

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

....

Civil Revision No.44347 of 2023.

Mst. Razia Begum.

Versus

Public at Large, etc.

J U D G M E N T.

Date of hearing: **01.10.2024.**

Petitioner by: Muhammad Alamgir Khan,
Advocate.

Respondents No.2-5 by: Mr. Akhtar Saeed Bhatti, Advocate.

Respondent No.6 by: Barrister Humayun Faiz, Advocate.

AHMAD NADEEM ARSHAD, J. Through this Civil Revision filed u/s 115 of *Code of Civil Procedure, 1908*, the petitioner has called in question the validity and legality of judgments/orders dated 14.03.2023 and 16.06.2023 of learned Courts below whereby her application for issuance of succession certificate was dismissed while directing respondent No.6 to pay the entire amount of the insurance policy to respondent No.2/nominee.

2. Facts in brevity are that the petitioner filed an application for issuance of succession certificate by maintaining that her son namely Muhammad Jahangir Khan passed away on 05.04.2022, who in his lifetime had obtained an insurance policy worth Rs.10,00,000/- from the State Life Insurance Corporation of Pakistan, hence, she being

mother (one of the legal heirs) of the deceased is entitled to inherit $1/6^{\text{th}}$ share out of the policy amount. Learned Trial Court, after taking its reply, dismissed the same vide order dated 14.03.2023 and directed respondent No.6 to pay the entire amount of the insurance policy to respondent No.2/wife of the deceased being 'nominee'. Feeling aggrieved, the petitioner preferred an appeal which also met the same fate and dismissed by the learned Appellate Court vide judgment/order dated 16.06.2023. Hence, this petition.

3. I have heard learned counsel for the parties at length and perused the record with their able assistance.

4. It is matter of record that Muhammad Jahangir Khan died on 05.04.2022 leaving behind mother namely Mst. Razia Begum (*petitioner*), widow namely Mst. Sana Mukhtar (*respondent No.2*), a daughter and two sons (*respondents No.3 to 5*). Admittedly, deceased Muhammad Jahangir Khan in his lifetime purchased an insurance policy from State Life Insurance Corporation of Pakistan wherein he nominated his wife (respondent No.2) as his nominee. The petitioner, by way of filing an application for issuance of succession certificate, claimed that being mother of the deceased she is entitled to inherit $1/6^{\text{th}}$ share of the insurance policy amount, whereas, respondent No.2 denied her right on the ground that being nominee she is solely entitled to receive the whole insurance policy amount.

5. The learned Courts below non-suited the petitioner on the ground that the amount of the Insurance Policy does not fall within the ambit of "*Tarka*" and said conclusion was drawn in the light of

judgment of Hon’ble Sindh High Court rendered in a case titled “MST. RABIA QAVI AND OTHERS V. MST. HINA QAVI KHAN AND OTHERS” (PLD 2020 Sindh 263) wherein, by considering the decision of the Federal Shariat Court in a case titled “MIRZA MUHAMMAD AMEEN, ETC. V. GOVERNMENT OF PAKISTAN” (PLD 1982 FSC 143) and decision of the Shariat Appellate Bench in a case titled “WAFaqI HAKOOMAT-E-PAKISTAN V. AWAMUNNAS” (PLD 1991 Supreme Court 731), concluded that amount of life insurance policy is not part of the ‘Tarka’, therefore, not liable to be inherited to the legal heirs and only the nominee is entitled to receive the amount of said life insurance policy.

6. The deeper dive into the documents and the grounds advanced by the learned counsel for the parties reveals that following questions need adjudication:

- (i) *Whether the proceeds of Insurance Policy are to be treated as ‘Tarka’?*
- (ii) *Whether the nominee can exclude all the legal heirs of the deceased insured person and the nomination itself operates as a gift or will?*
- (iii) *Whether the status of the nominee is only to collect the policy proceeds and distribute the same amongst the legal heirs.*

7. Before further discussion, it is better to understand the meaning of "nominee" in the light of renowned dictionaries. A "nominee" is typically defined as a person or entity designated to act on behalf of another, particularly in legal or financial matters. The

nominee may hold assets for the benefit of the actual owner, indicating a fiduciary relationship.

BLACK'S LAW DICTIONARY (11th Edition) has explained the word "nominee" as "a party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others".

OXFORD ADVANCED LEARNER'S DICTIONARY has defined the word "nominee" as "a person who has been formally suggested for a job, a prize etc.

The status of the nominee has been thrashed out by the august Supreme Court of Pakistan in the landmark judgment titled "MST. AMTAL HABIB AND OTHERS V. MST. MUSARAT PARVEEN AND OTHERS" (PLD 1974 SC 185) in the following manner:

"The nomination merely confers a right to collect the money or to 'receive the money'. It does not operate either as a gift or as a will and, therefore, cannot deprive the others heirs of the nominator who may be entitled thereto under the law of succession applicable to the deceased. The nominee thus collects as a trustee for the benefit of all persons entitled to inherit from the deceased employee."

This view was reiterated by the august Supreme Court of Pakistan in a case titled "MALIK SAFDAR ALI KHAN ANOTHER V. PUBLIC AT LARGE AND OTHERS" (2004 SCMR 1219).

In another case titled "MST. AMEERAN KHATOON V. MST. SHAMIM AKHTAR AND OTHERS" (2005 SCMR 512), the august Supreme Court of Pakistan while relying upon the judgment of

“WAFAQI HAKOOMAT-E-PAKISTAN (referred supra) wherein

'Tarka' was defined, held as under:

“Applying above test on the facts of instant case we are persuaded to hold that deceased Muhammad Ayub was not entitled for the Benevolent Fund and, Group Insurance during his life time and on his death, such amounts shall be deemed to be owned by him. Thus they will devolve upon his legal heirs being his 'Tarka'. Therefore, petitioner would not be entitled exclusively to claim these amounts except to the extent of her entitlement as per Shariat with other legal heirs of the deceased as it has been held by this Court in the case of Mst. Amtul Habib and others v. Mst. Musarrat Parveen and others PLD 1974 SC 185.”

A Division Bench of this Court, while dealing with the question of nomination in a case titled "POSTAL LIFE INSURANCE (PLI) AND OTHERS V. MUHAMMAD ISHAQUE BUTT" (2022 CLD 309), observed as under:

"The nomination by itself only confers right to collect the money but does not operate either as a gift or as a will, in view of the rule in "Mst. Amtul Habib and others v. Mst. Musarrat Parveen and others" (PLD 1974 SC 185), therefore, it cannot deprive the legal heirs of the nominator who are otherwise entitled to inherit the assets of deceased, under the law of succession applicable to the deceased. The respondent as nominee will be entitled to collect the amount of claim as trustee for the benefit of all the legal heirs entitled to inherit from the deceased nominator and will be responsible for disbursement of the awarded claim with liquidated damages, in terms of judgment of the Insurance Tribunal which the respondent as trustee of the amount shall be legally obliged to disburse amongst the legal heirs of deceased."

From the above said discussion, it has been safely concluded that the nomination merely confers a right to collect the money or to receive the money and it does not operate as a gift or as a will and, therefore, cannot deprive the legal heirs of the nominator who may

be entitled thereto under the law of succession applicable to the deceased propositus. The nominee, thus collects as a trustee for the benefit of all persons entitled to inherit from the deceased propositus.

8. The term “*Tarka*” has already been explained by the Federal Shariat Court and the Shariat Appellate Bench. The Federal Shariat Court in “*Mirza Muhammad Ameen’s Case*” referred supra held as under:

“This summing up is the crux of the matter. What is heritable is only that right which a person enjoys or had a right to enjoy during his lifetime till his death and this may include corporeal property incorporeal property whether partial or absolute, right to easement, debt including mortgage debt with right to remain in possession of property mortgaged, right to Diyyat and other compensation, right to recover debt or property by action (Chooses-in-action), right to possession of property sold till the payment by the purchaser of the purchase money and all other rights which are not strictly personal in the sense that they might abate with the death of the right-holder.”

Whereas, Shariat Appellate Bench, in “WAFAQI HAKOOMAT-E-PAKISTAN’s case referred supra, observed as under:

"ترکہ کی تعریف میں جس مال کا ذکر ہے۔ اس میں جائیداد منقولہ اور غیر منقولہ اور وہ واجب الادا رقوم شامل ہیں جو مرنے والے کے لیے کسی دوسرے کے ذمہ لازم ہوں، نیز وہ دیت جو مرحوم کو وصول کرنی ہو۔ خواہ وہ قتل خطا سے واجب ہوئی ہو، یا قتل عمد سے صلح کر کے یا اولیاء کی طرف سے قصاص کی معافی کے بعد اس طرح اس مال میں سارے مالی حقوق بھی شامل ہوں۔ مثلاً اگر میت کے پاس کوئی چیز رہن رکھی ہوئی تھی، اور اسے اپنے قرضے کی وصولی تک اس رہن پر قبضہ رکھنے کا حق تھا، تو یہ حق بھی ورثہ کی طرف منتقل ہوگا، یا اگر مرنے والے نے کوئی چیز بیچی تھی لیکن خریدار سے قیمت وصول کرنے کے لیے اس چیز پر اپنا قبضہ برقرار رکھا تھا، تو قبضہ کا یہ حق بھی قابل وراثت ہے۔ اسی طرح کسی شے کے استعمال کے حقوق، مثلاً حق آبپاشی، کسی نالی سے پانی بہانے کا حق، یا کسی راستے پر چلنے کا حق، یہ بھی ترکے میں شامل ہے، اور یہ سب حقوق مرنے والے سے اس کے ورثاء کی طرف منتقل ہوں گے۔"

9. Now the foremost question for determination is that whether the amount of Life Insurance Policy falls within the ambit of “*Tarka*” and liable to be distributed amongst the legal heirs of the deceased propositus or not? The status of the amount of Life Insurance Policy is not described in the insurance documents. However, Section 72 of the Insurance Ordinance, 2000, provides that the policy holder, when effecting the policy or at any time before the policy matures for payment, nominate the person or the persons as nominee to whom the money secured by the policy shall be paid in the event of the death of the insured person. For ready reference, said Section is reproduced as under:

72. Nomination by policy holder.- (1) *The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:*

Provided that where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) *Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the record relating to the policy and any such nomination may, at any time before the policy matures for payment, be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.*

(3) The insurer shall furnish to the policy holder a written acknowledgment of having registered a nomination or a cancellation or change thereof.

(4) A transfer or assignment of a policy made in accordance with section 71 shall automatically cancel a nomination: Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the right of the nominee only to the extent of the insurer's interest in the policy. Provided further that the assignment of a policy to a party other than the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that person on the security of the policy within its surrender value shall not cancel a nomination but shall suspend it, to the extent of the interest of that person in the policy, until such time as the policy is re-assigned on repayment of the loan.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees, survive the person whose life is insured the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (III of 1874), applies or has at any time applied:

Provided that where a nomination made before the commencement of this Ordinance, in favour of the wife of the person who has insured his life or of his wife and children or any of them, is expressed, whether or not on the face of the policy, as

being made under this section, the said section 6 shall be deemed not to apply or not have applied to the policy.

10. Admittedly, when a person secures Insurance Policy he makes certain payments from time to time as per the schedule from his pocket and on the maturity of Policy in his lifetime, he is entitled to receive the same. Moreover, as per sub-Section 02 of Section 72 of Ordinance *ibid* the Policy holder can change the nominee or cancel the nomination at any time before maturity of the policy. It is further provided in the sub-section 05 of Section 72 of the Ordinance *ibid* that in the event of death of the nominee or the nominees before the policy matures the amounts secured by the policy shall be payable to the legal heirs of the deceased policy holder or legal representatives, or the holder of a succession certificate, as the case may be. It is nowhere mentioned that after the death of nominee the amount would be disbursed amongst the legal heirs or legal representatives of the nominee. Hence, it clarifies that the nomination shall not operate as a gift or will because had the nomination been a gift or will, then after the death of the nominee the amount would devolve on the heirs of nominee rather than the heirs of policy holder.

11. The Section 72 of the Ordinance *ibid*, authorizes and empowers the policy holder to nominate a person or persons to whom the money secured by the policy shall be paid in the event of his death, but this provision of law does not exclude the legal heirs to inherit the assets, including the policy proceed of the deceased according to the principle of Muhammadan Law, because the reasons

is that there is a constitutional guarantee enunciated in the Constitution of the Islamic Republic of Pakistan, 1973, that no law can be made which is contrary to the injunctions of Quran and Sunnah. It is a Quranic injunction that the legal heirs of a Muslim deceased, will inherit their assets according to the principle of Muhammadan Law, therefore, for this reason the Superior Courts of the country finally held, that the nominee is only supposed to collect the policy proceeds and to disburse among the legal heirs and further the nominee in any case shall not exclude or deprive the legal heirs by the fruits of the policy. Reliance is placed upon the Insurance Tribunal case law cited as "MUHAMMAD UMAR V. IGI AND OTHERS" (2023 CLD 420).

12. From the analysis of the above discussed legal provisions, it can be securely held that the Insurance Policy proceeds fall within the definition of '*Tarka*' of the policy holder after his death.

13. The concept of nominee is alien to Muslim Law, according to which the legal heirs are the only persons entitled to receive the property left by their predecessor and no Muslim heir can exclude the other heir on the ground that he is a nominee. It is an established principle of law that a nominee, if appointed, does not become the sole owner of the assets left by the deceased but he/she is only authorized to collect the amount or to hold the property of the deceased as an administrator and then to distribute the same amongst all the legal heirs. The nomination does not make the nominee as donee nor the nomination amounts to a gift, in the absence of

delivery of possession of the property gifted. The nominee cannot claim as exclusive owner of the amount of the insurance policy. In the light of Muslim Law of Inheritance, all the legal heirs of the deceased are entitled to receive the property (*'Tarka'*) left by the deceased, according to their shares.

14. In view of the above discussed circumstances, learned Courts below have erred in law while dismissing the succession petition of the petitioner. Learned Courts below have failed to properly appreciate the question involved in the *lis*. The judgments referred by the Courts below as well as learned counsel for the respondent are not applicable in the present case as this case relates to life insurance policy and the nominee was appointed by the nominator just to fulfill the legal requirement of Section 72 of the Insurance Ordinance, 2000.

15. As an inevitable corollary of the above discussion, this petition is allowed. Consequently, impugned judgments of the Courts below are set-aside and the petitioner is held entitled to receive her due share out of the policy proceeds. Learned Trial Court is directed to issue the succession certificate forthwith as per Shari shares of all the legal heirs of deceased Muhammad Jahangir Khan.

(AHMAD NADEEM ARSHAD)
JUDGE.

APPROVED FOR REPORTING.

JUDGE.