A NOMINATION MADE IN FAVOUR OF A PERSON DOES NOT LEAD TO A NOMINEE ATTAINING TITLE OVER A PROPERTY FOR WHICH SUCH NOMINATION WAS MADE AND ACCORDINGLY THE TERM 'VESTING' UNDER SECTION 109A OF THE COMPANIES ACT, 1956, DOES NOT CREATE A THIRD MODE OF SUCCESSION

INTRODUCTION:

*The Apex Court in a recent decision in **Shakti Yezdani and Anr. Vs Jayanand Jayant Salgaonkar and Ors.**[1], inter alia held that the nomination process did not override succession laws and there was no third mode of succession that the Companies Act, 1956 (pari materia provisions of the Companies Act, 2013) and Depositories Act, 1996 intended to provide.*

FACTS:

The Appellants and Respondent nos. 1 to 9 are the legal heirs and representatives of one Mr. Jayant Shivram Salgaonkar.

The said Mr. Jayant Shivram Salgaonkar ("**Mr. Salgaonkar**") executed a will on 27th June, 2011, making provisions for the devolution of his estate upon the successors ("**said will**").

In addition to the properties mentioned in the said will, Mr. Salgaonkar had certain fixed deposits ("**FDs**") in respect of which the Respondent nos. 2, 4 and Appellant no. 2 were made nominees. Further, there were certain mutual fund investments ("**MFs**") in respect of which the Appellants and the Respondent no. 9 were made nominees.

Mr. Salgaonkar passed away on 20th August, 2013.

On 29th April, 2014, the Respondent no. 1 filed a Suit before the Bombay High Court with a prayer for declaration inter alia that the properties of Mr. Salgaonkar must be administered under the court's supervision.

The Appellants contended that they were the sole nominee(s) to the MFs and were absolutely vested with the securities on Mr. Salgaonkar's death. Additionally, the Appellant no. 2 was nominated and entitled to the FDs of Mr. Salgaonkar.

The Appellants further contended that nominations made in Mr. Salgaonkar's MFs/shares were made as per Section 109A and 109B of Companies Act, 1956 and bye-law 9.11.7 of the Depositories Act, 1996. It was contended that Section 109A and 109B of the Companies Act, 1956 must be read as a code in themselves, wherein the meaning of words 'vest' and 'nominee' were to be seen from the statute alone bearing in mind the non-obstante clause contained therein. Therefore, the provisions should be interpreted without reference to any outside consideration.

On 31st March 2015, the Bombay High Court while passing an order in the Notice of Motion

[1] Civil Appeal No. 7107 of 2017

filed in the above Suit considered whether the law laid down in the case of ***Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited and Others***[2] was per incuriam. The contentions of the Appellants were rejected by the Single Judge by observing that section 109A and section 109B of the Companies Act, 1956 could not be read in a vacuum and it was permissible for the court to look at pari materia provisions in other statutes.

The Single Judge observed that the fundamental focus of section 109A and section 109B of the Companies Act, 1956 and Bye-law 9.11.7 of the Depositories Act was not the law of succession nor was it intended to restrict the law of succession in any manner. Addressing the mischief that was sought to be avoided by the two statutory provisions, the Single Judge observed that the aforesaid provisions intended to afford the company or the depository in question, a legally valid quittance so that it does not remain answerable forever to succession litigations and endless slew of claims under the succession law.

The Single Judge observed that a nominee held shares/securities in a fiduciary capacity and was answerable to all claims made under the succession law.

Being aggrieved with the decision of the Single Judge, the Appellants, preferred an Appeal, before the Division Bench of the Bombay High Court.

The Division Bench observed that the object and provisions of the Companies Act, 1956 was not to provide a mode of succession or to deal with succession at all. The object of section 109A Companies Act, 1956 was to ensure that the deceased shareholder was represented, as the value of the shares was subject to market forces and various advantages would keep accruing to the shareholder, such as allotment of shares and disbursement of dividends. Moreover, a shareholder is required to be represented in the general meetings of the company.

It was further observed that the aforesaid provisions were enacted to ensure that commerce would not suffer due to delay on part of the legal heirs of the deceased shareholder in establishing their rights of succession to claim shares of a company. It was observed that the so-called 'vesting' under section 109A of the Companies Act, 1956 did not create a third mode of succession nor was the provision intended to create another mode of succession. The Companies Act, 1956 had nothing to do with the law of succession.

In view of the aforesaid, the Division Bench held that a nominee of shares or securities was not entitled to the beneficial ownership of the shares or securities which were the subject matter of nomination to the exclusion of all other persons who were entitled to inherit the estate of the holder as per the law of succession. It was further held that a bequest made in a will executed in accordance with the Indian Succession Act, 1925 in respect of shares or securities of the deceased, superseded the nomination made under the provision of section 109A of Companies Act, 1956 and Bye-law 9.11 framed under the Depositories Act, 1996. The Division Bench further held that an incorrect view was taken in ***Kokate (supra)***.

Being aggrieved by the order of the Division Bench of the Bombay High Court, the Appellants approached the Apex Court.

ISSUE FOR CONSIDERATION:

[2] (2010) SCC Online Bom 615

The issues for consideration before the Apex Court were as follows:

(i) The scheme, intent and object behind the Companies (Amendment) Act, 1999,

(ii) The implication of the scheme of 'nomination' under the Companies Act, 1956 as well as other comparable legislations,

(iii) The use of the term 'vest' and the presence of the non obstante clause within the provisions of the Companies Act, 1956,

(iv) Nomination under the Companies Act, 1956 vis-à-vis law of succession.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

It was submitted on behalf of the Appellants that the scheme of nomination provided under the Companies Act, 1956 was not analogous to nomination provided under other legislations and unlike other legislations, the term 'vesting' and 'to the exclusion of others' along with a 'non-obstante clause' were placed together under the Companies Act, 1956.

It was submitted that section 109A and section 109B (now section 72 of the Companies Act, 2013) under the Companies Act, 1956 made it clear that a nominee, upon the death of the shareholder/debenture holder, would secure full and exclusive ownership rights in respect of the shares/debentures for which he/she was the nominee.

It was further submitted that section 187C and section 109A(3) of the Companies Act, 1956 were to be read together, to mean that shares should 'vest' with the nominee to the exclusion of all other persons unless nomination was varied or cancelled.

The said will had categorically mentioned all other properties of the deceased except the shares for which the Appellants were named as nominees, the implication was naturally that the ownership rights of such shares would pass on to the nominees after the death of the testator i.e., the Appellants' grandfather.

It was also submitted that the nomination for shares i.e., Form SH-13 under Rule 19(1) of the Companies (Share Capital & Debentures) Rules, 2014 indicated that the shareholder or joint shareholder could nominate one or more persons as nominee in whom all rights of the holder should vest. As such nomination could be in the favour of a third party or a minor, it was argued that the legislature under the Companies Act intended to give complete ownership to the nominee.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

Relying upon the judgment of the Apex Court in ***Indrani Wahi v. Registrar of Cooperative Societies and Others***[3] it was submitted that the term 'vesting' under section 109A of the Companies Act, 1956 would not create a third mode of succession.

It was further submitted that the Companies Act had nothing to do with the law of succession. In support of this contention, reliance was placed on Part IV of the Companies Act, 1956 which dealt with share capital and debentures as well as section 108 to section 112 of the Companies Act, 1956 which related to 'transfer of shares and debentures'. It was submitted that the limited object of the aforesaid provisions were to provide a facility for transfer of shares or

[3] (2016) 6 SCC 440

debentures through a proper instrument of transfer and consequential actions such as registration and in case of grievances, appeal thereof. The introduction of section 109A and section 109B merely provided for facility of nomination aiding in the process of such transfer. Therefore, no third mode of succession by way of nomination had been contemplated under to the Companies Act.

It was further submitted that by virtue of consistent views taken by the Apex Court and various High Courts a nominee by virtue of section 109A and section 109B of the Companies Act, 1956 could not impact the rights of the legal heirs/legatees obtained through application of the succession law.

It was further submitted that the terms 'nominee' and 'nomination', were not defined under any enactment and were to be considered as ordinarily understood by persons making the nomination, for their moveable or immovable properties. Similarly, the term 'vest' as used under the Indian Succession Act, 1925 would be understood to mean that neither the administrator nor the executor would become the owner of the property. Such vesting was therefore limited to the specific purpose of distribution of the estate amongst the lawful successor(s).

It was submitted that if the contention of Appellants were to be accepted, nomination would be rendered similar to a 'will' or a 'testamentary disposition' to the extent of securities, of a particular company. However, the Indian Succession Act, 1925 prescribed a detailed judicial process to obtain letters of administration or succession certificates or probates, as the case may be.

JUDGMENT:

The Apex court observed that the object for the introduction of a nomination facility was made to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country.

It was observed that the Apex Court as well as several High Courts whilst dealing with the concept of 'nomination' under various legislations such as the Government Savings Certificate Act, 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939, and the Employees Provident Fund and Miscellaneous Provisions Act, 1952 had taken a consistent view that the nomination made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession was not to be impacted by such nomination. The legal heirs therefore had not been excluded by virtue of nomination.

The Apex Court was of the view that the legislative intent for creating a scheme of nomination under the Companies Act, 1956 was not intended to grant absolute rights of ownership in favour of the nominee merely because the provision contained three elements i.e., the term 'vest', a non-obstante clause and the phrase 'to the exclusion of others', which were absent in other legislations that provide for nomination.

Relying upon its decisions in ***Fruits & Vegetable Merchant Union v. Delhi Improvement Trust***[4], ***Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu***[5] and ***Municipal Corpn. of Greater Bombay v. Hindustan***

[4] AIR 1957 SC 344

[5] 1991 Supp (2) SCC 228

Petroleum Corpn.[6], the Apex Court observed that the use of the word 'vest' did not by itself, confer ownership of the shares/securities in question, to the nominee. The vesting of the shares/securities in the nominee under the Companies Act, 1956 and the Depositories Act, 1996 was only for a limited purpose, i.e., to enable the company to deal with the securities thereof, to avoid uncertainty as to the holder of the securities, which could hamper the smooth functioning of the affairs of the company.

The vesting of securities in favour of the nominee contemplated under section 109A of the Companies Act 1956 (pari materia section 72 of Companies Act, 2013) and Bye-Law 9.11.1 of Depositories Act, 1996 was to ensure that there existed no confusion pertaining to legal formalities that were to be undertaken upon the death of the holder and by extension, to protect the subject matter of nomination from any protracted litigation until the legal representatives of the deceased holder are able to take appropriate steps. The object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

The Apex Court observed that nomination process did not override the succession laws. Simply said, there was no third mode of succession that the scheme of the Companies Act, 1956 (pari materia provisions in Companies Act, 2013) and Depositories Act, 1996 intended to provide.

In view of the aforesaid, the Apex Court held that the Companies Act, 1956, did not deal with the law of succession and upheld the decision of the Division Bench of the Bombay High Court.

[6] (2001) 8 SCC 143