

**(2011) 10 AP CK 0013**

**Andhra Pradesh High Court**

**Case No:** W.A. No. 516 of 2003

Bank of Baroda and another

APPELLANT

Vs

Lalitha Shankarnarayana

RESPONDENT

**Date of Decision:** Oct. 17, 2011

**Acts Referred:**

- Succession Act, 1925 - Section 372

**Citation:** (2012) 1 ALT 684

**Hon'ble Judges:** P.V. Sanjay Kumar, J; Ghulam Mohammed, J

**Bench:** Division Bench

**Advocate:** K. Srinivasa Murthy, for the Appellant; S.R. Sanku, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

P.V. Sanjay Kumar, J.

The Bank of Baroda is the appellant and the order dated 17.03.2003 passed in W.P.No. 12090 of 2002 is under appeal. By the said order, the learned Judge directed the Bank to treat the application filed by the respondent herein as being within time and to pass appropriate orders for sanctioning pension to her within a time frame. The respondent filed the subject writ petition assailing the letter dated 08.04.2002, addressed by the Bank rejecting her claim for payment of pension in spite of the Succession Certificate dated 12.03.2001 obtained by her in O.P. No. 839 of 1994.

2. The facts in brief. R.S. Shankarnarayanan, the husband of the respondent died in harness, while working as the Manager of the Coonoor Branch of the Bank, on 16.01.1990 in a road accident. Her son was granted compassionate appointment as a Clerk in the Bank. She applied for sanction of pension in the year 1996. The same was rejected under the impugned letter dated 08.04.2002.

3. It is not in dispute that one other lady by name Rohini claimed to be the wife of the respondent's husband and approached the Bank asserting a right over his terminal benefits under the Will said to have been executed by him. The letter dated

16.11.1991 addressed by the Chairman and Managing Director of the Bank to the Joint Secretary, Banking Division, New Delhi, is relevant in this context and reads as under;

As may please be observed, in view of the conflicting claims; one arising by virtue of marriage and another on account of Will purported to be executed by late Mr. Shankarnarayan the matter cannot be resolved unless an order of the Court of competent jurisdiction disposes off the claim in accordance with the Will or otherwise. The Bank will abide by such order of the Court.

4. Pursuant to the advice of the Bank, the respondent along with her children and father-in-law filed O.P. No. 839 of 1994 before the II Additional Chief Judge, City Civil Court, Hyderabad, u/s 372 of the Indian Succession Act, 1925, for a Succession Certificate in respect of the gratuity, provident fund, etc., of the deceased employee. Rohini was arrayed as the first respondent in the OP. By order dated 12.03.2001, the civil Court dismissed the petition but held that the respondent herein was entitled to receive the pension of her husband while Rohini was entitled to receive the other service benefits under the Will executed by the deceased employee. Significant to note, the Bank was also a party to the said O.P. This order has admittedly attained finality.

5. It is the case of the appellant Bank that a Pension Scheme was floated by it under Notification dated 08.11.1995, whereunder the employees/families of the deceased employees who were in service after 01.01.1986 and died while in service before 29.09.1995, were required to submit their options within 120 days from the date of the notification. As the respondent herein submitted her option on 16.08.1996, beyond the stipulated 120 days, the appellant Bank rejected her claim under the impugned letter dated 08.04.2002.

6. The learned Judge, however, was disinclined to accept this rejection in the facts and circumstances of the case. The learned Judge took note of the fact that the respondent had filed O.P. No. 839 of 1994 before the civil Court for obtaining a Succession Certificate and held that she could not have made an application within time for seeking pension without first obtaining the necessary Court order. The learned Judge was of the opinion that the eligibility of the respondent herein accrued only upon the date of disposal of the O.P. and therefore, the objection taken by the Bank could not be sustained. The writ petition was accordingly allowed directing the Bank to treat the application filed by the respondent herein as being within time as per the notification and in view of the order passed in O.P. No. 839 of 1994, and to pass appropriate orders within a time frame.

7. Though the order of the learned Judge was stayed pending appeal on 21.04.2003, it is fairly conceded by the learned counsel for the appellant Bank that the Bank is paying pension to the respondent herein pursuant to the said order.

8. In the light of the afore stated facts, the issue that arises for consideration is whether the failure on the part of the respondent in submitting her option within the time frame stipulated in the notification dated 08.11.1995 would be fatal to her claim for pension.

9. Significantly, the Pension Scheme was not in existence at the time rival claims were made by the two ladies for the terminal benefits of late Shakarnarayanan. Pursuant to the advice tendered by the Bank itself, the respondent approached the competent civil Court for grant of a succession certificate. The Bank was also a party to the said proceedings and suffered the order dated 12.03.2011 that the respondent herein was entitled to the pension payable consequent upon the demise of her husband. Though it is no doubt true that the entitlement of the respondent to pension as such was not an issue before the civil Court, it is relevant to note that the Bank, being a party to the said OP, did not choose to file an appeal in spite of the finding therein that the respondent was entitled to pension. That apart, the stand of the Bank all through was that it would abide by the Court order. This is evident from the letter dated 16.11.1991 addressed by the Chairman and Managing Director of the Bank also.

10. In such circumstances, the failure on the part of the respondent to submit her option within the time frame stipulated in the notification cannot be held against her. Once her very entitlement to claim her husband's terminal benefits was in issue and was sub judice before the competent civil Court, even if she had submitted the option within time, no good could have come of it. The Bank would have invariably rejected the same on the ground that the issue had to be decided by the competent civil Court. In such circumstances, the Bank cannot hold the failure on the part of the respondent in submitting an option in time against her, for the purpose of altogether disentitling her to pension. It is not in dispute that despite the compassionate appointment granted to her son, the respondent would still be entitled to pension and had her option been submitted within time, the Bank had no other objection to the sanction of pension to her.

11. In such circumstances, we find no reason to interfere with the order of the learned Judge which has already been given effect to by the Bank. The entitlement of the respondent for pension shall be from 12.03.2001, the date of the order in O.P. No. 839 of 1994, whereunder her right to such pension stood crystallized. The writ appeal is accordingly dismissed. There shall be no order as to costs.