(1965) 10 BOM CK 0017

Bombay High Court

Case No: Appeal No. 31 of 1960

Maria Antonica Rodrigues		APPELLANT
	Vs	
D.R. Baliga and Others		RESPONDENT

Date of Decision: Oct. 22, 1965

Acts Referred:

- Married Womens Property Act, 1874 - Section 6

Citation: AIR 1967 Bom 465 : (1967) 69 BOMLR 41

Hon'ble Judges: Gokhale, J

Bench: Single Bench

Advocate: H.R. Mehervaid, instructed by Mehervaid and Co. Attorneys, for the Appellant; K.J. Abhyankar, Asst. Govt. Pleader, for the Respondent

Judgement

(1) The appellant, Maira Antonica Rodrigues, is the daughter of respondent No. 3, Baltazar M. Rodrigues, who effected a policy of insurance with the Oriental Government Security Life Assurance Company, Ltd. (hereinafter referred to as "the Insurance Company"). The policy was a marriage endowment policy, issued on the 25th of September 1933, for a sum of Rs. 5,000. The premium on the policy was payable "during the joint lifetime of the proposer and the said Maria Antonica Rodrigues for a period of 19 years". The sum assured was payable to "the proposer whom failing to the said Maria Antonica Rodrigues provided she shall have attained majority, failing which to the legally appointed guardian of the said Maria Antonica Rodrigues." It is also mentions the following special provisions:-

"if the said Maria Antonica Rodrigues, hereinafter called the said chile, shall die before the twenty-fifth day of September Nineteen Hundred and Fifty-two while the policy is in force, the total amount of premiums paid excluding the first year''s premium shall be returned to the proposer or his proving executors or his administrators or other legal representatives who shall take out representation from any British Court to his estate or limited to the moneys payable under the

policy.

Should the said child die before the end of the term of assurance specified above the payment of the premiums may be continued and another child of the same family be substituted for the said child, and all references to the said child and is legally appointed guardian shall them be construed as a reference to the child so substituted and its legally appointed guardian".

One of the provisos to the policy, inter alia, stated:

". . . . . .in case it shall hereafter appear that any untrue averment is contained either in the proposal or in the relative declaration above mentioned, or that any of the matters set forth therein have not been truly and fairly stated, or that any material information has been withheld, then and in every such case, this policy shall be void, and all claim to any benefit in virtue of these presents, shall cease and determine, and all moneys that have been paid in consequence thereof shall belong to the Company, excepting always in so far relief is provided in terms of the privileges printed on the back hereof, or may be lawfully granted by the Directors of the Company".

As the preamble itself shows, the policy was issued on the strength of "a proposal for assurance together with a relative declaration made before the Medical Examiner, by the proposer". The proposal was made by respondent. No. 3 on a form supplied by the Insurance Company. It is a form meant for Proposal for Educational Annuity or Marriage Endowment. In Column (11) of the form, the question "Do you wish an Educational Annuity or a Marriage Endowment?", the answer given by respondent No. 3 is: "Marriage Endowment for both after 11 years (eleven) and 19 years". The appellant Maria Antonica Rodrigues and her sister Corinda Lira Rodrigues are mentioned as the children upon whose survivance the Annuity or Endowment becomes payable. Respondent No. 3 has then made the following declaration below which he has singed:

"I, the above designed B. M. Rodrigues, the person whose life is proposed to be assured, do hereby declare that the foregoing statements are true and I do hereby agree that these statements and this declaration along with the further statements to be made at the time of Medical Examination and the answers to the questions to be put to me by the Medical Referee of the Company in connection with the assurance with the declaration relative thereto shall be the basis of the contract between me and the Company and that if any untrue averment be contained therein, all moneys which shall have been paid up on account of the said assurance shall be forfeited, and the assurance itself shall be absolutely null and void".

After the expiry of the period of 19 years, the policy moneys became payable on the 25th of September 1952. The question which has arisen for decision in this appeal is whether this policy taken out by respondent No. 3 was a policy to which Section 6 of the Married Women''s Property Act, 1874 (hereinafter referred to as Act II of 1874)

applied.

(2) Section 6 of Act II of 1874, to the extent relevant, is as follows:

"6. (1) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the State in which the office at which the insurance was effected is situate, and shall be received and held by him upon and trusts expressed in the policy, or such of them as are then existing".

In order that this section should apply to a policy of insurance, the policy must be effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them. If this condition is complied with, then the policy shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed and as long as any object of the trust remains, the policy shall not be subject to the control of the husband, or to his creditors, or form part of his estate. Respondent No. 3, the father of the appellant, undoubtedly effected the present policy of his own life but the question which falls for determination is whether this policy is expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them. If it is so, it will be beyond the control of respondent No. 3 or of his creditors, inasmuch as it ceases to be a part of his estate. In the present case, the question arose in these circumstances:-

Respondent No. 3 carried on business in the name of Baltazar and Sons. The 2nd Income Tax Officer, C-IV Ward, Bombay, who is respondent No. 1 to this appeal, issued a certificate to the Collector of Bombay u/s 46(2) of the Indian Income Tax Act for recovery of Income Tax due to respondent No. 2, the Union of India, amounting to Rs. 3,61,266-10-0 from respondent No. 3 for the assessment year 1945-46. The appellant stated in the plaint that similar certificate were issued for subsequent years and the total liability of respondent No. 3 was to the tune of nearly five and half lakhs. Respondent No. 3 was unable to meet a major part of his Income Tax liability and that is why respondent No. 1 issued a general notice u/s 46 (5) of the Income Tax Act requiring the Insurance Company to pay to him the money due and payable to respondent No. 3 under several policies taken out by him including the present Marriage Endowment Policy No./ 389928. The appellant applied to the Collector of Bombay on the footing that the notice issued by respondent No. 1 u/s 46 (5) was like an attachment u/s 46 (2) of the Income Tax Act. She represented to

the Collector of Bombay that she has been expressly mentioned as the beneficiary of the policy and the policy itself bore an endorsement that her mother had been appointed her guardian with regard to the said policy moneys during her minority and that she having attained majority the policy moneys had to be held in trust on her behalf and that respondent No. 3 had no claim or interest therein. The appellant also wrote to the Insurance Company to the same effect, but she was informed that the amount of the policy had already been paid by them to the first respondent. On the 29th of March 1955 the Additional Collector of Bombay made an order that attachment of the present policy and become infructuous inasmuch as the moneys had already been recovered by the Income Tax Officer and that, therefore this policy should be released from attachment. The appellant then filed a suit in the City Civil Court for a declaration that valid trust was created in favour of the appellant in respect of this policy and that the Insurance Company and respondent No. 3 held the said policy and the moneys thereunder as trustees of the appellant. The relief claimed was that the respondents, including the Union of India, be ordered and decreed to pay to the appellant the moneys under the policy.

(3) Defendant No. 1 and Defendant No. 5, the Income -tax Officers, and Defendant No. 2, the Union of India, contested the claim of the plaintiff. The principal ground taken in defence was that Section 6 of Act III of 1874 was not applicable and that the policy did not create any trust in favour of the plaintiff, inasmuch as it was not for the benefit of the Plaintiff.

(4) The learned Judge of the City Civil Court framed a number of issues, but the principal one was whether a valid trust was created in favour of the Plaintiff in respect of the policy issued by the Insurance Company. This issue was answered by the learned Judge in the negative. It is not necessary to refer to the other issues because both the learned advocates appearing for the parties before me have not argued them. The learned Judge took the view that Section 6 of Act III of 1874 was not applicable to the policy in question. This decision is now challenged by Mr. Mehervaid on behalf of the appellant-Plaintiff.

(5) I have already quoted Section 6 to the extent relevant for the purposes of this appeal. A policy of insurance in order that Section 6 should apply should be effected by any married man of his own life. The other requirement is that the policy, on the face of it, must be for the benefit of his wife or of his wife and children, or any of them. The present policy is on the life of respondent No. 3. That it is not for the benefit of his wife, or of his wife and children is apparent. It is for the benefit of his children, i.e., the appellant and her sister. It was contended by Mr. Abhyankar, appearing for the respondents, that a policy which is for t he benefit of a child or children is not contemplated by Section 6 of Act III of 1874. According to his contention, the expression "for the benefit of his wife or of is wife and children, or any of them" means that the policy is either for the benefit of the wife or for the benefit of the wife and children or for the benefit of the wife and any one of the

children. It cannot be, he says, for the benefit only of the children without the wife. This contention raised on behalf of the Defendants found favour with the learned Judge. The contention is that "any of t hem" has reference to any of the children along with the wife and not any of the children without the wife. On a plain interpretation of the section I do not find it possible to accept this construction suggested by Mr. Abhyankar. The expression "of his wife and children" referred to more than one child because the word "children" would include one child. According to the construction suggested by Mr. Abhyankar, the expression "of his wife and children" must refer to a policy for the benefit of the wife and more than one child and not for the benefit of the wife and only one child. The reasonable construction would be that when the word "children" is used, it includes one child also. Only if it were not so, then the further expression "any of them" would have been necessary to provide for the case of a policy for the benefit of the wife and one child. Looking to the language exployed, it does not seem to me that a policy, which was not for the benefit of the wife but was for the benefit only of children, was not contemplated by Section 6. Mr. Abhyankar has relied on the marginal note to Section 6, which says: "Insurance by husband for benefit of wife". It is a well-settled rule of construction that if the language of the section is clear, the marginal note cannot control the intention expressed in the main section. The section no doubt refers to a policy for the benefit of the wife and children, and still the marginal note only refers to insurance by husband for benefit of wife. The marginal note in this case, therefore is only an indication of the subject dealt with by the Legislature in the particular section and cannot be treated as exhaustive of all aspects of that subject which actually find expression in the section itself. Mr. Abhyankar then invited my attention to the preamble of the Act and said that the preamble indicates that the whole Act is to make provision for married women and, therefore, Section 6 also intended that, without a benefit being conferred on the wife, a child alone could not be the beneficiary in a policy covered by Section 6. The Act itself has been described as "an Act to explain and amend the law relating to certain married women, and for other purposes". The various provisions of the Act show that they are not all confined to such benefits for married women alone and there are provisions for other purpoſs. Moreover, while it is permissible to look at the preamble for understanding the import of the various clauses contained in the Act, full effect has to be given to the express provisions of the Act even though they appear to go beyond the terms of the preamble. Where the language of the Act is clear, the preamble must be disregarded. Where the object or meaning of an enactment is not clear the preamble may be resorted to to explain it. See Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, , Mr. Abhyankar''s contention is that the pronoun "them" used in the expression "any of them" refers to any of the children with the wife and has no reference to anyone of the children alone. On the language of the section it does not seem to me that that was the intention of the Legislature and it is, therefore, not possible to accept this limited construction suggested by Mr. Abhyankar.

(6) The analogous provision in the English Act, the Married Women''s Property Act, 1882, is Section 11 and the relevant corresponding provision is as follows:-

"A policy of assurance effected to be for the benefit of his wife, or his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named. . . . . ."

The language employed by the British Parliament in this section is no doubt more explicit and admits of no ambiguity whatsoever. The language employed in Section 6 of Act III of 1874 is not so explicit. If the Indian Parliament had employed the expression "for the benefit of his wife or of her children" then there would have been no difficulty. In view of the objects of the legislation there is no reason to think that the intention of the Indian Parliament was any different than the intention of the British Parliament, as expressed in Section 11 of the English Act. A similar argument fall for consideration before the Full Bench of the Madras High Court in Balamba v. Krishnayya ILR 37 Mad 483: AIR 1914 Mad 595 and the learned Chief Justice observed as follows:

"This suggested anomaly was met by the contention that a similar anomaly arose under the language of Section 6 itself since the words "or any of them" only applied to children, and that a policy for the benefit one or more children, to the exclusion of the wife, did not come within the terms of the section. The words of the Indian Act are the same as those of Section 10 of the English Act of 1874 (except that the English Act says "be deemed to be a trust for the benefit of his wife and of his children or any of them" whilst the Indian Act says "be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them").

These words may be ambiguous, but in Section 11 of the English Act of 1882 we have the words "for the benefit of his wife or of his children, or of his wife and children, or any of them". This makes the matter quite clear, we should construe the words in Section 6 of the Indian Act of 1874".

The learned Chief Justice also explained the intendment of Section 6 in the following words:

"The section no doubt is in the interest of the wife and children, but its primary object is to enable a man to make provision for their benefit, without executing a separate deed of trust. The section enables a Hindu male to do something which, but for the section, he would not be able to do."

I respectfully agree with this construction of Section 6. There is no doubt in my mind that although the predominant object of the Act was to make provision for married women, the Act also dealt with may incident matters and Section 6 clearly shows that the benefit was not only of the wife but of the children. There is no reason to

think that the Parliament intended the benefit to be conferred on the wife alone or on the wife with her children but not on the children alone. The correct construction, therefore, is that a policy for the benefit of (1) the wife, (2) the wife and children, and (3) the children. The plural "children" would no doubt include on child. I am, therefore, unable to accept Mr. Abhyankar''s contention that the view taken by the learned Judge that a policy to which Section 6 can apply cannot be only for the benefit of the children is correct.

(7) Mr. Abhyankar then contended that even if a policy can be only for the benefit of a child or children, the other requirements u/s 6 which must be complied with are that policy must be expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them. Mr. Abhyankar says that the present policy does not in terms says that it is for the benefit of the appellant. Now, it is true that the words "for the benefit of" are not used in the policy, nor are they necessary to be used. If it is clear from the policy that the intention was that it was taken for the benefit of the wife and/or children, Section 6 should apply. The Schedule which, under the policy, is deemed to be a part of the policy, shows that the sum assured became payable in the event of the appellant surviving the 25th of September 1952. It is made payable to the proposer, i.e., respondent No. 3 failing him, to the appellant provided she shall have attained majority, failing which, to the legally appointed guardian of the appellant. The premium is payable during the joint lifetime of the proposer, i.e., respondent No. 3, and the appellant for a period of 19 years. The special provisions in the Schedule provide that should that appellant die before the end of the term of assurance specified in the policy, the payment of the premiums may be continued and another child of the same family be substituted for the appellant and all references to the appellant and her legally appointed guardian shall be construed and its legally appointed guardian. Thus, although the policy does not in terms use the words "for the benefit of", it cannot be doubted that benefit was sought to be conferred on the appellant or, in the event of her death, to another child of respondent No.3, if so substituted. That the policy moneys were also payable to the appellant, if respondent No. 3, was not alive, or to her legally appointed guardian, if she was a minor, is also clear from the policy. The schedule also describes the class of the policy as "Marriage, Endowment 19 years". Even the dictionary meaning of "endowment" would support the construction that the policy was intended as a permanent provision for the benefit of someone. Webster''s International Dictionary gives the following meanings of "endowment";

"(1) The act of bestowing a dower, fund, on permanent provision for support. (2) That which is bestowed or settled on a person or an institution; property, fund, or revenue permanently appropriated to any object; as the endowment of a church, a hospital, or a college. (3) That which is given or bestowed upon the person or mind; gift of nature, accomplishment; natural capacity; talents; usually in the plural".

We are not directly concerned with meanings Nos. (2) and (3), but the underlying idea of an endowment is bestowing fund or making a permanent provision for the support of someone. The present policy in terms refers to marriage endowment and the obvious object of respondent No. 3 was to take out a policy for making a provision for the marriage of the appellant and of her sister. If there was any doubt, one has only to look to the proposal made by respondent No. 3 before the policy was taken out. The form on which the proposal is made by respondent No. 3 is the one supplied by the Insurance Company for "Proposal for Educational Annuity or Marriage Endowment". It specifically states that the endowment becomes payable upon the survivance of the appellant and her sister. Mr. Abhyanker contends that the proposal cannot be considered, since it is not the policy, which is referred to in Section 6 of the Act, and a policy is only the one which is formally issued by the Insurance Company after the proposal is accepted. As I have already pointed out earlier, the policy itself states that it shall become void if any of the matters setforth in the proposal have not been truly and fairly stated or if nay material information has been withheld. The declaration made by respondent No. 3 below the proposal in terms states that the statements made in the proposal and the declaration along with the further statements to be made at the time of the medical examination and the answers to the questions to be put by the medical referee of the Company in connection with the assurance with the declaration relative thereto shall be the basis of the contract between respondent No. 3 and the Insurance Company and that if any untrue averment be contained therein, all moneys which shall have been paid up on account of the said assurance shall be forfeited and the assurance itself shall be absolutely null and void. The policy is not the formal document issued after acceptance of the proposal but is the whole contract which constitutes the policy of insurance. In the circumstances of this case, there is no doubt that the contract consists of not only the formal policy issued but of the proposal and the policy, and it is, therefore, open to refer to the proposal to ascertain as to what were the terms of the policy. On a reference to both these documents, namely, the proposal and the policy, it seems clear to me that the policy was taken by respondent No. 3 for the benefit of his daughters, one of whom is the appellant. The proposal in this case must be treated as part of the policy of insurance and it can be looked at to ascertain to whom the insurance moneys were payable. Leach, C. J., delivering the judgment of the Full Bench of the Madras High Court in Krishnan Chettiar v. Velayee Ammal ILR (1938) Mad 909: AIR 1938 Mad 604, observed as follows (p. 919) (of ILE Mad): (at p. 607 of AIR):

"The word "policy" in Section 6 of the Married Women''s Property Act means the document or documents evidencing the contract. If the document known as the policy stands alone and does not incorporate in it any other document, only that document can be looked at, but if it does expressly incorporate another document, as in this case, the document must be deemed to be part of the policy"."

This is the view taken in a number of cases in Indian and English Courts, and I am unable to agree with the suggestion made by Mr. Abhyankar that it is not open for the Court to look at the terms of the proposal to ascertain the contract and that the contract must be ascertained only from the formal document, called "the policy" issued by the Company. In my view, in the present case, there is no doubt on the formal document of the policy itself that it was for the benefit of the appellant, but read with the proposal, the matter, I think, is put completely beyond doubt.

(8) Mr. Abhyankar then says that even if the policy is for the benefit of the appellant, that is not the kind of benefit contemplated by Section 6 of the Act because the appellant alone is not the beneficiary under the policy and respondent No. 3 retained his interest in the policy moneys and did not divest himself of such interest when the policy was taken out. He relies on the provision in the policy that the policy moneys would be payable to the proposer, i.e., respondent No. 3, and failing him to the appellant. Mr. Abhyankar says that if the appellant survived till the 25th of September 1952, respondent No. 3 , her father, was entitled to payment of the policy moneys and the benefit of the policy , therefore, was available not only to the appellant but also to respondent No. 3, her father. In fact the contention went further and suggested that the appellant''s interest was only contingent on the happening of a certain event and there was no present trust created in favour of the appellant under the policy. Mr. Abhyankar says that if the appellant survived up to the 25th of September 1952, respondent No. 3, her father, would take the moneys and where is the benefit of the appellant in the case? The appellant would get the benefit only if respondent No.3 predeceased the relevant date on which the policy moneys became payable and which event may or may not happen. Mr. Abhankar saya that if it did not happen, the appellant was out of the picture and the benefit was not, therefore,. Of the appellant. Mr. Abhyankar reads more than what the section contains. All that Section 6 requires is that it must be a policy for the benefit of his wife or of his wage and children, or any of them. It does not say that it must be a policy exclusively for the benefit of his wife or of his wife and children or any of them. Assuming hat some benefit accrued under the policy in favour of respondent No. 3, if it is shown that some benefit also accrued in favour of the appellant,. It was a policy for the benefit of the appellant and was, in the terms of the section, covered as a policy protected under this Act. Mr. Abhyankar says that in order that Section 6 should apply there must be a trust so that the policy moneys shall not be subject to the control of respondent No. 3. If respondent No. 3 was entitled to withdraw the moneys, can it be said, Mr. Abhyankar asks, that he had no control over the policy money? There are two answers to these contentions. One answer is that the right to receive payment is not the same thing as having a full right over the property received. Payment may be received in trust for someone else. All that the policy says is that the sum assured will be payable to respondent No. 3. If that contingency happens, respondent No.3 shall hold the amount so received in trust for the appellant. The second answer is that the trust may as well be a contingent trust.

There is nothing in the section to indicate that a contingent trust could not be the one contemplated by Section 6 of the Act. Even on the construction suggested by Mr. Abhyankar that the appellant would be entitled to the policy money in the event of respondent No. 3 dying before the policy matured, it means that the trust itself was created in favour of the appellant on the happening of that event. That there can be a contingent trust is not disputed by Mr. Abhyankar. But the contention is that the provisions of Section 6 would apply only if an unconditional interest in the benefit of the policy was created at the time when the policy was taken out in favour of the wife or the child and not if a contingent benefit was contemplated. No doubt he is apparently supported by the observations of a Division Bench of this Court in Dinbai v. Bamansha 36 Bom LR 608: AIR 1934 Bom 296. But on a close scrutiny of the case it does not seem that that case really supports Mr. Abhyankar''s proposition. It is pertinent to note that the policy itself was not produced in that case, but an argument was advanced on the basis of a letter written by the Insurance Company in which the terms of the policy were given. Mr. Justice Baker observed that from that letter it appeared that the sum payable under the policy was payable at death or at age fifty-five with profits to the insured, but in the event of his death before his wife it was to go to the wife, thd failing her, to the insured, his executors. Administrators of assigns. On these terms, Mr. Justice baker, who delivered one of the judgments of the Division Bench, stated that the policy contemplated was for the benefit of the assured himself if he attained the age of fifty-five, and if he had attained the age of fifty-five and policy would have been payable to him, and would undoubtedly have formed part of his estate, nor would his wife have had any interest in it. It is significant that the proposal form in the present case says that the child upon whose survivance the endowment becomes payable is the appellant along with her sister. The payability of the policy moneys is dependent upon the survivance of the appellant and her sister on a certain specified date. Since the terms of the policy did not disclose that the benefit was of the wife but on the contrary disclosed that the proposer retained interest in the policy moneys, as indeed the learned Judge observed in his judgment, there is no difficulty in accepting the contention that that policy would not be covered by Section 6 of the Act. But hat is not the case here. In my view, the policy here is clearly intended for the benefit of the appellant but it is on her survivance on a particular date that the policy moneys become payable. That they become payable to respondent No.3 does not eliminate the benefit because it only means that the moneys in the hands of respondent No. 3 will be held in trust for the benefit of his daughter, the appellant. I am, therefore, unable to accept the contention of Mr. Abhyankar that the question is concluded by 36 Bom. L. R. 608 : AIR 1934 Bom 296 . On the other hand, a number of decision in England and in India have consistently taken the view that a contingent trust cen be created by a policy for the benefit of a daughter or wife by a person on his own life and such a contingent trust can counter benefit to the beneficiary in the event of a certain thing happening. Ameer Ali, J. succinctly stated the position in In Re: Sm. Ashalata Dassi, . The learned Judge observed: "The Act does not say wholly

for the benefit of the wife or solely for the benefit of the wife or anything of the kind." Although it is not necessary for me to go to the extent the learned Judge went in that case in holding that a mere nomination of the wife in the policy to receive the amount payable in the event of the husband''s death before a certain date will bring it within the ambit of Section 6 of the Act, I respectfully agree with his view that the fact that t he wife''s interest is made contingent on some event happening, does not prevent or affect the creation of a valid trust. A Division bench of the Madras High Court in Bengal Insurance and Real Property Co. Ltd. and Another Vs. Velayammal, considered a case in which in the declaration, in answer to question "Name of the nominees or nominees who would receive the sum assured" the answer given by the assured was "Self or wife, Velayammal". On the basis of a declaration of this type the Court observed as follows:

"This shows that the wife was intended to have a benefit from the policy. According to the terms of the policy the money was payable in the event of the assured surviving 11th April 1943 or at previous death. Obviously he could not receive payment if he died before that date, but his wife could. It is true that her right to the benefit depended upon the contingency of her surviving her husband if he died before the named date. But the circumstances that a benefit to the wife is of a contingent character does not prevent it from being a benefit within the Married Women''s Property Act; . . . . . .If there was a trust, as in out judgment there was, for t he benefit of the wife in the event which happened, it would follow from section 6 that the Official Trustee of Bengal would be the trustee, and he alone would be competent to sue for the enforcement of the trust: . . . . . ."

In Abhiramavalli Ammal Vs. The Official Trustee of Madras and Others, a life insurance policy in the column "To whom payable", contained the following words, namely, "The assured or his wife Abhiramavalli, if he predeceased her", it was held that the said words expressed on the face of the policy that the same was for the benefit of his wife and as such it enured and was deemed to be a trust for t he benefit of the wife within the meaning of section 6 of the Married Women''s Property Act. A number of decisions of Courts in England have held that the benefit arising under a policy of life insurance for the purposes of the Married Women''s Property Act may be a benefit contingent on the happening of a certain event and that in such a case it would be a contingent trust which is included within the scope of section 6 of the Act. It is unnecessary to refer to a large number of cases, but the case reported in In re, Rleetwood''s Policy. (1926) Ch 48 has been referred to and regarded as a leading case in most of the Indian and English decisions. In that case, a husband took out an insurance policy for Pounds 500 on his life and, by the terms of the policy the insurance company agreed to pay that sum to the insured''s wife if she were living at his death, or in the event of her prior death to pay it to the insured''s executors, administrators and assigns. The policy contained a proviso that, if at the end of twenty years the insured was still living, he should have the right to exercise any of six specified options. The insured being then still living, he

exercised an option to receive the entire cash value of the policy with its share of accumulated profits and to discontinue the policy. A sum of Pounds 288 thus became payable. The insurance company were unwilling to pay over this sum except on the joint receipt of the husband and wife, and ultimately paid it into Court. Tomlin J. held that the policy came within section 11 of the Married Women''s Property Act, 1882, and created a trust in favour of the wife in certain events; that the insured must be taken to have exercised the option for the benefit of the trust; and that, unless the husband and wife came to an agreement, the fund must be accumulated in Court until it could be ascertained, by the death of either party, who was entitled to it.

(9) On the facts disclosed, the insured in fact received the entire cash value of the policy and discontinued the policy. It was quite plain from the terms of that policy that it was a policy on the life of the husband and that the proceeds would belong to the wife if she survived the husband, but otherwise to the husband. It was contended on behalf of the husband that wile it was true that the policy was expressed to be for the benefit of the wife in the event of her surviving in the policy which in terms conferred upon the husband the absolute right to destroy his wife''s interest. It was his case that, if at the end of the accumulation period he and his wife were both still living he was free to exercise one or other of the several options provided for by the policy; and that if by so doing, he put an end to the policy his wife''s interest under the policy ceased, and he was entitled to put into his own pocket and benefit which resulted from his exercise of the particular option. The rival contention on behalf of the wife was that although she was a beneficiary under the policy only contingently, the husband, when he exercised one of the options, must be taken to have exercised it for her benefit and that she was therefore entitled to take the sum assured. The learned Judge came to the following conclusions (p. 53):

"In my view that section applies to this policy. The policy is, in the terms of the section, a policy of assurance effected by a man on his own life, and expressed to be for the benefit of his wife. It is true it is expressed to be for the benefit of his wife in a certain event only, but the fact that the benefit is of a limited or contingent character does not prevent it from being a benefit within the meaning of this Act. I think, therefore, that the policy creates a trust in favour of the wife, but only in terms of the trust."

The learned Judge later went on to say (p.55):

"It seems to me that the presence in the policy of powers which the insured may or may not be entitled as against the beneficiary to exercise, does not enable me to construe this policy as one which, in respect of these option, gives the insured the right to destroy the rights of the beneficiary."

That has been the legal position well settled and Mr. Abhyankar''s contention, therefore that inasmuch as respondent No. 3 did not divest himself fully of his interest in the policy, as the policy moneys were payable to him on a certain date, cannot be accepted. The legal position seems to be that the right to receive the moneys given to respondent No. 3 did not confer on him any absolute interest in the policy moneys but such moneys as he could receive would be with him in trust for the ultimate benefit of the appellant, his daughter. Section 6 of the Act does not say that the benefit must be only for the wife or the children. It could be a benefit for the wife and children along with others. Moreover, the mere fact that the right to the benefit would accrue only in the event of a certain contingency happening will not take the policy out of the scope of section 6. In such cases nothing in the section which precludes such a contingent trust being included for the purposes of that section. Similarly, whether or not the policy expressly refers to the words "for the benefit of his wife, or his wife and children, or any of them" if it is apparent on the contract of insurance that a benefit was conferred on them, it is enough for the purposes of section 6 of the Act. The contract of insurance may consist , in a given case, not only of the policy formally issued when the proposal is accepted but of the proposal which may be incorporated in the policy. Mr. Abhyankar invited my attention to Mr. Rahibai v. Ratanlal Hiralal AIR 1938 Nag 321 and Krishnamurthy v. Anjayya AIR 1936 Mad 635. I think that the view taken by the learned Judge in the former case runs counter to a series of decisions of Indian and English Courts. In the latter case it was clear that no benefit was conferred on the wife on the face of the policy, as the words used were "To the person or person legally entitled thereto". In this view of the matter, the view taken by the learned Judge is not sustainable and it will have to be held that the policy in this case was covered by section 6 of Act III of 1874 and a valid trust was created in favour of the appellant in respect of that policy by respondent No.3 as alleged in the plaint.

(10) This appeal will, therefore, be allowed, the order of the City Civil Court will be set aside and there will be a decree in favour of the appellant. Respondent No. 2 original Defendant No. 2, the Union of India, do pay to the Plaintiff-appellant a sum of Rs. 5,000 with interest thereon at the rate of 6 per cent per annum from the date of the filing of the suit till judgment and at the rate of 4 per cent per annum subsequently till payment. Respondent No. 2 original Defendant No. 2 will pay the costs of this appeal and of the trial Court to the appellant. Respondent No. 2 original Defendant No. 2 the Union of India will also pay the costs of the commission referred to by the learned Judge in paragraph 19 of his judgment.

(11) Appeal allowed.