

DICTUM

“Summary of Judicial Pronouncements”

NOMINATION OF SHARES – Bombay High Court rules that Will shall prevail over Nomination of Shares under Companies Act - Shakti Yezdani v. Jayanand Jayant Salgaonkar [December 01, 2016]

BACKGROUND

Nomination of shares under Companies Act has been the discussion point for many years with number of litigations hovering on this aspect. Laws relating to the title of shares after death of member have been deliberated and litigated in various courts and tribunals. One of the prime contentious issues has been whether nomination under the Companies Act shall prevail over the will? This Bombay High Court ruling is in relation to “**Right of Nomination**” under Companies Act, with reference to the principles of inheritance and succession laid down by the Apex Court.

Facts of the Case

1. Whether title of shares after death of the member will ultimately be held by Nominee nominated to hold shares by deceased member under Companies Act or his legal heir?
2. Whether Section 109A of the Companies Act, 1956 / Section 72 of Companies Act, 2013 creates third mode of succession in case of shares?
3. Whether Companies Act can override other succession Laws?

Court’s Ruling

1. **Division Bench of the Bombay High Court in Shakti Yezdani v. Jayanand Jayant Salgaonkar [December 01, 2016] (‘Case’) held that only the legal heirs, and not Nominee, shall ultimately be vested with shares of deceased shareholder.**
2. Division Bench also held that the object of the provisions relating to “**Nomination**” is not to either provide a mode of succession or to deal with succession, but the object is to ensure that the deceased shareholder is represented by someone as the value of the shares. The purpose is to ensure that commerce do not suffer due to delay on the part of the legal heirs in establishing their rights of succession and claiming the shares of the Company.
3. Division Bench also noted that the word “**Vesting**” under Section 109A of the Companies Act, 1956 does not create a third mode of creation and Companies Act has no relation with the law of succession.

Our Views

1. Nomination shall not prevail over will or legal succession.
2. Provisions related to Nomination under Section 72 of the Companies Act, 2013 are corresponding to Section 109A of the Companies Act, 1956, so this Case holds good even under new Companies Act.
3. Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited [2010] unsettled the basic principle of Nominee under Companies Act by vesting rights of shares held by deceased shareholder in the hands of Nominee instead of legal heir, which has now been corrected in the discussed Case.
4. Though the non-obstante clause of Section 72(3) of the Companies Act, 2013 creates ambiguity as to whether Companies Act can override specific succession laws, but this Case clears this uncertainty.
5. Nominee has only limited rights over shares / Debentures and holds the rights until legal heirs claim the rights.

Let’s Talk

For a deeper discussion on how this issue might affect your business, please contact:

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