

Constitutional Writ

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas

Judgment on 24.08.2010

W.P.No.9938 (W) of 2010

Smt. Abhamoyee Mondal

v.

The General Manager, Paschim Banga Gramin Bank & Ors.

Points:

Duty of Advocate- Whether an Advocate is required to be prima-facie satisfied with the statements made in the petition- Constitution of India Art 226-Advocates Act,1961 S.35

Facts:

The petitioner is 76 and a housewife. She has three children: two daughters and a son. Both the daughters and their respective husbands are respondents and the petitioner's allegation is that her daughters and sons-in-law have been unauthorizedly withdrawing monies from the ten accounts that her deceased husband were maintaining with the Hat-Basudebpur branch of Paschim Banga Gramin Bank. Bank produced a document dated May 15, 2010 showing that out of the ten accounts mentioned by the petitioner - (i) there was never any existence of three accounts, (ii) her husband had closed as many as six accounts during his lifetime, and (iii) the remaining savings account, last operated on August 9, 2008, had Rs.1929 balance on February 12, 2010.

Held:

Under the circumstances, on August 10, 2010 Court made the following order:

“To enable advocate for the petitioner to refund the amount he has received from the old lady who has been totally misled to file this art.226 petition before this Court, hearing is adjourned. Place the matter as motion on the daily list after a fortnight.”

Para 4

Without ascertaining the facts from the Bank, it seems to Court, at the instigation of someone, the petitioner made absolutely baseless allegations against her daughters and their respective husbands. Court believes they all will forget the incident, and the petitioner’s advocate landing her straight in the High Court with an evident baseless family feud will have already understood the basic duty of an advocate.

Para 7

Mr. D. Nath and Mr. D. Basu, advocates, for the petitioner. Mr. Md. Sabir Ahmed, advocate, for the Bank.

The Court: The petitioner in this art. 226 petition dated May 7, 2010 is seeking the following principal relief:

“(a) A Writ of and/or in the nature of Mandamus by directing the respondent authorities to consider the representation dated February 10,2010 of the petitioner by intimating her the status of the said cash certificates being numbers of DU/195/69, the certificate No.DU/271/60, the certificate No. DU/802/84, the certificate No.LTD/1130/06, the certificate No.LTD/956, the certificate No.LTD/836, the certificate No.RD/320/36, the certificate No.RD/84/60, the certificate No.RD/280/60 and intimate her the status of the said account being no. 2341 as was in the name of the husband of the petitioner in paschim banga gramini bank, branch office at Hat-Basudebpur, Uluberia, Howrah.”

2. The petitioner is 76 and a housewife. She has three children: two daughters and a son. Both the daughters and their respective husbands are respondents and the petitioner's allegation is that her daughters and sons-in-law have been unauthorizedly withdrawing monies from the ten accounts that her deceased husband were maintaining with the Hat-Basudebpur branch of Paschim Banga Gramin Bank.

3. On August 10, 2010 when the petition was taken up for admission hearing counsel for the Bank produced a document dated May 15, 2010 showing that out of the ten accounts mentioned by the petitioner - (i) there was never any existence of three accounts, (ii) her husband had closed as many as six accounts during his lifetime, and (iii) the remaining savings account, last operated on August 9, 2008, had Rs.1929 balance on February 12, 2010.

4. Under the circumstances, on August 10, 2010. I made the following order:

“To enable advocate for the petitioner to refund the amount he has received from the old lady who has been totally misled to file this art.226 petition before this Court, hearing is adjourned. Place the matter as motion on the daily list after a fortnight.”

5. Now the petitioner has filed an affidavit dated August 13, 2010 stating that in view of the order of this Court dated August 10, 2010 her advocate has refunded her the amount that she had paid him as professional fee.

6. It is evident from the materials before me that the petitioner's allegations are incorrect. Three out of the ten accounts mentioned by her are non-existent, and six were closed by her husband during the period from March 21, 2003 to March 9, 2007. He died on August 30, 2008.

7. Without ascertaining the facts from the Bank, it seems to me, at the instigation of someone, the petitioner made absolutely baseless allegations against her daughters and their respective husbands. I believe they all will forget the incident, and the petitioner's advocate landing her straight in the High Court with an evident baseless family feud will have already understood the basic duty of an advocate.

8. In the live savings account on February 12, 2010 Rs.1929 was lying. The petitioner and her children all are entitled to the amount. Counsel for the Bank has said that there is no difficulty in paying the amount to the petitioner and her children according to their respective shares.

9. In view of the above-noted situation, I dispose of the petition ordering as follows. The petitioner and her children are free to approach the Bank claiming the amount lying in the live savings account. On compliance with the formalities the Bank shall pay the persons entitled to the amount according to their respective shares. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

