A.F.R.
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Pronounced: *30.04.2025*

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 2997 of 2022
Petitioner :- Smt. Kusum
Respondent :- Anand Kumar And 3 Others
Counsel for Petitioner :- Deepak Kumar,Vindeshwri Pandey
Counsel for Respondent :- Vivek Kumar Pandey,Mahendra Pratap Singh,Vivek Shukla

Hon'ble Pankaj Bhatia,J.

1. Present petition has been filed challenging the order dated 12.07.2022 passed by District Judge, Unnao in Civil Revision No.16 of 2022 (Smt. Kusum vs. Anand Kumar & Ors.).

2. The facts, in brief, are that the petitioner claims that she had taken out 15 life insurance in the name of her daughter namely Ranjeeta when she was unmarried and subsequently, the daughter was married to respondent no.1, and respondent no.2 – the granddaughter of the petitioner – was born out of the wedlock in between the daughter of the petitioner and respondent no.1. Unfortunately, daughter of the petitioner died on 01.09.2021 when respondent no.2 was about 11 months' old. It is claimed that in the 15 life insurance policies, the petitioner was the nominee as named by her daughter before her death. However, to resist the said claim, respondent no.1 and respondent no.2 filed Civil Misc. Case No.08/2022 under Section 372 of Indian Succession Act before the Civil

Judge (Senior Division), Unnao claiming succession including the claim arising out of life insurance policies. It is claimed that the petitioner was not even made a party. Subsequently, the said case was disposed off in the Lok Adalat on 12.03.2022 without hearing the petitioner. Aggrieved against the said judgment, the petitioner preferred an petition being Matters Related Under Article 227 No.2114 of 2022 in which an order came to be passed on 07.06.2022 holding that a revision would lie against the said order passed by the Civil Judge before the competent Court. In terms of the said order, Civil Revision No.16 of 2022 was preferred before the District Judge, Unnao. Ultimately, the revision came to be decided by means of the order impugned vide which the succession certificate was modified to the extent that the amount of all the 15 life insurance policies was directed to be excluded from the list of assets and further directions were issued to the revisionist for depositing the same in the form of Fix Deposit Receipts in the name of respondent no.2 till her attaining the age of 18 years.

3. Neat contention of learned counsel for the petitioner is that in terms of the mandate of Section 39(7) read with Section 39(8) of the Insurance Act, it is the petitioner who was named as a nominee, is entitled to the amounts under the policies as being a beneficial nominee. It is not denied that apart from the amounts under the policies, the respondent no.2 would be entitled to succession to her estate as admittedly the daughter of the petitioner died intestate.

4. Thus, the issue that arises for consideration is on the one hand the claim of the petitioner by virtue of her being nominee to be entitled to the beneficial interest arising out of the amounts payable for the insurance policies by virtue of Section 39(7) of the Insurance Act to the exclusion of respondent no.2 *vis-a-vis* the rights of succession in respect to the amounts under policies of the daughter flowing from the Hindu Succession Act.

5. It is essential to notice that Section 39(7) of Insurance Act was amended in the year 2015 by virtue of Act No.5 of 2015 on the recommendations made by the Law Commission. Section 39 after its amendment is recorded as under:

> ***"39. Nomination by policyholder.—*** *(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:*
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> *Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.*
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> *(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.*
>
> *(3) The insurer shall furnish to the policyholder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by*

regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or re-transferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the Insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the ***nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6)*** *unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.*

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(12) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 (3 of 1874), applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said Section 6 shall be deemed not to apply or not to have applied to the policy."

6. The reasons for amendment were the recommendations of the Law Commission, which are as under

"The Law Commission's views

7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the

beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13 The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to s.39

7.1.14 After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy

money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested amendment of s.39

7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death: Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with s.98 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

Provided that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, will not cancel the nomination but shall

affect the rights of the nominee only to the extent of the interest of the transferee or assignee as the case may be in the policy.

Provided that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy holder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/ are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee.

(12) The collector nominee shall make payment the benefits arising out of policy to the beneficiary nominee or his legal heirs or representative in accordance with the regulations made by the Authority.

(13) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which s.6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of this Act, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said s.6 shall be deemed not to apply or not to have applied to the policy."

7. It is admitted at the Bar that prior to the amendment in Section 39 by virtue of Act No.5 of 2015, the law was very well settled in the case of ***Smt. Sarbati Devi and Anr. v. Smt. Usha Devi; (1984) 1 SCC 424*** to the effect that the nominee of a policy is entitled to hold the amount for the benefit of the successor and the nominee cannot be treated as being

equivalent to an heir or legatee, and the amounts can be claimed by the heirs in terms of the provisions governing the Succession Act applicable to them.

8. On the plain reading of the opinion expressed by the Law Commission which resulted in the amendment to Section 39, it is clear that the same was done at the instance of insurance companies who wanted the same to be brought at par with Section 45-ZA of the Banking Regulation Act so as to discharge the insurance companies from their burden of payment of the amount to the nominee.

9. It is also essential to notice that all the recommendations of the Law Commission were not accepted while enacting and amending the provisions of Section 39, specifically the explanation proposed in the amendments by the Law Commission was not incorporated while amending the Act.

10. It is also essential to notice that Section 45-ZA of the Banking Regulation Act also made prescriptions for payment of the amounts of the depositors' money on the basis of nomination. Section 45-ZA reads as under:

> ***"45-ZA. Nomination for payment of depositors' money.—****(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate in the prescribed manner, one or more persons not exceeding four, either successively or simultaneously to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.*
>
> *(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the*

> *banking company, the nominee shall, on the death of the sale depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.*
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> *(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.*
>
> *(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit:*
>
> *Provided that nothing contained in this sub-section shall effect the right or claim which any person may have against the person to whom any payment is made under this section."*

11. Thus, on plain reading of Section 45-ZA(2), it is clear that the same is *pari materia* with Section 39(7) of the Insurance Act.

12. Section 45-ZA came up for interpretation before the Hon'ble Supreme Court in the case of ***Ram Chander Talwar & Anr. v. Devender Kumar Talwar & Ors.; (2010) 10 SCC 671*** wherein the rights of the nominee *vis-a-vis* the right of the successor was considered and the Supreme Court held as under:

> *"5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed."*

13. Thus, the *pari materia* provision contained in Section 39(7) of the Insurance Act cannot be interpreted in contradiction to the interpretation of the *pari materia* provision contained in Section 45-ZA(2) of the Banking Regulation Act and thus, on that count the submission of counsel for the petitioner merits rejection.

14. Besides the rejection of the contention of counsel for the petitioner on the ground that *pari materia* provision has been interpreted in the case of ***Ram Chander Talwar (supra)*** and would be binding, it is essential to see the interpretation of Section 39(7) as interpreted by various High Courts.

15. The amended Section 39(7) came up for interpretation in the case of ***Shweta Singh Huria & Ors. v. Santosh Huria & Ors.; AIR 2021 Delhi 121*** wherein the Delhi High Court considered the earlier judgment in the case of ***Sarbati Devi (supra)*** and the subsequent amendment and also recorded the recommendations of the Law Commission in its 190th Report, which reads as under:

> *“The Law Commission's views:—*
>
> *7.1.12. There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh.*

On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13. The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to Section 39:—

7.1.14. After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested Amendment of Section 39:—

“7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

xxx xxx xxx

> *(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.*
>
> *(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom subsection (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.*
>
> *xxx xxx xxx*
>
> *(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.*
>
> *(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s).*
>
> *Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.*
>
> *Explanation : For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee."*

And ultimately carved out a difference between a 'beneficiary nominee' and a 'collector nominee' to hold that prior to the amendment in the Insurance Act, the nominee was only a collector nominee, however, after the amendment, the nominee became a beneficiary nominee to the exclusion of others. The relevant

portions are contained in Para – 31, 32 & 33, which are as under:

> *"31. As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary nominee' and 'collector nominee' and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-Section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'.*
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> *32. Perusal of the impugned order of the Trial Court shows that the Appellants had brought the 2015 Amendment to the notice of the Trial Court, including the judgment of the Rajasthan High Court in Ramgopal (supra). But the Trial Court has not even dealt with the legal issue raised before it and allowed the application under Order XII Rule 6 CPC, based on the unamended provisions of Section 39. It is a settled law that the rights of the parties to a lis have to be decided in accordance with the statutory provisions and law that prevails on the day the cause of action arises.*
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> *33. In the present case, Appellants had specifically flagged the issue of applicability of the amendment to Section 39 on the ground that Late Shri Vineet Huria died on 11.07.2018 and the policy had matured after the Amendment to Section 39, came into force. It was thus incumbent upon the Trial Court to have considered and examined the issue, once the same was raised and highlighted by the Appellants and taken a decision accordingly, with respect to the benefits accruing under the insurance policies, in question."*

16. Similarly, the matter came up for interpretation before the Andhra Pradesh High Court in the case of ***Mallela Manimala v. Mallela Lakshmi padmavathi and Ors.; 2023 SCC OnLine AP 459*** wherein the amended Section 39(7) was taken into consideration and the judgment of the Delhi High Court in the case of ***Shweta Singh Huria (supra)*** was also considered and ultimately, the High Court recorded as under:

> *"17. Thus, the above jurisprudence tells that the consistent view of the High Courts is that after amendment of Section 39, a beneficial nominee takes the insurance amount after the demise of the holder of the policy for his beneficial enjoyment in exclusion of other legal heirs. To this extent change is brought in the law.*
>
> *18. The above being the law, the facts of the case are that admittedly Ramesh Babu, the son of petitioner, who obtained the insurance policies, died on 04.06.2021, as is evident from the copy of Death Certificate issued by the Greater Hyderabad Municipal Corporation, filed along with material papers in the writ petition, and as such the two insurance policies shall be deemed to have matured on the date of his death. Admittedly, he died after the amendment to Section 39 of Insurance Act, 1938 came into force. In that view, the law prevailing on the date of maturity of insurance policies would be applicable to this case, meaning thereby, the 1st respondent, the wife of the deceased, who is shown as nominee in the two policies, shall be beneficially entitled to receive the policy amounts in exclusion of the other heirs. Ergo, this writ petition is not maintainable."*

17. The matter also came up for consideration before the High Court of Madras in the case of ***K.R. Sakthi Murugeswari v. The Division Manager, Life Insurance Corporation of India and Ors.; W.P. (M.D.) No.11044 of 2021 decided on 16.10.2023 : 2023/MHC/4812*** wherein the Court ultimately held that a beneficiary nominee under the amended Section 39(7) would be entitled to the amounts. The relevant paragraph reads as under:

> *"12. A beneficiary nominee means a nominee who is entitled to receive the entire sum assured under the insurance policy absolutely. On the other hand, a collector nominee means a nominee other than a beneficiary nominee . It is true that on a plain reading of Section 39(7) of the Act, this distinction has been done away with. However, the legislature was careful enough to identity who all will fall within the category of nominees who in law will be considered as a beneficiary nominee. While categorizing those persons, the legislature was careful enough to bring in the parents, spouse, children, spouse and children or any of them. If the*

legislature had thought it fit to make everyone as a beneficiary nominee, there was no need for the legislature to specifically prescribe those persons who will fall within the ambit of Section 39 (7) of the Insurance Act, 1938. The fact that such a conscious description of persons, who fall under Section 39(7) of the Act has been prescribed by the legislature, shows that the legislature only wanted those persons who are closely related to the deceased policy holder alone to be treated as beneficiary nominees. In the instant case, the third respondent is admittedly the brother of the deceased policy holder and the third respondent cannot be brought within the scope of Section 39(7) of the Act. If the third respondent cannot be brought within the scope of Section 39(7) of the Act, it would only mean that he will be treated as a collector nominee. The Insurance Company cannot deal with the inter~se rights and the claim between the petitioner and the third respondent and the company has to entrust the sum assured to someone who has been nominated under the policy. By handing over the sum assured to the nominee, the job of the Insurance Company comes to an end. Thereafter, it is not the concern of the Insurance company to see as to who has the rightful claim over the sum assured and whether it actually goes into their hands as per the personal law governing the parties. Therefore, the concept of nomination is only to ensure that the Insurance Company does not get into the area of dispute and the Company washes of its hands by handing over the sum assured to the nominee. If the nominee falls within the scope of Section 39(7) of the Act, those persons described therein automatically takes it as a beneficiary nominee. If the person does not fall within the scope of Section 39(7) of the Act, he can only be treated as a collector nominee and he has to hold the money in trust subject to the claims made by the legal representatives who are entitled to a share in the sum assured. This position continues even after the amendment made to the Insurance Act in the year 2015. If every nominee is brought within the scope of Section 39(7) of the Act, this Court will be doing violence to the plain language used in the said provision and it will be certainly beyond the scope of the said provision."

18. However, the High Court of Karnataka in the case of ***Smt. Neelavva @ Neelamma v. Smt. Chandravva @ Chandrakala @ Hema & Ors.; RFA No.100471 of 2023 decided on 20.02.2025*** took a different view and also noticed the judgment of the

Supreme Court in the case of ***Shakti Yezdani and Anr. v. Jayanand Jayant Salgaonkar and Ors.; (2024) 4 SCC 642*** and held as under:

> *"36. Keeping in mind, the ratio laid down in Shakti Yezdani's case supra, and the recommendations made by the Law Commission of India, and partial acceptance and partial (implied) rejection of the recommendations by the Parliament, and the application of Heydon's Rule for the reasons assigned above, this Court has to conclude that amended Section 39 is not intended to override the provisions of law relating to succession.*
>
> *37. However, Sections 39(7) and (8) should carry some meaning and cannot be rendered otiose. By taking into consideration the recommendations of the Law Commission, the effect of ratio in Shakti Yezdani's case supra, which has held that the nominee will not acquire a better right than the natural heir, this Court is of the view that the expression "beneficial interest" appearing in Section 39(7) and "beneficial title" appearing in Section 39(8) should be interpreted to say, that such nominee/s or their legal representatives recognised in Sections 39(7) and 39 (8) will get beneficial title over the benefits flowing from the insurance policy, if the testamentary and non-testamentary heirs do not claim the benefits flowing from the insurance policy. To put it differently, under the unamended provision, the nominee had an obligation to distribute the benefits flowing from the policy to the legal heirs. Under Section 39(7), there is no such obligation as long as there is no claim by the legal heirs. In the absence of any claim by legal heirs, the title vests in beneficiary nominee. However, if there is a claim by the legal heir/s, then the nominee's claim has to yield to the personal law governing succession. "*

The following was also recorded in Para 39:

> *"39. In addition to the reasons assigned, this Court has also noticed the following things to arrive at a different view than the view taken by Andhra Pradesh and Rajasthan High Courts:*
>
> > *(a) The Objects and Reasons are silent as to why the amendment was introduced. The mischief in the old provision is not discussed and so also no discussion as to what is sought to be remedied by way of an amendment.*
> >
> > *(b) The provision does not define the expression "beneficial interest". Does it mean "beneficial title" or not is not clarified.*

(c) The provision does not provide for an option to declare the nominee named in Section 39 (7) as a "collector nominee" and by default he becomes "beneficiary nominee" though the policy holder may not carry such intention.

(d) The provision does not say as to whether it overrides the personal law relating to succession. The personal law, passed by the Parliament, providing a particular mode of succession, which at times run contrary to nomination is not amended and still operates. Two conflicting legislations (relating to succession) are not envisaged in the scheme of the Constitution.

(e) The nominees grouped as the "beneficiary nominee" include the 'father' of the policyholder who is a Class II heir and other nominees are Class-I heirs namely spouse, mother and children. At the same time, Class–I heirs namely the children of a predeceased son or daughter or widow of a predeceased son who are Class - I heirs are left out from the category of "beneficiary nominees" which tend to run contrary to the object of insurance which is aimed at covering the risk of the family of the policyholder."

The Court also suggested the following in Para 41:

"41. Being conscious of the fact that Courts do not have legislative power, a few things are discussed below to invite the attention of the stakeholders to debate/deliberate and to come out with better practices when it comes to enacting or amending a law.

(i) The Objects and Reasons for enacting or amending a law must contain a clear unambiguous statements as to why the law is introduced, what is the mischief sought to be remedied by way of amendment.

(ii) Whenever the law is amended, the law must in clear specific terms state as to whether the amendment is prospective or retrospective in its operation. Whether the amendment is prospective or retrospective should not be left to speculation or interpretation by resorting to tools/rules of interpretation by interpreting the terms like "inserted" "amended" "substituted" and the like which are used to amend the law. Rules of interpretation cannot have a universal application and it will have its own limitation in ascertaining the intention of the legislator.

> *(iii) Acts like the Indian Contract Act, Transfer of Property Act, Indian Evidence Act etc have plenty of illustrations which explain the law with clarity and precision. Wherever needed, the law should be explained with illustrations which provide clarity to the provision of law. The practice appears to have been completely forgotten, and it is high time that such good practice is revived to bring in much needed clarity in law.*
>
> *(iv) Whenever different High Courts take a different view in interpreting the law, the law maker should spring into action and clarify the position by way of an amendment and should not wait for the issue to be resolved by the Apex Court as the process may take a considerably long time. To cite an example, the controversy, whether Section 6 of the Hindu Succession Act, 1956 as amended in 2005, is prospective or retrospective is finally resolved in 2019, 14 years after the amendment. As soon as different High Courts took a different view, an amendment clarifying the position would ensure the timely resolution of many cases.*
>
> *(v) There should be a conscious endeavor to frame/structure the law in simplest and easy to follow short sentences. The wholly undesirable practice of framing law, with long and complicated sentences is to be discarded at any cost. After all, the law is meant for a common man to understand and follow. The law should never be a riddle or puzzle to be solved by a trained legal mind."*

19. It is essential to notice the judgment of the Madhya Pradesh High Court in the case of ***Arun Kumar Singh v. Jaya w/o Chetan Singh Chouhan and Ors.; 2022 SCC OnLine MP 5948*** wherein the Court had held that the nominee under the amended Section 39(7) would not be an absolute beneficial nominee and the rights of the successors can be claimed in accordance with the law of succession governing them.

20. The conflicting judgments as recorded above by the Delhi High Court, Andhra Pradesh High Court and Madras High Court on the one hand and by the

Karnataka High Court and Madhya Pradesh High Court on the other hand, clearly establishes that there is no common opinion with regard to the effect of change in Insurance Act, particularly Section 39(7), on the rights of the successors. In fact, the Delhi High Court, Andhra Pradesh High Court and the Madras High Court have not gone into the effect of Amendment in Section 39 of the Insurance Act *vis-a-vis* the rights flowing in favour of heirs under the Succession Act.

21. It is also essential to notice the judgment of the Supreme Court in the case of ***Shakti Yezdani (supra)*** wherein the rights of the nominee in the ownership of the shares in a company came up for consideration and the view of the Supreme Court was to hold that the nomination process would not override the succession laws. The observations of the Supreme Court are as under:

> *"59. Consistent interpretation is given by courts on the question of nomination i.e. upon the holder's death, the nominee would not get an absolute title to the subject-matter of nomination, and those would apply to the Companies Act, 1956 (pari materia provisions in the Companies Act, 2013) and the Depositories Act, 1996 as well.*
>
> *60. An individual dealing with estate planning or succession laws understands nomination to take effect in a particular manner and expects the implication to be no different for devolution of securities per se. Therefore, an interpretation otherwise would inevitably lead to confusion and possibly complexities, in the succession process, something that ought to be eschewed.*
>
> *61. At this stage, it would be prudent to note the significance of a settled principle of law. In Shanker Raju v. Union of India [Shanker Raju v. Union of India, (2011) 2 SCC 132 : (2011) 1 SCC (L&S) 161], the Court held:*
>
> > *"10. It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of*

> *stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible."*

62. The vesting of securities in favour of the nominee contemplated under Section 109-A of the Companies Act, 1956 (pari materia Section 72 of the Companies Act, 2013) & Bye-Law 9.11.1 of the Depositories Act, 1996 is for a limited purpose i.e. to ensure that there exists no confusion pertaining to legal formalities that are 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.

63. Additionally, there is a complex layer of commercial considerations that are to be taken into account while dealing with the issue of nomination pertaining to companies or until legal heirs are able to sufficiently establish their right of succession to the company. Therefore, offering a discharge to the entity once the nominee is in picture is quite distinct from granting ownership of securities to nominees instead of the legal heirs. ***Nomination process therefore does not override the succession laws. Simply said, there is no third mode of succession that the scheme of the Companies Act, 1956 (pari materia provisions in the Companies Act, 2013) and the Depositories Act, 1996 aims or intends to provide.***

64. Upon a careful perusal of the provisions within the Companies Act, it is clear that it does not deal with the law of succession. Therefore, a departure from this settled position of law is not at all warranted. The impugned decision [Shakti Yezdani v. Jayanand Jayant Salgaonkar, 2016 SCC OnLine Bom 9834] takes the correct view. The appeal is accordingly dismissed without any order on costs."

22. In view of the conflicting opinions in respect of the rights of a nominee under the amended Insurance Act and the right of the successors by virtue of Hindu Succession Act (as the parties are governed by the Hindu Succession Act in the present case), the same is to be reconciled in light of arguments raised.

23. It is essential to notice the scheme of the Insurance Act and the purpose for which it was enacted in the year 1938. The reasons for enactment clearly indicate that the Act was *enacted to consolidate and amend the law relating to the business of insurance*. The said Insurance Act underwent amendment on various occasions and ultimately by virtue of Act No.5 of 2015 on the recommendation of the Law Commission, Section 39 apart from the other sections, was amended to include the amended Section 39(7) and 39(8) of the Act, as quoted herein above.

24. In contradistinction of the said Act, the succession amongst Hindus is governed by The Hindu Succession Act, 1956 which was enacted to amend and codify the law relating to intestate succession and received the assent of the President on 17.06.1956. The said Act governs intestate succession amongst the Hindus, and Section 15 of the said Act prescribes for general rules of succession in the case of female Hindus, which reads as under:

> ***"Section 15. General rules of succession in the case of female Hindus.*** *- (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, -*
>
> > *(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

25. Thus, on the one hand, the benefits arising out of an insurance policy which are estate of the deceased which have to be divided and paid to the successors in terms of the provisions of the Hindu Laws, however, the beneficial nominee claims the payment of the estate to the exclusion of the heirs as flow from the Hindu Succession Act.

26. In the present case, two conflicting provisions have to be interpreted so as to reconcile the two statutes without doing violence to either of them as both are validly enacted by Parliament.

27. It is well settled that when two statutes operating in different fields are called upon for conciliation, harmonious construction is to be adopted. It is also well settled that when two statutes which are operating in different fields are up for interpretation, the Special Act would prevail over the General Act *(generalia*

specialibus non derogant and generalibus specialia). The issue with regard to interpretation of two conflicting provisions contained in two different statutes has attracted the attention of the Supreme Court on various occasions.

28. In the judgment in the case of ***KSL and Industries Limited v. Arihant Threads Limited and Ors.; (2009) 9 SCC 763***, although, there was a difference of opinion, however, Hon'ble Mr. Justice C.J. Thakker in his opinion recorded as under:

> *"70. I am thus at a point where two statutes employ non obstante clause having "overriding effect". Such a conflict, as laid down in several cases, may be resolved by judiciary on various considerations: such as the policy underlying the enactments, the language used, the object intended to be achieved, or mischief sought to be remedied, etc. One of the tests applied by courts is that normally a later enactment should prevail over the former. The courts would also try to reconcile both Acts by adopting harmonious interpretation and applying them in their respective fields so that both may operate without coming into conflict with each other. In resolving the clash, the court may further examine whether one of the two enactments is "special" and the other one is "general". There can also be a situation in law where one and the same statute may be held to be a "special" statute vis-à-vis one legislation and "general" statute vis-à-vis another legislation. On the basis of one or more tests, the court will try to salvage the situation by giving effect to non obstante clause in both the legislations.*
>
> *76. In Sanwarmal Kejriwal v. Vishwa Coop. Housing Society Ltd. [(1990) 2 SCC 288] this Court applied the test as to "general" and "special" Act and held that special law would have primacy over the general law.*
>
> *77. In LIC v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] before this Court two Acts came up for consideration: (1) the Industrial Disputes Act, 1947 (the ID Act), and (2) the Life Insurance Corporation Act, 1956 (the LIC Act). One of the questions before the Court was which of the two should be considered as "special law". It was urged that the Industrial Disputes Act should be regarded as "general law" relating to workmen and the Life*

> *Insurance Corporation Act should be considered as "special law" in relation to employees engaged by LIC. It was, therefore, submitted that when a complaint is made by an employee of LIC, he cannot invoke the provisions of the ID Act and the matter must be decided in accordance with the LIC Act."*

29. The law with regard to interpretation of two statutes which are apparently in confliction also came up for consideration before the Supreme Court in the case of ***Managing Director, Chhattisgarh State Co-Operative Bank Maryadit v. Zila Sahkari Kendriya Bank Maryadit and Ors.; (2020) 6 SCC 411*** wherein the following was recorded:

> *"33. It is a settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:*
>
> > *"To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific... The principle is expressed in the maxims generalia specialibus non derogant and generalibus specialia."*
>
> *Similarly, Craies in Statute Law states:*
>
> > *"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."*
>
> *Where two provisions conflict, courts may enquire which of the two provisions is specific in nature and whether it was intended that the specific provision is carved out from the application of the general provision. The general provision operates, save and except in situations covered by the specific provision. The rationale behind this principle of statutory construction is that were there appears a conflict between two provisions, it must be presumed that the legislature did not intend a conflict and a subject-specific provision governs*

those situations in exclusion to the operation of the general provision.

34. In an early decision of this Court in J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P. [J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170] , a three-Judge Bench of this Court considered whether the principle applied to conflicts within the same enactment. Clause 5(a) of the Government Order dated 10-5-1948 conferred upon, inter alia, any employee or a registered trade union of employers the right to move the Board constituted under the order to initiate an enquiry into an industrial dispute. Clause 23 stipulated that where an enquiry is pending before the Regional Conciliation Officer, notwithstanding the pendency of a case before the Board or Industrial Court, no employer shall discharge or dismiss any workman. Under Clause 24, an order of the Board, unless modified in appeal, was final and conclusive. The appellant, representing the employer's union, contended that once an order is made under Clause 5(a), Clause 23 has no application and the employer may proceed to dismiss the workmen. The Court rejected the contention noting that any employer could defeat the provisions of Clause 23 merely by an application under Clause 5(a). The Court held that Clause 23 was made with a definite purpose. Consequently, where an enquiry was pending under Clause 23, an application under Clause 5(a) was barred. The Court held : (AIR pp. 1174-75, paras 9-10)

> *"9. ... We reach the same result by applying another well-known rule of construction that general provisions yield to special provisions. The learned Attorney General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. ...*

> *10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Clause 5(a) has no application in a case where the special provisions of Clause 23 are applicable."*
>
> *(emphasis supplied)*

This Court affirmed that the principle that the general excludes the specific is a tool of statutory interpretation even in cases of conflict within the same enactment. Where one of the conflicting provisions is general in nature and the other is specific, "common understanding" dictates that the specific provision is given effect, while the general provision continues to apply to all other situations.

35. In CTO v. Binani Cements Ltd. [CTO v. Binani Cements Ltd., (2014) 8 SCC 319] , the question concerned whether the respondent assessee was entitled for the grant of an eligibility certificate for exemption from payment of Central Sales Tax and Rajasthan Sales Tax under Entry 4 in Annexure 'C' of the Sales Tax New Incentive Scheme for Industries, 1989. Annexure 'C' to the Scheme was titled the "Quantum of Sales Tax Exemption under the new Scheme". Entry 4 of the Annexure stipulated that "prestigious units" would be entitled to a 75% exemption from tax liability with 100% in terms of fixed capital investment. By an amendment, Entry 1-E was inserted which covered "new cement units" and stipulated that large-scale units would be entitled to 25% tax exemption. A two-Judge Bench of this Court held : (SCC pp. 331-32, paras 32 & 34)

> *"32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a statute contains both a general provision as well as specific provision, the latter must prevail.*
>
> * * *
>
> *34. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of*

> *harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the Latin maxim of generalia specialibus non derogant....”*

36. The Court held that where two provisions are in question — one of general application and the other specific in nature, a harmonious interpretation would mean that the general law, to the extent it is dealt with by the special law, is impliedly repealed. This Court, relying on the principle generalia specialibus non derogant held that Item 1-E is a “subject specific provision”. The Court noted that the amendment removed “new cement industries” from the non-eligible Annexure ‘B’ and placed it into Annexure ‘C’ amongst the eligible industries. Consequently, the Court rejected the contention of the respondent assessee and held that as Item 1-E concerned the more specific unit, it was excluded in its application from other general entries. The principle that the general provision excludes the more specific has been consistently applied by this Court in South India Corpn. (P) Ltd. v. Board of Revenue [South India Corpn. (P) Ltd. v. Board of Revenue, AIR 1964 SC 207] , Paradip Port Trust v. Workmen [Paradip Port Trust v. Workmen, (1977) 2 SCC 339 : 1977 SCC (L&S) 253 : AIR 1977 SC 36] , Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27] , CCE v. Jayant Oil Mills (P) Ltd. [CCE v. Jayant Oil Mills (P) Ltd., (1989) 3 SCC 343 : 1989 SCC (Tax) 423] , P.S. Sathappan v. Andhra Bank Ltd. [P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672] , Sarabjit Rick Singh v. Union of India [Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417 : (2008) 1 SCC (Cri) 449] and Pankajakshi v. Chandrika [Pankajakshi v. Chandrika, (2016) 6 SCC 157 : (2016) 3 SCC (Civ) 105].

37. While sub-section (3) of Section 54 deals with a class of societies, clauses (a) and (b), as inserted by the 2016 Amendment Act are specific in their application to only cooperative banks. Furthermore, while Section 54(3) deals with the appointment of deputed cadre officers on cadre posts, clauses (a) and (b) deal only with the appointment of CEOs of cooperative banks. Clause (a) contemplates that the eligibility guidelines prescribed by RBI will apply to officers holding the post of CEO of a cooperative bank. Significantly, clause (b) of Section 54(3) beings with the words “if the concerning cooperative bank fails to appoint” which denotes an intention to vest with cooperative banks the power to appoint their

CEO. The provision also stipulates that where the cooperative bank fails to appoint CEO within a specified period, the Registrar may appoint an eligible officer of the bank. The stipulation that in the case of default, CEO shall be an officer of the bank and not an officer from the cadre as notified under Section 54(3) demonstrates the intention of the legislature to vest with cooperative banks the power to appoint their CEO.

38. Evidently, by virtue of the 2016 Amendment Act, clauses (a) and (b) were inserted as specific provisions for the appointment of CEO of cooperative banks, vesting in them the power of appointment. Where two interpretations of potentially conflicting provisions are possible, courts must adopt the interpretation that furthers the intention of the legislature as encapsulated in the maxim verba ita sunt intelligenda ut res magis valeat quam pereat. Craies on Legislation states:

> *"... if two constructions of a provision are possible on its face, and one would clearly advance the legislative purpose and the other would clearly achieve little or nothing, the former is to be preferred."*

39. In this view of the matter, a harmonious construction of Section 54(3) and clauses (a) and (b) of the 2016 Amendment Act leads to the conclusion that clauses (a) and (b) are special provisions concerning the appointment of CEO of cooperative banks which are carved out of power of the State Government to issue a notification under Section 54(3). We are strengthened in this view by the deletion of Section 57-B(19) and the simultaneous insertion of clauses (a) and (b) in Section 54(3).

40. The difficulty in the present matters arises from the contention of the first respondent that the exception carved out by clauses (a) and (b) of Section 54(3) also applies to Central Societies that fall within the ambit of Section 49-E(2) of the 1960 Act. In this submission, where a cooperative bank as a Central Society has received funds from the State Government in the manner stipulated in Section 49-E(2), such Central Banks may independently appoint a CEO and would not be obligated to appoint its CEO from the cadre constituted under Section 54, even if such cadre has been constituted.

41. As we have noted, both sub-section (2) and sub-section (3) of Section 54 are not provisions confined only to cooperative banks. However, clauses (a) and (b) of sub-section (3) specifically deal with the appointment of CEOs of cooperative banks. While introducing clauses (a) and (b) into sub-section (3) of Section 54 by the 2016 Amendment Act, the

legislature has nonetheless left intact the provisions of Section 49-E. Section 49-E(2) stipulates that CEO shall be appointed from among the officers of the cadre maintained under Section 54, where such cadre has been constituted. Section 49-E is a provision governing Apex and Central Societies to whom financial assistance has been extended by the State Government in the forms stipulated therein. The expression "Central Society" is defined to mean a Cooperative Land Development Bank or any other society whose operation is confined to a part of the State, as noticed earlier in Section 2(c-i). The provisions contained in Section 49-E are intended to bring about regulatory control of the State Government by requiring the appointment of CEO from among the officers of the cadre maintained under Section 54. The 2016 Amendment Act which brought in the provision of clauses (a) and (b) of sub-section (3) has not affected the operation of Section 49-E. Hence, the appointment of a CEO of Central Society governed by Section 49-E(2) has to be from the officers of the cadre maintained under Section 54. Significantly, sub-section (2) of Section 49-E contains a non obstante stipulation. As a consequence, notwithstanding the 2016 Amendment Act, CEO of a Central Society falling within the description of sub-section (2) of Section 49-E has to be appointed from among the officers of the cadre maintained under Section 54, if such cadre has been constituted.

42. It is necessary here to note that Section 49-E(2) is not a self-contained provision. Section 49-E(2)(b)(i) merely stipulates that CEO of a Central Society that falls within its ambit, shall be appointed from among the officers of the cadres maintained under Section 54. Thus, where a cadre under Section 54 has been constituted, a Central Society falling within the ambit of Section 49-E(2) is obligated to appoint its officer from such cadre. Neither Section 49-E nor Section 54(2) specify whether the appointment is to be made from the cadre of the Apex Society or Central Society as constituted under Section 54(2). Section 54(3) empowers the State Government to issue a notification specifying the class of societies which shall employ officers from such cadres maintained by Apex or Central Societies as may be specified therein. In addition to conferring upon the State Government the general power to notify the class of societies which would employ officers from the cadres maintained by Apex or Central Societies, the notification under Section 54(3) operationalises the regulatory control of the State Government envisaged in Section 49-E(2) in the manner specified therein.

43. This is evident in the Notification dated 12-1-1971 issued by the State Government in exercise of the power conferred upon it which stipulated that the first respondent (as a District Central Cooperative Bank) is obligated to accept and appoint the officer deputed by the appellant (as the Apex Society) as CEO. Had Section 49-E(2) an inbuilt mechanism for the determination of the officer who would be appointed as CEO, no difficulty would arise given the use of a non obstante provision therein. The difficulty arises precisely because of the link between Section 49-E and the notification issued by the State Government under Section 54(3). To hold that clauses (a) and (b) vest in cooperative banks which are Central Societies falling within the ambit of Section 49-E(2) the overriding power to appoint their CEO would render the provision inoperative. This would defeat the salient purpose of ensuring the regulatory control of the State Government over Societies to which it has made a financial contribution. On the other hand, to hold that a cooperative bank which is a Central Society within the ambit of Section 49-E(2) must accept and appoint the cadre officer deputed by the Apex Society, defeats the special provision inserted for cooperative banks in clauses (a) and (b) of Section 54(3). Both Section 49-E(2)(b) and clauses (a) and (b) of Section 54(3) deal with the appointment of a CEO.

44. As we have noted before, it is settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:

> *"... It is the duty of the court to avoid "a head on clash" between two sections of the same Act and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise."*

Francis Bennion in his work Statutory Interpretation states:

> *"Inconsistent enactments — A common application of the principle is in relation to contradictory enactments within the same Act. Enactment A may in itself be clear and unambiguous. So may enactment B, located elsewhere in the Act. But if they contradict each other, they cannot both be applied literally. A undoes B, and B undoes A. The court must do the best it can to reconcile them, but*

> *this can be achieved only by giving one or both a strained construction."*

Where two provisions of an enactment appear to be in conflict, courts do not readily presume an "either/ or" situation. Courts must construe the provisions harmoniously to ensure, as far as possible, the effective operation of both provisions in a manner that furthers the purpose of the enactment. Every provision, phrase, clause and word must be interpreted in a manner to further the object of the enactment. No word or part of a statute can be construed in isolation. Courts must be mindful that an interpretation which renders either provision otiose must be avoided unless the conflict does not yield any possible reconciliation.

45. In Krishan Kumar v. State of Rajasthan [Krishan Kumar v. State of Rajasthan, (1991) 4 SCC 258] , the Rajasthan State Road Transport Corporation, Jaipur proposed a scheme in 1977 under Section 68-C of the Motor Vehicles Act, 1939 (the 1939 Act) for the exclusive operation of the disputed road. Upon the enactment of the Motor Vehicles Act, 1988 (the 1988 Act), a writ petition was filed contending that due to undue delay in notifying the scheme under the 1939 Act, the scheme was not saved by the 1988 Act. Section 100(4) of the 1988 Act stipulated that a draft scheme must be finalised within one year from the date of its publication, failing which it would lapse. Section 217(2)(e) stipulated that notwithstanding the repeal of the 1939 Act, a scheme proposed under Section 68-C, if pending immediately before the commencement of the 1988 Act, shall be finalised in accordance with the provisions of Section 100 of the 1988 Act. The Court noted that, contrary to legislative intent, no scheme under the 1939 Act would be saved if schemes under that Act were to be assessed with reference to the date of their publication. Noting the apparent conflict between the two provisions, a two-Judge Bench of this Court interpreted both provisions harmoniously and held : (SCC pp. 266-67, paras 10-11)

> *"10. There appears to be some apparent conflict between Section 100(4) and Section 217(2)(e) of the Act. While Section 217(2)(e) permits finalisation of a scheme in accordance with Section 100 of the new Act sub-section (4) of Section 100 lays down that a scheme if not finalised within a period of one year shall be deemed to have lapsed. If the appellant's contention is accepted then Section 217(2)(e) will become nugatory and no scheme published under Section 68-C of the old Act could be finalised under the new Act. On the other hand if the period of one year as*

prescribed under Section 100(4) is not computed from the date of publication of the scheme under Section 68-C of the old Act and instead the period of one year is computed from the date of commencement of the Act both the provisions could be given full effect.

11. It is settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same."

The Court held that where Parliament confers a benefit, it must not be readily assumed that it intends to withdraw a benefit at the same time. Furthermore, the provisions of one section cannot be used to defeat another, unless there is no possibility of reconciling the two conflicting provisions.

46. In British Airways Plc. v. Union of India [British Airways Plc. v. Union of India, (2002) 2 SCC 95] , the appellant was an aircraft carrier engaged in the business of international air transport of passengers and cargo. It was contended that as they were not a "person-in-charge" as defined in Section 2(31) of the Customs Act, 1962, no penalty can be imposed upon them under Section 116 for shortages in offloading the quantity of goods consigned. Section 42 required an officer under the Act to issue a written order for the conveyance of the goods from the customs house. Clause (e) of sub-section (2) of Section 42 prescribes that no such order shall be given until the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on them under Section 116 or the payment of any penalty that may be levied upon them under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct. The appellant contended that once a clearance order is issued, no liability can be imposed on them.

47. A two-Judge Bench of this Court noted held that while Section 42 operated to expedite the clearance of goods, Section 116 operated to ensure the protection of cargo. Consequently, the two provisions subserved different purposes. Further, by an amendment in Section 148 which was a provision for the liability of an agent of the person-in-charge, sub-section (2) was inserted which stipulated that any person who represents himself to any officer of customs as an agent of any such person-in-charge,

and is accepted as such by that officer, shall be liable for the fulfilment of any obligation of the person-in-charge. The Court held that effect must be given to the amendment, which would be rendered redundant if the contention of the appellant was accepted. Relying on the principle of harmonious interpretation, the Court held : (British Airways Plc. case [British Airways Plc. v. Union of India, (2002) 2 SCC 95] , SCC p. 100, para 8)

> *"8. ... It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy."*

This Court held that courts must ensure that every provision is construed in a manner to render seemingly contradictory provisions workable. In interpreting two provisions of a statute, courts must adopt the interpretation which does not defeat either provision and advances the remedy envisaged by their enactment."

30. The matter once again came up for consideration before the Supreme Court in the case of ***Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act 1996 and Stamp Act, 1889; (2024) 6 SCC 1*** wherein the following was recorded:

> *"178. It is trite law that a general law must give way to a special law. This rule of construction stems from the doctrine generalia specialibus non derogant. In LIC v. D.J. Bahadur [LIC v. D.J. Bahadur, (1981) 1 SCC 315 : 1981 SCC (L&S) 111] , this Court held :*
>
> > *"52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it*

> *may be special and we cannot blur distinctions when dealing with finer points of law."*

179. In Sundaram Finance Ltd. v. T. Thankam [Sundaram Finance Ltd. v. T. Thankam, (2015) 14 SCC 444] , this Court held :

> *"13. ... Once it is brought to the notice of the Court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law—generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the Court."*

31. However, the classic text of 'harmonious interpretation' of two statues which are apparently in conflict was considered extensively by the Supreme Court in the case of ***Life Insurance Corporation of India v. D.J. Bahadur and Ors.; (1981) 1 SCC 315***, wherein the following was recorded:

> *"29. Interpretative insight will suffer, even as the judicial focus will blur, if the legislative target is not sharply perceived. Indeed, I lay so much stress on this facet because Brother Koshal's otherwise faultless logic has, if I may say so with great deference, failed to convince me because of this fundamental misfocus. To repeat for emphasis, the meat of the statute is industrial dispute, not conditions of employment or contract of service as such. The line of distinction may be fine but is real.*
>
> *30. Be that as it may, a bird's eye view of the ID Act reveals the statutory structure and legal engineering centering round dispute settlement in industries according to the rule of law and away from fight with fists or economic blackmail. This large canvas once illumined, may illustrate the sweep of awards and settlements by reference to the very agreement of 1974 we have before us. It goes far beyond bonus and embraces a wide range of disputes and rainbow of settlements in a spirit of give and take. One may visualise the bargaining process. Give in a little on*

bonus and get a better deal on salary scale or promotion prospects; relent a wee-bit on hours of work but bargain better on housing facilities, and so on. The soul of the statute is not contract of employment, uniformity of service conditions or recruitment rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production.

31. If there is no dispute, the ID Act is out of bounds, while the LIC Act applies generally to all employees from the fattest executive to the frailest manual worker and has no concern with industrial disputes. The former is a "war measure" as it were; the latter is a routine power when swords are not drawn if we may put it metaphorically. When disputes break out or are brewing, a special, sensitive situation fraught with frayed tempers and fighting postures springs into existence, calling for special rules of control, conciliatory machinery, demilitarising strategies and methods of investigation, interim arrangements and final solutions, governed by special criteria for promoting industrial peace and justice. The LIC Act is not a law for employment or disputes arising therefrom, but a nationalisation measure which incidentally, like in any general takeover legislation, provides for recruitment, transfers, promotions and the like. It is special vis-a-vis nationalisation of life insurance but general regarding contracts of employment or acquiring office buildings. Emergency measures are special, for sure. Regular nationalisation statutes are general even if they incidentally refer to conditions of service."

49. The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. Immediately, we are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly: [craies on statute law, 1963 Edn, PP 376-77]

> *"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Sewards v. Vera Cruz [Mary Sewards v. Owner of the "Vera Cruz", (1884) 10 AC 59, 68] , 'that*

> *where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant — i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."*

50. The crucial question which demands an answer before we settle the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter pro tanto repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general? An implied repeal is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Section 11 and Section 49 of the LIC Act, read with Regulation 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with.

51. There is no doubt that the LIC Act, as its long title suggests, is an Act to provide for the nationalisation of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Its primary purpose was to nationalise private insurance business and to establish the Life Insurance Corporation of India. Inevitably, the enactment spelt

out the functions of the Corporation, provided for the transfer of existing life insurance business to the Corporation and set out in detail how the management, finance, accounts and audit of the Corporation should be conducted. Incidentally, there was provision for transfer of service of existing employees of the insurers to the Corporation and, sub-incidentally, their conditions of service also had to be provided for. The power to make regulations covering all matters of management was also vested in appropriate authorities. It is plain and beyond dispute that so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Section 2(s) of the ID Act. Nor is the Corporation's main business investigation and adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints!

52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management

when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

54. I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion. [U.P. State Electricity Board v. H.S. Jain, (1978) 4 SCC 16 : 1978 SCC (L&S) 481 : (1979) 1 SCR 355] The problem that arose there was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of superannuation made by the Electricity Board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948 which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a Bench of three Judges) speaking through Chinnappa Reddy, J. observed:

> *The maxim generalia specialibus non derogant is quite well known. The rule flowing from the maxim has been explained in Mary Seward v. Owner of the 'Vera Cruz' [craies on statute law, 1963 Edn, PP 376-77] as follows:*
>
> *"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially*

> *dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.' ”*

55. In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170, 1174 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 436] , this Court observed at p. 1174:

> *“The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.*
>
> *We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies.”*

I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be

a special legislation regulating the take over of private insurance business.

56. A plausible submission was made by the appellants, which was repelled by the High Court, that the LIC Act contained provisions regarding conditions of service of employees and they would be redundant if the ID Act was held to prevail. This is doubly fallacious. For one thing, the provisions of Sections 11 and 49 are the usual general provisions giving a statutory corporation (like a municipality or university) power to recruit and prescribe conditions of service of its total staff — not anything special regarding "workmen". This Court in Bangalore Water Supply and Sewerage case (7 Judges' Bench) [(1978) 2 SCC 213, 232 : 1978 SCC (L&S) 215, 234] and long ago in D.N. Banerji v. P.R. Mukherjee (5 Judges' Bench) [(1952) 2 SCC 619 : AIR 1953 SC 58 : 1953 SCR 302 : (1953) 1 LLJ 195] has held that the ID Act applied to workmen employed by those bodies when disputes arose. The general provision would still apply to other echelons and even to workmen if no industrial dispute was raised. Secondly, no case of redundant words arose because the Corporation, like a university, employed not only workmen but others also and to regulate their conditions of service, power was needed. Again, in situations where no dispute arose, power in the employer to fix the terms of employment had to be vested. This is a common provision of a general sort, not a particularised provision to canalise an industrial dispute.

57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885 (891) [Watney Combe Reid & Co. v. Berners, 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518] observed that:

> *"General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law."*
>
> *To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose — these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now."*

32. In the light of the judgment of the Supreme Court in the case of ***Life Insurance Corporation of India (supra),*** it is essential to notice that the insurance policy is basically a contract and the said contract is subject to the limitations and the restrictions as imposed by virtue of the Insurance Act which itself was enacted for regulating the business of insurance in India. The said Act was never enacted by the Parliament to govern the rights of succession in respect of the persons who are governed by their individual succession laws, whereas the Hindu Succession Act was specifically enacted to codify the law of succession in respect of Hindus dying intestate. Clearly the issue of succession would be governed by a specific statute being The Hindu Succession Act and to that extent, the

general law as flows from Section 39(7) under the Insurance Act has to give way.

33. It is also fairly well settled that the statues are considered to be intra vires and thus, the phrase ‘beneficial nominee’ as flows from Section 39(7) has to be interpreted in the light of law as explained in the case of ***Sarbati Devi (supra)*** prior to the amendment under Section 39(7).

34. Holding the beneficiary to be a beneficial nominee to the exclusion of the heirs would lead to absurdity which was never intended by the statutes while amending the provisions of Section 39(7). Any other interpretation would be doing violation to the delicate balance of rights in between the nominee and the legal heirs whose rights flow from the Hindu Succession Act.

35. Thus, the contention of the petitioner is rejected for the following reasons:

i. Section 39(7) of the Insurance Act which is *pari materia* to Section 45-ZA(2) and was incorporated to achieve similar objective having been interpreted in ***Ram Chander Talwar (supra)*** to hold that the nominee cannot be held to be the owner of the money lying in the account. Section 39(7) also has to be interpreted to hold that the beneficial nominee cannot be said to be the owner of the money out of the proceeds of policy.

ii. In view of the similar provision being interpreted in the case of ***Shakti Yezdani (supra)***, it has to be held that the nominee would not unsettle the

rights of the legal heirs by virtue of the respective succession act.

iii. On harmonious interpretation of the two provisions i.e. Insurance Act and Hindu Succession Act, the rights conferred by Hindu Succession Act will prevail over the rights claimed by the nominee under Section 39(7) of the Insurance Act, the succession act being specific to succession in contradiction to the Insurance Act which is general.

36. In the light of the said, present petition deserves to be dismissed and the judgment passed by the revisional Court is liable to be upheld.

37. Ordered accordingly.

38. As the issue is of seminal importance and affecting the public at large coupled with the fact that different High Courts have taken different views, I deem it appropriate to grant certificate of appeal under Section 134-A of Constitution of India to the Hon'ble Supreme Court.

Order Date :-30.04.2025 **[Pankaj Bhatia, J.]**
nishant