

*** THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+ WRIT PETITION No.2499 of 2022

% 29.03.2022

M/s. Pawan Mohan Lal Shah (HUF),
Rep. by its Dr. Anurita Menon W.o. Dr.Rajeev Menon,
Aged: 46 years, Occ: Doctor (Radiology),
R/o.Gachibowli, Hyderabad and others

.... Petitioners

Vs.

\$ Securities and Exchange Board of India,
Rep. by its Chairman, SEBI Bhavan,
Bandra Kurla Complex, Bandra,
Mumbai-400051and others.

..... Respondents

!Counsel for the Petitioner : Mr. Avadesh Narayan Sanghi

Counsel for the 1st Respondent : Mr. C.V. Narasimham

<Gist :

>Head Note:

? Cases referred:

1. AIR 2020 SC 3717
2. 2015 SCC OnLine 14424

THE HON'BLE Dr. JUSTICE G. RADHA RANI**Writ Petition No.2499 of 2022****ORDER:**

This writ petition is filed for the following relief:

“to issue an appropriate Writ Order or direction more particularly one in the nature of Writ of Mandamus by declaring that the restriction imposed by the Respondents vide circular No.SEBI/HO/MRD/DP/OW/P/2016/25739/1 dated 14.09.2016 restricting the married daughters not to operate HUF Account as Karta, is absolutely illegal, arbitrary, unconstitutional and violative of Article 14, 21 and 300-A of Constitution of India R/w.Hindu Succession Act and consequently, direct the Respondents to declare that the Petitioner is entitled to operate Pawan Mohanlal Shah HUF Account including NSDL Demat Account Axis Bank Ltd., bearing Client ID:12658000 DP ID: IN300484 and pass..”

2. Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent.

3. The learned counsel for the petitioners submitted that one late Pawan Mohanlal Shah opened an account with the 4th respondent bank. His family had an ancestral temple known as Gopeshwar Temple, situated at 22-4-538, 539, Temple Etebar Chowk, Hyderabad. The same was being maintained from out of the Hindu Undivided Family (HUF) account by

said Pawan Mohanlal Shah. To derive more funds, he also opened a Demat account in the 4th respondent Bank. Late Pawan Mohanlal Shah was blessed with three daughters, namely, Monish Shah, Dr. Anurita Menon and Dr. Aditi Shah. There was no male member in the family. Sri Pawan Mohanlal Shah passed away on 10.02.2020 leaving behind his wife and three daughters. His elder daughter was a permanent citizen of United States of America. After the death of Pawan Mohanlal Shah, his wife, and his elder and younger daughters issued a declaration authorizing his 2nd daughter Dr. Anurita Menon to maintain the HUF Account in the 4th respondent Bank including Demat Account to maintain the temple as there were sentiments attached to it. After the said declaration made by the family, an application was submitted by Dr. Anurita Menon to the 4th respondent Bank to permit her to operate the bank account and Demat account which was in the name of HUF, but the 4th respondent bank furnished a copy of circular dated 14.09.2016 issued by the respondents No.1 to 3 stating that a married daughter could not be a Karta of the family and she was not entitled to operate HUF Account. Challenging the same, Dr. Anurita Menon filed W.P. No.747 of 2022 before this Court, in the capacity of representing M/s.Pawan Mohanlal Shah HUF. When the said writ petition came up for admission on 06.01.2022, on the observations of

this Court that her mother and sisters also should be reflected as parties to the proceedings, the said writ petition was withdrawn seeking liberty to file a fresh writ petition.

4. The present writ petition is filed since the petitioners were governed by the Hindu Succession Act, 1956 and Section 3 (f) defines 'Heir' as including a female and Section 6 deals with the coparcener which includes the daughter with equal rights that of a son. Similarly, under Section 8 of the Act, the properties of a male would devolve among the sons and the daughters as per the Schedule – I and similarly Section 29 would devolve equal rights including right of inheritance among the sons and daughters. The impugned circular issued by the respondents imposing restrictions for operating the HUF account by excluding married daughter was illegal and was violative of the constitutional provisions of Articles 14, 21 and 300-A and relied upon the judgments of the Hon'ble Apex court in **Vineeta Sharma v. Rakesh Sharma and Others**¹ and of the High Court of Delhi in **Mrs. Sujata Sharma v. Shri Manu Gupta**².

5. Notices were served on respondents No.1 to 4 and Sri C.V. Narasimham filed vakalat on behalf of 1st respondent and also filed counter

¹ AIR 2020 SC 3717

² 2015 SCC OnLine Del 14424

affidavit. There is no representation on behalf of respondents No.2 to 4 even after receipt of notice.

6. The learned counsel for the 1st respondent contended that the 1st respondent deleted the words “except married daughters” in the end of para 1.2 (a) of the Circular with effect from 14.02.2018 and informed the respondents No.2 and 3 by letters of the same date. He also relied upon the judgment of the High Court of Delhi in the case of **Sujatha Sharma** (2 supra) and submitted that in terms of the said decision the 2nd petitioner i.e. the wife of late Pavan Mohanlal Shah being the eldest member of the family HUF could be the Karta and not the deponent of the writ petition. The deponent of the writ affidavit was not a party to the writ petition in her individual capacity and she was not the eldest member of the family and as such she was not having any right to represent the 1st petitioner as its Karta and prayed to dismiss the writ petition with costs.

7. In the light of the rival contentions of both the learned counsel, the point that arises for determination in this writ petition is whether the 1st petitioner can act as Karta and can operate the HUF Account including the Demat Account in the 4th respondent bank?

8. On a perusal of the circular issued by the Securities and Exchange Board of India (SEBI) bearing No.SEBI/HO/MRD/DP/OW/P/2016/25739/1, dated 14.09.2016, regarding opening of HUF Demat accounts and procedure to be adopted in the event of death of Karta of a HUF. Guideline No.1.2 (a) would prescribe that in the event of death of Karta of HUF, the name of the deceased Karta in the Beneficial Owner (BO) account shall be replaced by the new Karta appointed by the members of the HUF, who in such a case shall be the senior most member of the family, except married daughters, which was impugned in the writ petition. As per the counter affidavit filed by the 1st respondent, the words “except married daughters was deleted from the said circular with effect from 14.02.2018 and the same was informed to the respondents No.2 and 3 vide letters dated 14.02.2018. The only objection taken by the 1st respondent was that the 2nd petitioner, wife of the deceased Pawan Mohanlal Shah, being the eldest member of the family could be the Karta, but not the deponent of the writ affidavit.

9. In the decision of the High Court of Delhi in **Sujata Sharma**, relied on by both the learned counsel, the issue that was considered was “whether the plaintiff being the first born among the coparceners of the HUF property, would by virtue of her birth be entitled to be its Karta.” The

High Court of Delhi, while referring to the Hindu Succession (Amendment) Act, 2005 and extracting the judgment of **Ram Belas Singh vs. Uttamraj Singh and Ors.** [AIR 2008 Patna 8], wherein it was held that:

".... in a joint Hindu family governed by Mitakshara law the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and will have the same rights in the coparcenary property as she would have if she had been a son and shall also be subject to the same liabilities in respect of the said coparcenary property as that of a son and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener. In the said circumstances, the law is made very clear that the term "Hindu Mitakshara coparcener" used in the original Hindu Law shall now include daughter of a coparcener also giving her the same rights and liabilities by birth as those of the son."

9.1. By extracting the judgment relied by the learned counsel for the defendants No.1 to 4 in the said case, in **Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal** [AIR 1991 SC 1538], and extracting paragraph-13 of the said judgment referring to Raghavachariar's Hindu Law Principles and Precedents Eighth Ed. 1987 in Section 275 at page 239, it was held as under:

"So long as the joint family remains undivided, the senior member of the family is entitled to manage the family properties, and the father, and in his absence, the next senior- most male member of the family, as its manager provided he is not incapacitated from acting as such by illness or other sufficient cause. The father's right to be the manager of the family is a survival of the patria potestas and he is in all cases, naturally, and in the case of minor sons necessarily the manager of the joint family property. In the absence of the father, or if he resigns, the management of the family property devolves upon the eldest male member of the family provided he is not wanting in the necessary capacity to manage it."

9.2. In paragraph-24 of the said judgment, by extracting the principles of Hindu Law by Mulla, it was stated that:

"By virtue of the new provision, a daughter of a coparcener in a joint Hindu family governed by the Mitakshara law now becomes a coparcener in her own right and thus enjoys rights equal to those hitherto enjoyed by a son of a coparcener. The implications of this fundamental change are wide. Since a daughter now stands on an equal footing with a son of a coparcener, she is now invested with all the rights, including the right to seek partition of the coparcenary property. Where under the old law, since a female could not act as karta of the joint family, as a result of the new provision, she could also become karta of the joint Hindu family"

9.3. By referring to the 174th report of the Law Commission of India in paragraph-25, it was also said to be argued that:

"when women are equal in all respects of modern day life, there is no reason why they should be deprived of the right and privilege of managing HUF as their Karta."

9.4. In paragraph-29 of the said judgment by referring to the judgment of the Hon'ble Apex Court in **Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara v. Seth Govindram Sugar Mills** [AIR 1966 SC 24], it was extracted that:

"The decision of the Orissa High Court in Budhi Jena v. Dhobai Naik followed the decision of the Madras High Court in V.M.N. Radha Ammal v. Commissioner of Income-tax, wherein Satyanarayana Rao J. observed :

"The right to become a manager depends upon the fundamental fact that the person on whom the right devolved was a coparcener of the joint family... Further, the right is confined to the male members of the family as the female members were not treated as

coparceners though they may be members of the joint family."

17. Viswanatha Sastri J. said :

"The managership of a joint Hindu family is a creature of law and in certain circumstances, could be created by an agreement among the coparceners of the joint family. Coparcenership is a necessary qualification for managership of a joint Hindu family."

18. Thereafter, the learned judge proceeded to state : It will be revolutionary of all accepted principles of Hindu law to suppose that the senior most female member of a joint Hindu family, even though she has adult sons who are entitled as coparceners to the absolute ownership of the property, could be the manager of the family... She would be guardian of her minor sons till the eldest of them attains majority but she would not be the manager of the joint family for she is not a coparcener.

19. The view expressed by the Madras high Court in accordance with well settled principles of Hindu law., while that expressed by the Nagpur High Court is in direct conflict with them. We are clearly of the opinion that the Madras view is correct."

and finally held in paragraph-30 that:

"What emerges from the above discussion, is that the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of co-parcenership. Section 6 of the Hindu Succession Act is a socially beneficial legislation; it gives equal rights of inheritance to Hindu males and females. Its objective is to recognize the rights of female Hindus as co-parceners and to enhance their right to equality apropos succession. Therefore, Courts would be extremely vigilant apropos any endeavour to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a Karta, so can a female member. The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its Karta"

10. Thus, as per the above judgment, the eldest female coparcener of a HUF can be the Karta. But, in the present case, the 2nd petitioner being the wife of late Pavan Mohanlal Shah not being a coparcener cannot be the Karta of the family. Even in the judgment of the Madras High Court referred by the Hon'ble Apex Court, it was held that:

“the mother could be guardian of her minor sons till the eldest of them attains majority, but she could not be the Manager of the Joint Family for which she is not a coparcener.”

11. Thus, it was the elder daughter who could be the Karta of the HUF. A Memorandum of Understanding was executed by the mother and the other daughters i.e. petitioners No.3 and 4 in favour of the 2nd daughter Dr. Anurita Menon unanimously appointing her as the Karta of the HUF with effect from 10.11.2020. The elder daughter is reported to be living in USA and she gave an undertaking to the 1st petitioner appointing her as Karta of the HUF and giving access, custody and responsibility of all the Assets (including but not limited to Bank accounts, land & buildings, furniture & fixtures, precious metals and articles, plots, flats, stocks and shares mutual funds, bonds, deposits, Demat accounts share in partnership firms & LLP's, Loans given) and liabilities of the HUF.

12. As seen from the above judgments, the right to become a Manager depends upon the fundamental fact that the person on whom the right devolved is a coparcener of the Joint Family and the Managership of a Joint Hindu Family is a creature of law and in certain circumstances could be created by an agreement among the coparceners of the Joint Family. The 3rd petitioner, the eldest daughter of the family, gave up her right to become the Karta and by a Memorandum of Understanding, agreed the 1st petitioner to be the Karta of the HUF. As such, the objection taken by the 1st respondent that it was the 2nd petitioner i.e. wife of late Pawan Mohanlal Shah who could be the Karta, is considered not valid.

13. For the reasons mentioned above, the Writ Petition is allowed permitting the 1st petitioner to operate the HUF Account including the Demat Account of the HUF in the respondent No.4 Bank bearing ID No.12658000, DP ID: IN300484, as Karta. No order as to costs.

Miscellaneous pending if any shall stand closed.

March 29, 2022
KTL

Dr. G. RADHA RANI, J