

Nomination - The Myth Debunked

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Nomination is the process of designating another individual during one's lifetime to act as one's legal nominee after one's death. The nominee is appointed in respect of specific assets or properties.

The general perception regarding nomination is that nomination substitutes a Will. The conception is that, by virtue of nomination, a nominee derives interest in those assets of a deceased person that are the subject matter of the nomination. In our Legal Spreadsheet circulated in May 2015, titled "Is Nomination a Myth"^[1], we had stated that compliance

with the procedure of nomination is merely a myth and cannot be a substitute for a Will; merely appointing a nominee is not sufficient to create a legal interest in property.

Taking this forward, a Division Bench of the Bombay High Court has, in the recent case of Shakti Yezdani and Another v. Jayanand Jayant Salgaonkar and Others ("Yezdani judgment")^[2], put to rest various misconceptions surrounding nomination and clarified the correct position in law.

Clarification of the Supreme Court judgment in Indrani Wahi's case

The Yezdani judgment considered the judgment of the Supreme Court in Indrani Wahi v. Registrar of Cooperative Societies and Others ("**Indrani Wahi**")^[3].

The idea that nomination awards interest in the deceased's assets is a myth... the nominee is appointed merely to ensure that commerce does not suffer due to delay on the part of legal heirs in establishing their rights of succession and claiming their right to property.

In the Indrani Wahi case, while dealing with the concept of nomination in a co-operative society, the Supreme Court held that the existing share or interest of the member would devolve by way of succession or inheritance only if a member of a society had not exercised the right of nomination. This judgment of the Supreme Court, making it compulsory for the society to transfer the interest

of the deceased in favour of the nominee, led to a lot of confusion regarding the rights of a nominee. However, what was overlooked by many was the observation that such a transfer in favour of the nominee would have no relevance to the issue of title between the inheritors or successors to the property of the deceased and it would be open to the other members of the family to pursue their case of succession or inheritance, in consonance with law.

In the Yezdani judgment, the Division Bench of the Bombay High Court clarified that the conclusion drawn by the Supreme Court in the Indrani Wahi case was that a co-operative society is bound by a nomination made by a member to the extent that it has no option except to transfer the shares in the name of the

nominee after the death of the member. However, those who are claiming inheritance will be entitled to pursue their remedies and claim title in the shares on the basis of inheritance.

Thus, reading the Indrani Wahi judgment along with the Yezdani judgment, it is clear that nomination does not create a legal right of inheritance and cannot and does not override the laws of succession.

Status of nomination under various other laws

In the Yezdani judgment, the Division Bench of the Bombay High Court clarified that the provisions relating to nomination under various laws have been constantly interpreted by the Supreme Court to hold that the nominee does not get absolute title to the property by virtue of the nomination.

The High Court also clarified that even assuming that the format of nomination requires attestation, as required for a Will under the Indian Succession Act, 1925, nomination does not become a testamentary disposition.

The Yezdani judgment, relying on various decisions passed by Indian courts, considered nomination under the following:-

1. Companies Act, 1956
2. Securities Exchange Board of India (Mutual Fund) Regulations 1996
3. Insurance Act, 1939
4. Life Insurance Act 1938
5. Banking Regulation Act, 1949
6. National Saving Certificates Act, 1959
7. Employees' Provident Fund and Miscellaneous Provisions Act, 1952
8. Banking Regulations Act, 1949
9. Depositories Act, 1996

While planning your estate, in order to ensure that your assets devolve on legal heirs of your choosing, the making of a Will needs to be a top priority.

Considering all these different laws, the Bombay High Court concluded in the Yezdani judgment that there is no difference between the drafting of Section 109A of the Companies Act, 1956 and the drafting of Section 6(1) of the Government Saving Certificates Act, 1959, Section 45-ZA(2) of the

Banking Regulation Act, 1949 and Bye-law 9.11 of the Depositories Act, 1996. The provisions of nomination under Government Saving Certificates Act, 1959, Banking Regulation Act, 1949, Depositories Act, 1996 have been interpreted by the courts on numerous occasions and, on all these occasions, the courts have come to the same conclusion – that the nominee does not become the owner and cannot claim ownership by virtue of nomination.

While the High Court did not consider the provision regarding nomination under the Companies Act, 2013, this provision is similar to the provision under the Companies Act, 1956 and hence the same conclusion will most probably apply.

The Yezdani judgment has thus made it clear that the legislative intent behind the procedure of nomination is not to provide a third line of succession, but to ensure that the property of the deceased that is the subject matter of the nomination is protected until the legal representatives take appropriate steps.

In conclusion

The idea that nomination awards interest in the deceased's assets is a myth and the correct position is that the nominee is appointed merely to ensure that commerce does not suffer due to delay on the part of legal heirs in establishing their rights of succession and claiming their right to property.

The Supreme Court's decision in Indrani Wahi and the Bombay High Court's decision in the Yezdani judgment elucidate the courts' interpretation that the process of nomination is only necessary to ensure that the assets of the deceased are protected and the deceased is represented before various organisations i.e., banks / societies / other authorities.

Therefore, while planning your estate, in order to ensure that your assets devolve on legal heirs of your choosing, the making of a Will needs to be a top priority.^[4]

- By Nirav Jani (Associate Partner) and Ritu Shetty (Associate)

[1] http://hariani.co.in/newsletters/22690_is_nomination_a_myth.pdf.

[2] Appeal no. 313 of 2015 in Notice of Motion no.822 of 2014 in Suit no.503 of 2014 along with Appeal no.311 of 2015 in Testamentary Petition no.457 of 2014.

[3] AIR 2016 SC 1969.

[4] http://hariani.co.in/newsletters/45665_WHERE_THERE_IS_A_WILL_THERE_IS_A_WAY.pdf.

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