



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4778 OF 2009

Shri Ganpati Panchayatan Sansthan Trust]
a private Trust for 5 Family Deities]
at Sangli, at Shri Ganpati Mandir Trust, Sangli]
Through its Manager]
Shri Balkishan S/O. Nathmalji Jaju]....Petitioner

versus

1 Union of India, though]
Secretary, Finance Department,]
North Block, New Delhi.]
]
2 National Securities Depository]
Limited, having office at 4th]
Floor, A Wing, Trade World,]
Kamla Mill Compound, Senapati]
Bapat Road, Lower Parel, Mumbai-400 013]
]
3 The Karur Vyasya Bank Limited,]
Through its Borivali Branch]
Manager, Having office at]
Shop No.4-7, Sunrise View]
Co-operative Housing Society Ltd.]
Vajira Naka, Borivali(W), Mumbai-400091]... Respondents

Mr. A V Anturkar a/w Mr. Uday Warunjikar for the Petitioner.

Ms. Neeta Masurkar for the Respondent No.1-UOI

Mr.Janak Dwarkadas, Senior Advocate a/w Mr.Swanand Ganoo and Mr. Zerick Dastur i/by J Sagar Associates for the Respondent No2.

None for the Respondent No.3.

**CORAM : P B MAJMUDAR &
 R M SAVANT, JJ.**

DATE : 16th July 2010

ORAL JUDGMENT [PER P B MAJMUDAR, J]

1 Rule. With the consent of the parties Rule is made returnable forthwith and heard. The learned counsel appearing for the Respondent No.1 Ms.Masurkar

waives service of Rule on behalf of the said Respondent, so also the learned senior counsel appearing for the Respondent No.2 waives service of Rule on behalf of the said Respondent.

2 By way of this Petition, the Petitioner, which is a Private Trust, is interested in getting Demat account opened in favour of Lord Ganpati, Chintamaneshwar Deo, Suryanarayan Deo, Chintamaneshwari Devi and Laxminarayan Deo, which deities, according to the Petitioner are having equal shares in corpus of the Trust. The Petitioner wants to open a Demat account with the Respondent No.3-The Karur Vyasya Bank Limited for the purposes of share transactions. The Respondent No.2 herein i.e. National Securities Depository Limited, is the controlling authority of the Respondent No.3 in connection with transactions of shares through the DEMAT account. The Respondent No.2 refused to grant such permission of opening of Demat account in the name of aforesaid five deities which is given cause to the Petitioner to file the instant Petition.

3 The learned counsel for the Petitioner Mr.Anturkar vehemently submitted that so far as the deity is concerned, the deity is an artificial person and, therefore, there is no prohibition in law if Demat account is operated in the name of a deity. The Learned Counsel further submitted that under the Hindu Law, a deity has given a separate status of person and therefore if a deity is entitled to income, there is no reason why the deity should not be permitted to open a Demat account as there is no prohibition in law. It is further submitted by the learned counsel for the Petitioner that there is nothing wrong if the deities are allowed to take part in share transactions like any other individual. It is further submitted by Mr.Anturkar that

even under the Income Tax Act, the deities are recognized as a juridical person and even the PAN-cards are issued for the purposes of the Income Tax Act and in view of the same, it is submitted that proper directions may be issued to the Respondent Nos. 2 and 3 to allow the Petitioner to pen a Demat account in the name of the aforesaid deities mentioned above.

4 The above Petition is resisted on behalf of the Respondent No.2 by filing an Affidavit in reply of one Mr. S Ganesh – the Senior Vice President of the Respondent No.2, by which affidavit the Respondent No.2 has denied the averments made in the above Petition. It is stated in the said affidavit that there is no provision in law by which a Demat account can be allowed to be opened in the name of a deity. The learned senior counsel appearing for the Respondent No.2-Mr.Dwarkadas submitted that such a DEMAT account can be operated by an individual person in his name and naturally a deity cannot hold a Demat account. He further submitted that so far as Demat account is concerned, it is in connection with share transactions which requires regular monitoring every day. Mr.Dwarkadas further submitted that so far as the activities of the Respondent No.2 are concerned, they are regulated by SEBI and if any Demat account is permitted to be opened in the name of a deity and if any any irregularity is found, it would be difficult to take action as a deity cannot be prosecuted and the Petitioner being a unregistered private trust does not have any legal status for action being taken against it.

5 We have heard the learned counsel for the parties at length. In our view, the instant Petition is devoid of merits. It is true that under Income Tax Act individual income received by a particular trust for a particular deity may be treated

as the income of the said deity, but the provisions of the Income Tax Act cannot be relied upon so far as opening of Demat account is concerned. The Petitioner wants to open an account in the name of the deities as mentioned above thereby bringing the Gods/Goddesses into share transaction business. It is not in dispute that the Demat account is essentially for share transactions. The learned counsel appearing for the Petitioner Mr.Anturkar has placed on record Encyclopedia in connection with Demat account. It states as under :-

The term Demat, in India, refers to a dematerialised account. For individual Indian citizens to trade in listed stocks or debentures. The securities Exchange Board of India (SEBI) requires the investor to maintain a Demat account. In a demat account shares and securities are held in electronic form instead of taking actual possession of certificates. A Demat Account is opened by the investor while registering with an investment broker (or sub broker). The Demat account number which is quoted for all transactions to enable electronic settlements of trades to take place.

6 The learned counsel for the Petitioner Mr.Anturkar further submitted that under the Hindu Law a deity of a God or Goddess is concerned is a separate entity and there is no restriction for such deity to hold property in its name. In, our view, the said principle cannot be straightway made applicable so far as scheme of opening of Demat Account is concerned.

7 The learned senior counsel for the Respondent No.2 Mr.Dwarkadas submitted that even in a Nationalised Bank, bank account cannot be allowed to be operated in the name of a deity, though of course the learned counsel for the Petitioner Mr.Anturkar states that he is not aware of any such restriction that a deity cannot open an account in a nationalised bank in its individual name.

8 Be that as it may, in so far as the present Petition is concerned we are only concerned with the opening of Demat account and so far as Demat account is concerned, since personal skill, judgment and supervision is required for its operation, we are of the view that such an account cannot be allowed to be operated in the name of artificial person. In a given case, it may result in serious difficulties if such an account is permitted to be opened in the name of Gods or Goddesses as the case may be. Since the Petitioner, which is a unregistered private trust, cannot open a Demat account, it cannot be indirectly permitted to open an account, in favour of such an artificial person and in the name of Gods or Goddesses.

9 Demat account is essential a commercial activity done on a day to day basis and it is not expected that a private trust would bring the Gods and Goddesses in the matter of share trading business. In our view, the Respondent No.2 has rightly rejected the prayer of the Petitioner holding that such account cannot be operated in view of the circular of the SEBI which is annexed at page 23 annexure "C". The Respondent No.3 therefore has rightly informed the Petitioner that such a Demat account cannot be allowed to be opened in the name of deity as per the circular of the Respondent No.2. Since in view of the restriction of the SEBI, as pointed out by the learned senior counsel Mr.Dwarkadas, that such a Demat account cannot be allowed to be opened and since in our view, even otherwise opening of such account in the name of deities in the matter of share trading business, is rightly not considered by the Respondent No.2 as it cannot be operated by such an artificial person. The trustees can always apply in their individual capacity as trustees for opening of such an account however not in the name of deities. We agree with the submissions of

learned senior counsel Mr.Dwarkadas that such type of Demat account cannot be allowed to be operated in the name of deity which not only requires signature while opening of the account but it also requires day-to-day monitoring of transactions in connection with trading in shares. We do not find any arbitrariness in the action of Respondent No.2 for not permitting the Petitioner to open such an account. The trustees can always open an account in their individual name without bringing the Gods and Goddesses into picture. The instant Petition, in our view, is thoroughly misconceived and is accordingly dismissed. Rule discharged.

10 Since we have dismissed the matter on merits, we have not gone into the alternative submission of the learned counsel for the Respondent No.2 Mr.Dwarkadas that Respondent No.2 is not a State within the meaning of Article 12 of the Constitution of India and the Petition is, therefore, not maintainable. However, prima facie we are of the opinion that since the Respondent No.2 requires to follow the guidelines given by the SEBI, it cannot be said that the writ petition against the Respondent No.2 is not maintainable. However, we have not gone into the said issue in depth and leave it to be decided at the appropriate time in appropriate proceedings.

The Writ Petition is dismissed.

[R.M.SAVANT, J]

[P.B.MAJMUDAR, J]