



2026:DHC:2555



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment Delivered on: 27.03.2026*

+ CS(OS) 53/2017

PANKAJ OSWAL

.....Plaintiff

Through: Mr. Jayant Bhushan, Senior Advocate with Mr. Mayank Mishra, Mr. Raunak Singh, Mr. Parag Rai, Mr. Kunwar Surya Pratap, Mr. Alay Raje and Mr. Arbind Gaur, Advocates with plaintiff in person.

Versus

ARUNA OSWAL &amp; ORS.

.....Defendants

Through: Mr. Sanjiv Kakra, Senior Advocate with Mr. Bharat Arora and Mr. Gourav Arora, Advocates for D1.

Mr. Vibhor Verdhan, Advocate for R2.

Mr. Dinesh Moorjani, Advocate for D3.

Ms. Ridhima Verma, Mr. Shashwat Tripathi and Ms. Aparajita Singh, Advocates for applicant in IA. No. 12308/2025.

**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J****I.A. 1737/2024 (under Order XII Rule 6 read with Order XX Rule 18(2) and Section 151 CPC by the plaintiff.**

1. The present application has been filed by the plaintiff seeking a judgement on admission and a preliminary decree in favour of the plaintiff declaring that:

- a. The plaintiff is a Class-I legal heir of Late Mr. Abhey Kumar Oswal; and
- b. The plaintiff is entitled to 1/4<sup>th</sup> share in the suit properties as listed in the amended schedule, specifically in the shares held by Late Mr.



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Abhey Kumar Oswal in OAML [53530960 (39.88%)] and OGL [28540318 (11.11%)] at the time of his demise on 29.03.2016.

2. The case set up by the plaintiff as noted from the plaint as well as material on record is that the plaintiff is the eldest son of Late Mr. Abhey Kumar Oswal [**'Decedent'**] and has filed the present suit *inter alia* seeking partition of estate of his late father claiming to be his class-I legal heir.
3. It is averred that Decedent was a Hindu by religion and a substantial shareholder, director and chairperson of the board of directors of Oswal Agro Mills Limited [**'OAML'**] and Oswal Greentech Limited [**'OGL'**], the two main holding companies of the Abhey Oswal Group.
4. It is further averred that the Decedent held 53530960 (39.88%) shares in OAML and 28540318 (11.11%) shares in OGL. The said shares form part of the scheduled properties as per the amended schedule which was taken on record by this Court *vide* order dated 14.05.2018.
5. It is the case of the plaintiff that on 29.03.2016 Decedent passed away intestate leaving behind plaintiff and defendants as his Class-I legal heirs. Defendant no.1 is the wife; whereas defendant nos.2 and 3 are the younger son and daughter respectively, of Decedent.
6. It is further the case of the plaintiff that soon after passing of Decedent multiple meetings of OAML and OGL were clandestinely held whereby defendant no.1 was appointed as the Additional Director and Chairperson of both the companies. Also, defendant no.1 and one Mr. Anil Bhalla, who was the director of OAML and CEO & MD of OGL were authorized to act as authorized signatories and manage bank accounts of both the companies.
7. It is averred that observing oppression and mismanagement in the affairs of the OAML after the demise of the Decedent, plaintiff approached



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the NCLT, Chandigarh by filing a petition being C.P. No. 56/CHD/PB/2018 under Sections 241 and 242 of the Companies Act, 2013. In the said petition, plaintiff asserted his locus to maintain the petition as being the beneficial owner of 1/4<sup>th</sup> shares held by the Decedent. He also sought rectification of the Register of Members to record his name as the member of the Company to the extent of 1/4<sup>th</sup> shares held by the Decedent, at the time of his demise.

8. In the said petition, defendant no. 1 herein filed an application objecting to the maintainability of the petition on the ground that the plaintiff does not hold requisite shares to file the said petition. The NCLT *vide* order dated 13.11.2018 held that the company petition is maintainable since the plaintiff was entitled to claim 1/4<sup>th</sup> shares held by the Decedent in OAML as his own shares. It was further held that the purported nomination in favor of defendant no. 1 by the Decedent will not affect the rights of the plaintiff to maintain the company petition. The order passed by NCLT was upheld by the NCLAT *vide* order dated 14.11.2019.

9. The order dated 14.11.2019 of the NCLAT was challenged by defendant no. 1 before the Hon'ble Supreme Court by filing a Civil Appeal no. 9340 of 2019. *Vide* judgement dated 06.07.2020<sup>1</sup>, the Hon'ble Supreme Court set aside the order dated 14.11.2019. The relevant extract of the judgment dated 06.07.2020 is reproduced herein:

*“21....Admittedly, in a civil suit for partition, he is also claiming a right in the shares held by the deceased to the extent of one fourth. The question as to the right of respondent no.1 is required to be adjudicated finally in the civil suit, including what is the effect of nomination in favour of his mother Mrs. Aruna Oswal, whether absolute right, title, and interest vested in the nominee or not, is to be finally determined in the said suit. The decision in a civil suit would be binding between the*

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<sup>1</sup> *Aruna Oswal vs. Pankaj Oswal and Ors*, (2020) 8 SCC 79.



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*parties on the question of right, title, or interest. It is the domain of a civil court to determine the right, title, and interest in an estate in a suit for partition.”*

10. It is the case of the plaintiff that according to some credible information, OAML, which is controlled by defendant no. 1 has engaged in talks to sell its most valuable asset, i.e., a parcel of land at village Anik, Taluka Kurla, Chembur, Mumbai *ad measuring* approximately 2,95,693.75 square yards.

11. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the plaintiff submits that the defendants have filed their respective written statements. The defendant nos.1 and 2 had filed a joint written statement on 11.05.2017. Thereafter, an amended written statement was filed on 12.10.2018. However, subsequently on 12.02.2023 defendant no.2 issued a letter of even date stating that said filing was made unauthorizedly on his behalf. He submits that defendants nos.2 and 3 have not filed any reply to the instant application and only defendant no.1 has opposed the present application by filing her reply.

12. He submits that a bare perusal of written statements filed by the defendants shows that the following basic facts of the present case as averred in the plaint have not been disputed:

- i. The Decedent was a Hindu;
- ii. The plaintiff is the eldest son of Decedent;
- iii. The Decedent passed away intestate on 29.03.2016;

13. He submits that in the written statement a stand has been taken that sometime in October 2006, a purported oral family settlement was acted upon, whereby plaintiff was excluded from all the properties owned by the



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Decedent, and thus, plaintiff is not entitled to any part of the Decedent's estate.

14. Mr. Bhushan further submits that it is also the case set up in the written statement that defendant no. 1 has been appointed as the sole nominee by Decedent in respect of all the shares of the two flagship Companies viz., OAML and OGL by execution of a nomination form in her favour. As per defendant no.1's stand taken in the amended written statement, such nomination read with section 72 of the Companies Act, 2013 has the effect of a 'Will' and therefore, the plaintiff is not entitled to any share in the estate of the Decedent.

15. He submits that recently the Hon'ble Supreme Court in *Shakti Yezdani & Anr. vs. Jayanand Jayant Salgaonkar & Ors., (2024) 4 SCC 642* has settled the law regarding the effect of "nomination" under various statutes including the erstwhile Section 109A of Companies Act, 1956, which is *pari materia* to the present Section 72 of the Companies Act, 2013. It has been laid down that nomination does not grant absolute rights of ownership in the shares in favour of the nominee.

16. He submits that if the amended written statement is meaningfully read, defendant no.1 is opposing the reliefs sought in the instant application only on following grounds:

- i. there is an oral family settlement whereby the Decedent has disowned plaintiff and therefore, plaintiff cannot claim any interest as Class I legal heir; and
- ii. the nomination by way of the Nomination Form amounts to and has the effect of a 'Will' in view of section 72 of the Companies Act, 2013, and the said document fulfils the pre-condition of a 'Will' since it is attested by two witnesses.



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17. He submits that even assuming for the sake of arguments that there was an oral partition / settlement, the said stand of defendant no.1 is untenable in the eyes of law as there cannot be an oral settlement during the lifetime of the Decedent regarding devolution of his estate after his demise. This is nothing but propounding an Oral Will. He submits that oral disposition of self-acquired properties by a Hindu is not permitted in terms of the provisions of the Hindu Succession Act, 1956. Reliance in this regard is placed on the decision of this Court in ***Goutam Bhadra & Anr. vs. Gouri Bhadra & Anr., 2014 SCC OnLine Del 1272.***

18. He further submits that in terms of provisions of Indian Succession Act, 1925, particularly as per section 63 read with sections 65 and 66 and schedule III, only a soldier, sailor or airman, serving in expedition or engaged in war, is allowed to make a Privileged Will, which can be made by word of mouth. Reliance has been placed on the decisions of this Court in ***Sunita Shivdasani vs. Geeta Gidwani, 2007 SCC OnLine Del 200*** and ***Neelima Sharma & Ors. vs. Satyavrat Sharma & Anr., 2025 SCC OnLine Del 807*** to submit that in the said decisions, it has been held that a Hindu cannot make a Privileged Will or an oral Will in terms of sections 65 and 66 of the Indian Succession Act, 1925.

19. He submits that the only way to exclude a legal heir from succession is by the way of a testamentary Will or any other testamentary documents. He submits that any settlement during the lifetime of the Decedent cannot operate as a Will. Reliance in this regard is placed on the decision of Division Bench of High Court of Madras in ***Appandainatha Nainar vs. Appadurai, 2003 (2) CTC 202*** and the decision of High Court of Kerala in ***Narayani & Anr. vs. Sreedharan, 2011 SCC OnLine Ker 4059.*** Therefore,



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plea of oral family settlement having been acted upon, disinheriting plaintiff, during lifetime of the Decedent does not hold any water.

20. On the plea of nomination raised by defendant no.1, Mr. Bhushan reiterates that the law in this regard has been settled in *Shakti Yezdani* (supra). He also places reliance on the decision of this Court in *Paminder Gujral & Ors. vs. Kiranjit Gujral & Ors., 2024:DHC:4870* to submit that the position settled in *Shakti Yezdani* (supra) has been applied in the said decision.

21. He submits that the Nomination Form relied upon by defendant no. 1 in her amended written statement is a generic/standard 'Know Your Client (KYC)' application form of Stock Holding Corporation of India Limited (SHCIL) and not a testamentary document evidencing propounding of a 'Will', with specificity. The said Nomination Form does not fulfil the conditions stipulated under the definition of 'Will' as defined under section 2(h) of the Indian Succession Act.

22. He places reliance on the decision of this Court in *K.L. Malhotra vs. Sudershan Kumari & Anr., (2008) 149 DLT 783* to submit that in the said decision, in the context of section 2(h) of the Indian Succession Act, 1925, it has been held that while interpreting the nature of the document purported to be a 'Will', the courts have to examine whether the document contains specific words of bequest to come into effect after the death of the testator. The *onus probandi* lies upon the party propounding the 'Will' and if no evidence is given by the said party, the issue must be decided against it.

23. *Per contra*, Mr. Sanjeev Kakra, learned Senior Counsel appearing on behalf of defendant no. 1 at the outset submits that the present application is entirely misconceived and not maintainable inasmuch as the plaintiff has grossly failed to point out any admission which would warrant the



indulgence of this Court under Order XII Rule 6. He submits that in the scheme of Order XII Rule 6 admission has to be clear, unequivocal, unambiguous and unconditional, which is not the case here. The said requirement cannot be something that has to be dissected from the pleadings/documents or arrived at after a lengthy process of deduction. In this regard, he has placed reliance on the following decisions passed by Hon'ble Supreme Court as well as this Court:

- i. ***Rajesh Mitra @ Rajesh Kumar Mitra vs. Karnani Properties Limited, 2024 SCC OnLine SC 2607;***
- ii. ***Himani Alloys Ltd. vs. Tata Steel Ltd. (2011) 15 SCC 273;***
- iii. ***Karan Kapoor vs. Madhuri Kapoor (2022) 10 SCC 496;***
- iv. ***Rakesh Kumar Aggarwal & Anr. vs. Caravan Commercial Company Limited, 2023 SCC OnLine Del 223; and***
- v. ***Sunil Goel vs. Mis Rational Enterprises & Ors. -Order dt. 22.03.2024 passed in CS (COMM) No.536 of 2016.***

24. He submits that in the instant case, there is no specific, clear and categorical admission of facts and documents by defendant no.1 warranting passing of a preliminary decree. In fact, there are various triable issues like: effect of nomination made by Late Mr. Abhey Kumar Oswal in the Nomination Application Form; and effect of oral family settlement acted upon between the parties, for which detailed evidence has to be led by the parties.

25. He further submits that the decision in ***Shakti Yezdani*** (supra) was passed in different facts and circumstances, thus, plaintiff's reliance on the same is misconstrued and based on a completely incorrect reading of the said decision.



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26. Elaborating further, he submits that in *Shakti Yezdani* (supra) the deceased therein had first nominated a beneficiary in the nomination form and drawn a Will i.e., the testamentary document. The deceased also clarified his wishes not only *qua* the shares but also other positions. The deceased revoked his gift deed in favour of some people, excluded some people from shareholding in his estate and expressed his desire for distribution of his estate as per his wishes among the selected members of his family (not all). Thus, the testamentary document in the said case had to prevail over all other documents i.e. nomination etc. Further, the nomination form was witnessed and acknowledged by two witnesses in compliance of mandatory conditions of a 'Will' under section 63 of the Indian Succession Act, 1925.

27. He further submits in *Shakti Yezdani* (supra), unlike the present case, owing to the deceased's 'Will' therein, which clearly detailed the assets division including the shares contrary to the prior nominations, the Hon'ble Supreme Court held that deceased's 'Will' was to prevail over the nomination for Bank accounts, shares, lockers etc. In the present case, the position is to the contrary, as the nomination form is the written 'Will' of the Decedent as far as his shares are concerned. He submits that as the Decedent did not execute any written and superseding 'Will' post the nomination form, therefore, the desire of the Decedent to 'Will' his shares, as he did under the aforesaid nomination form, has to prevail.

28. He contends that the nomination form in favour of defendant no.1 constitutes an absolute and binding declaration. As per Section 72 of the Companies Act, 2013, a nomination validly made supersedes all claims regarding the transfer of shares upon the demise of the nominator. The nomination form unequivocally vests ownership of the shares in defendant



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no.1 leaving no scope for disputes or division among other claimants. Therefore, the rights arising from the nomination are final and conclusive.

29. He further submits that the disputes between the parties are directly covered by the principles laid down by Hon'ble Supreme Court in *Aruna Oswal vs. Pankaj Oswal & Ors. (2020) 8 SCC 79* which specifically govern the disputes between family members regarding shareholding and inheritance.

30. He submits that it is a settled principle of law that the earlier judgment of a bench of a coordinate strength is binding on the subsequent bench of equal strength. Therefore, the decision in *Aruna Oswal* (supra) will hold the field between the same parties as far as the issue of Nomination and its effect is concerned. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in *Union of India & Drs vs. S.X Kapoor, 2011 (4) SCC 591*.

31. He submits that nomination and its effect is a matter of trial and cannot be decided in a summary manner. A plain reading and comparison of the nomination form in the present case with all other nomination forms available in public domain would show that all other nomination forms are to be signed by only one witness, whereas the nomination form in the present case has been signed by two witnesses. Therefore, the nomination form in the present case is entirely different from the other nomination forms and is not a standard template nomination form.

32. He further submits that it is also a matter of fact that the oral family settlement of 2006 disinheriting the plaintiff has been acted upon, inasmuch as in furtherance thereof, the Decedent had removed the plaintiff's name from the HUF account maintained in the HDFC Bank on 07.08.2007, factum of which can easily be verified from the records of the Bank itself.



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33. He submits that the Decedent has only included defendant nos.1 and 2 as his co-parceners in the HUF account held by him. Therefore, plaintiff cannot be treated as the legal heir to legally succeed to the estate of Late Mr. Abhey Kumar Oswal and claim any interest therein. He submits that account opening form of "AK Oswal & Sons HUF" dated 07.08.2007 clearly shows that the Oral Family Settlement was given effect to and the plaintiff was excluded from the estate of Late Mr. Abhey Kumar Oswal.

34. He further draws attention of the Court to the judgment dated 02.08.2019 passed by this Court to submit that whilst allowing application of defendant no.1 under Order VI Rule 17, this Court had observed that there are *prima facie* no obvious admissions about any right having been inherited by the plaintiff. Thus, there are no admissions *qua* entitlement of plaintiff in the estate of Decedent.

35. He submits that it is settled law that the nomenclature of a document is not determinative of its true nature, rather the Court must look into the contents of the document and the intention of the executant. Merely calling a document a 'nomination form' does not restrict the Court from treating it as a testamentary disposition if its language and execution reflect such an intent.

36. He reiterates that in the present case, the nomination form executed by Decedent expressly supersedes all prior nominations as well as all testamentary documents; and confers absolute entitlement on defendant no.1 *qua* all the shares of Decedent. Also, it was executed in the presence of two witnesses in conformity with section 63 of Indian Succession Act, 1925.

37. He, thus, contends that it is the content and intent underlying the nomination form that must prevail, and not the label attached to it. Reference in this regard is made to the decisions of Hon'ble Supreme Court



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in *B.K. Maniraju vs. state of Karnataka and Ors.*, (2008) 4 SCC 166 and *Meena Pradhan & Ors. vs. Kamla Pradhan & Anr*, (2023) 9 SCC 734.

38. Lastly, he submits that plaintiff's present application cannot be decided in part as declaration sought in Prayer A cannot be granted in isolation of Prayer B. Under these circumstances, the question of passing a Preliminary Decree on admission does not arise till the respective shares, if any, of the parties are determined which at present are in a fluid state. The question of passing a piecemeal order or judgment on a particular fact is neither permissible nor warranted under the provisions of Order XII Rule 6 CPC which only contemplates a passing of a decree on admission and not a decision regarding any fact in issue and that too without a trial.

39. In rejoinder, Mr. Bhushan submits that the defense of purported oral family settlement is a sham defense inasmuch as defendant no.1 has failed to provide material particulars of the said settlement in the written statement. He submits that following material particulars have not been provided:

- i. details of parties to the alleged oral settlement;
- ii. details of witnesses to such settlement; and
- iii. details of when and where the alleged settlement was arrived at.

40. He submits that in *Aruna Oswal* (supra) the Hon'ble Supreme Court did not conclusively decide the question pertaining to the effect of nomination under section 72 of the Companies Act in the facts of the present case. The Court only made "*prima facie*" observations regarding effect of section 72 of the Companies Act. The Court left it open for this Court to decide whether absolute right, title, and interest is to be vested in the nominee or not.



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41. He submits that *Shakti Yezdani* (supra) is an authoritative pronouncement on the scope and effect of nomination under section 72 of the Companies Act, and it continues to hold the field.

42. He lastly submits that whether nomination has the effect of a ‘Will’ or not is purely a legal question which does not require any evidence or trial. In any case, it is trite law that pleadings ought to be read meaningfully and, in a context, to understand their true meaning and import. Evasive and mechanical denials without substantiation are meaningless. In this regard, reliance has been placed on the decision of Division Bench of this Court in *Vijaya Myne vs. Satya Bhushan Kaura, (2007) 142 DLT 483 (DB)*. He submits that there are not only specific, clear and categorical admissions but also constructive admissions on part of defendant no.1.

43. Having heard learned counsel appearing on behalf of the parties, this Court notes that in the main suit, the plaintiff has prayed for decree of rendition of accounts, as well as, preliminary decree of partition to the extent that plaintiff is entitled to 1/4<sup>th</sup> share in the suit properties listed in the schedule as also the properties belonging to the Oswal Family, with further prayer for grant of final decree of partition.

44. However, in the present application under Order XII Rule 6 CPC, the plaintiff seeks judgment on admissions and preliminary decrees to the following effect:

*“42. In view of the foregoing, the Applicant/Plaintiff humbly prays that this Hon’ble Court may be pleased to:*

*A. Pass a judgment on admission and a preliminary decree declaring that the Plaintiff is a Class-I legal heir of Late Mr. Abhey Kumar Oswal;*

*B. Grant a preliminary decree declaring that the Plaintiff is entitled to 1/4<sup>th</sup> share in the suit properties as listed in the Amended Schedule, more specifically the Plaintiff is entitled to*



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*1/4th share in the shares held by Late Mr. Abhey Kumar Oswal in OAML [53530960 (39.88%)] and OGL [28540318 (11.11%)] at the time of his demise on 29.03.2016”*

45. When the present application was finally heard and the judgment was reserved, the learned counsel for the applicants in I.A. 12308/2025 (under Order I Rule 10 CPC) had contended that the applicants in the said application are claiming to be legal heirs of late Abhey Kumar Oswal, and in the event they are held to be legal heirs, they would also have share in the estate of late Abhey Kumar Oswal.

46. Confronted with this situation, Mr. Jayant Bhushan, learned senior counsel appearing on behalf of plaintiff/applicant had submitted that in the event the present application is allowed, the shares may not be declared while allowing the application, and only an observation may be made that declaration of shares of the parties will be subject to the outcome of the aforesaid application i.e. IA. 12308/2025.

47. Before proceeding to examine the case articulated in the present application, it is important for this Court to be mindful that the objective of enacting the provisions under Order XII Rule 6 CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree inasmuch as the said provision has been enacted to render speedy judgment and save the parties from going through the rigmarole of a protracted trial.<sup>2</sup>

48. It is equally settled that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right, or in other words, judgment on admission is a matter of discretion of the Court. Where the defendants have raised objections which goes to the root of the case, it

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<sup>2</sup> Vijaya Myne vs. Satya Bhushan Kaura, (2007) SCC OnLine Del 828.



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would not be appropriate to exercise discretion under Order XII Rule 6 CPC. The said Rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the admission by one of the parties of his opponent's claim.<sup>3</sup>

49. Insofar as the present suit is concerned, the foundational facts are not in dispute. The Decedent was a Hindu, who died on 29.03.2016, and is survived by the plaintiff (eldest son), defendant no.1 (wife), defendant no.2 (younger son) and defendant no.3 (daughter).

50. The Decedent's shareholding in OAML and OGL and the extent thereof has been mentioned in the prayer clause of the instant application, which again is not in controversy

51. The case set up by the plaintiff in the plaint is that the Decedent died intestate. In the amended written statement filed by the defendant no.1 on her own behalf, as well as on behalf of defendant no.2, as his general attorney, particularly in para 2 of the para wise reply, it has been admitted that the Decedent was a Hindu who left behind four legal heirs i.e., all the four parties to the suit, but it has been denied that the Decedent died intestate.

52. In para 11 of Preliminary Objections, the defendant no.1 has elaborated that she has been appointed by Decedent as his nominee in his DEMAT account *qua* his shareholding in OAML and OGL, and said nomination constitutes the legal testament of decedent.

53. Further, in para 4 of preliminary submissions, the defendant no.1 has pleaded oral family settlement that was purportedly arrived at in the month of October, 2006 in the Oswal family whereby the plaintiff was expelled, disowned and disinherited from the estate of decedent. As the pleading with

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<sup>3</sup> S.M. Asif vs. Virender Kumar Bajaj, (2015) 9 SCC 287.  
CS(OS) 53/2017



regard to the oral family settlement would assume relevance in the latter part of the present judgment, therefore, it is considered appropriate to reproduce para 4 of the preliminary submissions for ready reference, which reads thus:

*“4. Since the misdeeds of the Plaintiff and financial forgeries, manipulation and misadventure of the Plaintiff have been bringing a bad name to Late Mr. Abhey Kumar Oswal and his family, **Late Mr. Abhey Kumar Oswal, in the month of October, 2006 decided to completely expel, disown and disinherit the Plaintiff from his estate. It was categorically stated by Late Mr. Abhey Kumar Oswal that after his death only the Defendant No. 1 shall be entitled to inherit his estate and the Plaintiff will have no right, title or interest to any part of his estate. As such an oral family settlement was arrived at in the month of October, 2006 in the Oswal family and as such the Plaintiff shall not be entitled to inherit any estate of Late Mr. Abhey Kumar Oswal.**”*  
(emphasis supplied)

54. Notably, the defence of the contesting defendant i.e. defendant no.1 essentially rests on two pleas viz., :

- (i) an oral family settlement of October, 2006 whereby the plaintiff was disinherited; and
- (ii) nomination *qua* the shareholding of decedent in OAML and OGL in favour of defendant no.1, which according to her operates as a ‘Will’ and confers upon her absolute ownership.

#### **PLEA OF ORAL FAMILY SETTLEMENT DISINHERITING THE PLAINTIFF**

55. This Court has to first see as to whether the plaintiff’s right of inheritance as Class I legal heir of Decedent stands established on the basis of clear and unequivocal admissions and whether the defence of the defendant no.1, even if assumed to be correct, does not disclose a legally sustainable answer to the claim of plaintiff, not giving rise to any triable issue.



56. It has been articulated in above quoted Para 4 of preliminary submissions of amended written statement that in the month of October, 2006, the Decedent and his family decided to completely expel, disown and disinherit the plaintiff from his estate. It is further alleged that it was categorically stated by Decedent that after his death only defendant no.1 shall be entitled to inherit his estate and plaintiff will have no right, title or interest to any part of his estate. As such, an oral family settlement was arrived at in the month of October, 2006, disinheriting the plaintiff from the estate of the Decedent.

57. Upon examining the plea of oral family settlement as articulated in the amended written statement of defendant no.1, it is clear that the said oral family settlement proposed to regulate the devolution of the estate of Decedent after his death and the same would not take effect during his lifetime. In this backdrop, the very first question to be addressed is whether the oral family settlement alleged to have been arrived at in the month of October, 2006, is a 'Settlement' or a 'Will'.

58. An oral family settlement as articulated by the defendant no.1 in the amended written statement is an attempt to effect post death disposition, which clearly has a testamentary character. However, the law does not permit an oral 'Will' except when made under Section 65 and 66 of the Indian succession Act, 1925<sup>4</sup> by a soldier, airman or mariner, and that too in

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<sup>4</sup>**65. Privileged wills.** -Any soldier being employed in an expedition or engaged in actual warfare, 1\*[or an airman so employed or engaged,] or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 66. Such wills are called privileged wills.

**66. Mode of making, and rules for executing, privileged wills.-**

(1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged wills shall be governed by the following rules:--

(a) The will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.



the conditions as defined therein. A Hindu under section 63 of the said Act<sup>5</sup> can only make an unprivileged 'Will', which means it has to be a document in writing which bears his signature and attested by two witnesses.<sup>6</sup> Admittedly, no written 'Will' was executed by the Decedent in respect of his entire estate in terms of Section 63 of the Indian succession Act. Only in respect of shareholding of the Decedent, defendant no.1 has set up a case that there is a nomination in her favour, which according to her is a testamentary disposition, which aspect will be dealt with separately in the latter part of this judgment.

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(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(c) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his will, if it is shown that it was written by the testator's directions or that he recognised it as his will.

(d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier, 1\*[airman] or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.

(f) If the soldier, 1\*[airman] or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier, 1\*[airman] or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

<sup>5</sup>**63. Execution of unprivileged wills.**-Every testator, not being a Collecter by the All India Christian Council, [www.christiancouncil.in](http://www.christiancouncil.in) Page 19 of 123 soldier employed in an expedition or engaged in actual warfare, 1\*[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.



59. To properly appreciate the rival contentions, it is necessary to delineate the distinction between a ‘Settlement’ and a ‘Will’. The determination does not depend on the nomenclature of the document, which is not conclusive. Rather, the document must be read as a whole, with emphasis on its recitals and the intention of the executant as discernible therefrom. The crucial test is whether the document creates any interest in the property *in praesenti* so as to operate *inter vivos*, conferring any irrevocable right in favour of the beneficiary. Conversely, where the intention is that the interest in the property should pass only upon the demise of the executant, the instrument partakes the character of a testamentary disposition. Reference in this regard may be had to the decision in ***Namburi Basava Subrahmanyam vs. Alapati Hymavathi & Ors., (1996) 9 SCC 388*** wherein the Hon’ble Supreme Court had articulated the guiding principles in that behalf as under: -

*“3. The only question is the interpretation of the deed Ex. B-1. It is true, as rightly contended by Smt K. Amareshwari, the learned Senior Counsel for the respondents, that the nomenclature of the document is not conclusive. The recitals in the document as a whole and the intention of the executant and acknowledgement thereof by the parties are conclusive. **The Court has to find whether the document confers any interest in the property in praesenti so as to take effect intra vivos and whether an irrevocable interest thereby, is created in favour of the recipient under the document, or whether the executant intended to transfer the interest in the property only on the demise of the settlor. Those could be gathered from the recitals in the document as a whole.....”***

(emphasis supplied)

60. Following the decision in ***Namburi*** (supra), the Kerala High Court in ***Narayani and Anr. vs. Sreedharan, 2011 SCC OnLine Ker 4059***, in the context of written settlement deed, laid down that when a right is transferred

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<sup>6</sup>Neelima Sharma and Ors. v. Satyavrat Sharma and Anr., 2025 SCC OnLine Del 807  
CS(OS) 53/2017



*in praesenti*, it can only be treated as settlement deed. However, if no right is transferred *in praesenti* and provision is made only for transfer of the right after the death of executant, it could only be treated as a ‘Will’. The relevant extract from the said decision reads thus:

***“6. First question to be decided is whether Ext. B1 is a settlement deed or a will. This aspect was not considered by the courts below evidently for the reason that no such contention was raised before the courts below. Whatever it be, in the light of the submissions made, it is necessary to settle that question. If by execution of Ext. B1, right is transferred in praesenti, it can only be treated as a settlement deed. On the other hand, if no right is transferred in praesenti and by execution of Ext. B1, provision is made only for transfer of the right, after the death of either or both of the executants, it could only be treated as a will.”***

(emphasis supplied)

61. Upon examining the pleadings in substance and not merely going by the nomenclature used therein, this Court finds that the pleaded oral family settlement is not a transfer of right by the Decedent *qua* his estate *in praesenti*. It is rather an oral understanding to exclude the plaintiff, a Class-I legal heir, from succession after the demise of Decedent, which will fall within the ambit of an oral ‘Will’. It is only a privileged Will which can be made orally as provided in Section 66 of the Indian Succession Act, 1925 and by the category of persons mentioned in Section 65 thereof. The Decedent was not belonging to the categories as enumerated in Section 65; therefore, he was not competent to make an oral ‘Will’, rather he could have made only an ‘unprivileged Will’, which law requires to be in writing.

62. Under the statutory scheme of the Hindu Succession Act, 1956, intestate succession is governed by Section 8<sup>7</sup> of the said Act whereunder

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<sup>7</sup> 8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;



the property of male Hindu dying intestate firstly, devolves upon his Class-I legal heirs, and thereafter sequentially upon Class-II legal heirs; agnates; and cognates. Such intestate succession can be displaced only by - (i) a valid testamentary disposition, which takes effect after the death of testator; or (ii) a legally recognized transfer *inter vivos* which is between living people, by way of gift etc. Merely an oral understanding to disinherit a Class-I legal heir without execution of valid 'Will' or without transfer *inter vivos in praesenti* is not known to law. It is not the case of the defendant no.1 that the Decedent made any transfer *inter vivos qua* his estate. Therefore, the claim of defendant no.1 that the plaintiff was disinherited, based only on purported oral family settlement pleaded by her, is not legally tenable.

63. Insofar as the plea of defendant no.1 that the settlement was acted upon inasmuch as the plaintiff's name from HUF account was removed, this Court is of the considered opinion that the removal of plaintiff's name from an HUF account does not alter the legal position in respect of the inheritance of Decedent's estate. The reasons are as follows- (i) *Firstly*, the HUF coparcener arrangements will not have any bearings on the succession of individual estate of the Decedent; (ii) *Secondly*, no legally tenable extinguishment of plaintiff's share in the estate of Decedent has been shown either by *inter vivos* transfer during the lifetime of decedent or by testamentary disposition after his death; and (iii) *Thirdly*, even assuming the pleaded fact of oral family settlement to be true, the same does not constitute a lawful mode of extinguishing the plaintiff's statutory right of inheritance under the Hindu Succession Act, 1956.

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(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.



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64. Further, the Court also notes that in the amended written statement filed by defendant no.1, she has failed to provide any relevant details *apropos* the oral family settlement viz., (i) details of the parties to said settlement; (ii) who all from the Oswal family were present when such family settlement was arrived at; (iii) details of witness(es), if any, to the said settlement; and (iii) other material particulars like date, time and place of such oral family settlement. Incidentally, the alleged family settlement was not followed by recording of any written memorandum of family settlement. Furthermore, it is not the case of defendant no.1 that the plaintiff was present when alleged oral family settlement was arrived at and he consented to the same. Under normal circumstances, the plaintiff could not be expected to be a consenting party to an oral family settlement whereby he is being disinherited. This crucial circumstance divests the alleged settlement of its character as a 'family settlement'. That apart, Defendant No. 2, another member of the Oswal family, expressly disowned the said amended written statement which contains the plea of oral family settlement, by issuing a 'Cease and Desist Notice' dated 17.02.2023 to defendant no.1. Besides that, this Court has already held above that purported oral family settlement is not a 'settlement' but an oral 'Will', which is not legally permissible. Therefore, the defence of oral family settlement cannot succeed on either count. In this backdrop, merely making an averment that an oral family settlement was arrived at to disinherit plaintiff without providing material particulars, does not make such a strong defence that will enable the defendant no. 1 to succeed in the suit, even after the matter is put on trial. The plea of oral family settlement is thus, devoid of merit and does not raise a triable issue which would require leading of evidence.



65. On the aspect of sufficiency of pleadings, reference may advantageously be had to a decision of Hon'ble Supreme Court in *Maria Margarida Sequeira & Ors. vs. Erasmo Jack De Sequeria*, (2012) 5 SCC 370. In the said decision it was held that pleadings of a case must contain sufficient particulars and until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence. The relevant part of the decision reads as under :

*“74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.*

*75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.*

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*77. The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.”*

(emphasis supplied)

66. A co-ordinate bench of this Court in *Rajeev Tandon and Another vs. Rashmi Tandon*, 2019 SCC OnLine Del 7336 whilst deciding an application filed under Order XII Rule 6 CPC observed that vague, unsubstantiated and evasive pleas are sufficient ground to hold that there are



admissions in the pleadings and a decree is liable to be passed under Order XII Rule 6. The relevant extract reads thus:

*“24. The substance of the actual defence of the defendant from a perusal of the written statement is that the property in question has been purchased from the joint family fund obtained from the joint family business belonging to the father of the parties. It is also stated that the suit property was bought from the funds generated after disposal of the joint family property in which the defendant had an equal share and entitlement. This is the sum and substance of the defence raised by the defendant in her written statement. **It is manifest that the defence is vague, evasive and lacks material particulars. Under Order 8 Rule 3 CPC, a defendant is obliged to deal specifically with each allegation of fact of which he does not admit the truth. Similarly, under Order 8 Rule 4 CPC, if a defendant denies an allegation of fact, he must not do so evasively but answer the point of substance. In the present case, the denials are evasive and cannot be said to be a specific response.***

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*35. Clearly, vague, unsubstantiated and evasive pleas have been held to be sufficient ground to hold that there are admissions in the pleadings and a decree is liable to be passed under Order 12 Rule 6 CPC. As noted above, the pleas taken by the defendant in the written statement are vague, inconsistent and do not in any manner whatsoever show that any worthwhile defence is raised or any right exists in favour of the defendant to enable her to continue to occupy the suit property.*

*36. In my opinion, the defence taken by the defendant is vague and unsubstantiated and a mere attempt to prolong the present litigation. Accordingly, no defence is available to the defendant. The present application under Order 6 Rule 12 CPC is liable to be allowed.”*

(emphasis supplied)

67. The decision of **Rajeev Tandon** (supra) has been followed in subsequent decision of this Court in **Rajeev Chawla vs. Deepak Chawla, 2022 SCC OnLine Del 3177**, wherein the Court observed that the admission can also be constructive admission, which can be inferred from the vague and evasive denial. The Court noted that the averments in the written



statement therein with regard to the HUF are vague and unsubstantiated. Accordingly, the Court decreed the suit under Order XII Rule 6 CPC observing that no useful purpose will be served by sending the matter for trial. The relevant part of the decision reads thus:

***15. The legal proposition that emerges from a reading of the aforesaid paragraph is that a party setting up an HUF has to plead and give details in respect of the date when the HUF was created, who were its members/coparceners, who was the Karta and if the HUF was created after 1956 and when was the property put into the common hotchpotch of the HUF.***

***16. It is clear from the reading of the written statement that no such averments have been made in the written statement filed on behalf of the defendant. Only vague and unsubstantiated pleas with regard to the suit property being part of the HUF have been made without any particulars or documents in support thereof. Admittedly, the suit property was purchased after 1956, yet no details have been given as to when the property was thrown into the hotchpotch of HUF.***

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***20. In Rajeev Tandon (supra), a Co-ordinate Bench of this Court has observed that for the purposes of passing a decree under Order XII Rule 6 of the CPC, the admissions can be in the pleadings or in the documents filed on behalf of the parties. The admissions can also be constructive admissions, which can be inferred from the vague and evasive denial in the written statement.***

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***26. The averments made in the written statement with regard to existence of an HUF and the suit property being owned by the HUF, are vague and unsubstantiated. No useful purpose would be served by sending the matter for trial. Therefore, the plaintiff is entitled to a preliminary decree of partition in terms of Order XII Rule 6 of the CPC.***

(emphasis supplied)

### **PLEA OF NOMINATION AND ITS EFFECT**

68. The second limb of the defence articulated by defendant no.1 is that the nomination form executed by the Decedent under Section 72 of the



Companies Act, 2013 operates as a 'Will' and vests absolute ownership of Decedent's shares in OAML and OGL in defendant no.1. The said defence is predicated on the fact that – (i) the nomination form is signed by two witnesses; and (ii) it is specifically mentioned therein that this nomination shall supersede any prior nomination and also any testamentary document.

69. Since defendant no.1 has placed reliance on Section 72 of the Companies Act, 2013 in support of this plea, the said section is also extracted below for better appreciation of the controversy:

*“72. Power to nominate.—(1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.*

*(2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.*

*(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.*

*(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.”*

70. Notably, Section 72 of the Companies Act, 2013 is *pari materia* with Section 109-A of the erstwhile Act, i.e., Companies Act, 1956.



71. An identical controversy had arisen for consideration of the Hon'ble Supreme Court in *Shakti Yezdani* (supra). The Hon'ble Supreme Court noted that the following questions were formulated for decision by the Division Bench of Bombay High Court by way of an appeal which had arisen out of the Civil Suit and as testamentary petition: -

***“(i) Whether a nominee of a holder of shares or securities appointed under Section 109-A of the Companies Act, 1956 read with the bye-laws under the Depositories Act, 1996 is entitled to the beneficial ownership of the shares or securities subject-matter of nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder as per the law of succession?”***

***“(ii) Whether a nominee of a holder of shares or securities on the basis of the nomination made under the provisions of the Companies Act, 1956 read with the bye-laws under the Depositories Act, 1996 is entitled to all rights in respect of the shares or securities subject-matter of nomination to the exclusion of all other persons or whether he continues to hold the securities in trust and in a capacity as a beneficiary for the legal representatives who are entitled to inherit securities or shares under the law of inheritance?”***

***“(iii) Whether a bequest made in a will executed in accordance with the Succession Act, 1925 in respect of shares or securities of the deceased supersedes the nomination made under the provisions of Section 109-A and Bye Law 9.11 framed under the Depositories Act, 1996?”***

(emphasis supplied)

72. The Hon'ble Supreme Court after noting that section 109-A of the Companies Act, 1956 is *pari materia* with Section 72 of the Companies Act, 2013 adverted to the intent and purpose behind introduction of sections 109-A and 109-B<sup>8</sup> of the Companies Act, 1956 and observed that the object behind introduction of a nomination facility was to provide an impetus to the Corporate Sector in the light of slow investment during those times. In fact,

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<sup>8</sup> Section 109A and 109 B were introduced by the Companies Amendment Act, 1999.



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the provisions of nomination facility were made in order to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country. It was also emphasized that the ownership in securities is not granted to the nominee nor there is any distinct legislative move to revamp the extant position of law with respect to the nomination.

73. The Court further observed that reading the provisions of nomination under the Companies Act, 1956 (now Companies Act, 2013) with the broadest possible contours, it is not possible to say that the same deals with the matter of succession in any manner. It was further held that there is no material to say that the intention of the legislature behind introducing a method of nomination through the Companies Amendment Act, 1999 was to confer absolute title or ownership of properties/shares on the nominee.

74. The Hon'ble Supreme Court after comparative study of provisions with regard to the nomination under different statutes went on to conclude that there is no third line of succession contemplated under the Companies Act and the nominee would not get an absolute title to the subject matter of nomination.

75. Finally, it was held that the vesting of securities in favour of the nominee contemplated under the erstwhile Section 109A of the Companies Act, 1956 (*pari materia* with Section 72 of the Companies Act, 2013) is for a limited purpose i.e., to ensure that there exists no confusion pertaining to legal formalities that are 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 aforesaid holder are able to take appropriate steps.

76. The relevant extract from *Shakti Yezdani* (supra) reads thus:



“14. Looking at the provisions relating to nominations under different statutory enactments and the way the courts have interpreted those to the effect that the nominee does not get absolute title to the property which is the subject-matter of nomination, **the Division Bench interpreting the provisions under Sections 109-A and 109-B the Companies Act, 1956 declared that they do not override the law in relation to testamentary or intestate succession.** The judgment in *Kokate* [*Nitin Kokate v. Saraswat Coop. Bank Ltd.*, 2010 SCC OnLine Bom 615] was declared to be incorrect as it failed to consider the law laid down in *Khanchandani* [*Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani*, (2000) 6 SCC 724] and *Talwar* [*Ram Chander Talwar v. Devender Kumar Talwar*, (2010) 10 SCC 671 : (2010) 4 SCC (Civ) 313] as these cases preceded *Kokate* [*Nitin Kokate v. Saraswat Coop. Bank Ltd.*, 2010 SCC OnLine Bom 615].

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36. The object behind the introduction of a nomination facility as can be appreciated was to provide an impetus to the corporate sector in light of the slow investment during those times. In order to overcome such conditions, boosting investors' confidence was deemed necessary along with ensuring that company law remained in consonance with contemporary economic policies of liberalisation. **In fact, the provision of nomination facility was made in order to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country.** In contrast, one must note that ownership of the securities is not granted to the nominee nor there is any distinct legislative move to revamp the extant position of law, with respect to the same.

37. At this juncture, it would hold us in good stead to note what the Court succinctly held in *Salomon v. Salomon & Co.* [*Salomon v. Salomon & Co.*, 1897 AC 22 at p. 38 (HL)] : (AC p. 38)

“... In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.”

In this context, the act of the legislature to enact Section 109-A in the Companies Act, 1956 and provide a nomination facility to holders also aids in ascertaining the intent. The Companies Act, 1956 and subsequent amendments as parliamentary legislations are rooted in



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*Schedule VII List I Entry 43, which deals with incorporation, regulation and winding up of corporations. **There is no mention of nomination and/or succession within the provisions or the Statement of Objects and Reasons or any other material pertaining to the Companies Act, 1956. Same is also not seen in subsequent amendments to the Act.***

***38. Reading the provision of nomination within the Companies Act, 1956 with the broadest possible contours, it is not possible to say that the same deals with the matter of succession in any manner. There is no material to show that the intent of the legislature behind introducing a method of nomination through the Companies (Amendment) Act, 1999 was to confer absolute title of ownership of property/shares, on the said nominee.***

*39. In fact, while interpreting other enactments that are similar in nature by virtue of the fact that the provision of nomination within the statute begins with a non obstante clause and/or is armed with the term “vest” such as the (Banking Regulation Act, 1949, the Government Savings Certificates Act, 1959 and/or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952), multiple courts have rejected the argument that the nominee would become the absolute owner to the exclusion of the legal heirs. To hold otherwise would, in our opinion, exceed the scope and extent of Section 109-A of the Companies Act, 1956.*

*40. In an illuminating list of precedents, this Court as well as several High Courts have dealt with the concept of “nomination” under legislations like the Government Savings Certificates Act, 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 (quaere Insurance Act, 1938) and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It would be apposite to refer to what the Court said on nomination, in reference to these legislations:*



Case Law/Precedent	Held
<a href="#">Sarwati Devi v. Usha Devi</a>	Nomination under Section 39 of the <a href="#">Insurance Act, 1938</a> is subject to the claim of heirs of the assured under the law of succession.
<a href="#">Nozer Gustad Commissariat v. Central Bank of India</a>	Nomination under Section 10(2) of the EPF & Miscellaneous Provisions Act, 1952 cannot be made in favour of a non-family person. Relied upon <a href="#">Sarwati Devi</a> to state that the principles therein were applicable to the Employees Provident Funds Act as well and not merely restricted to the Insurance Act.
<a href="#">Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani</a>	Nominee entitled to receive the sum due on the savings certificate under Section 6(1) of the Govt. Savings Certificates Act, 1959, but cannot utilise it. In fact, the nominee may retain the same for those entitled to it under the relevant law of succession.
<a href="#">Ram Chander Talwar v. Devender Kumar Talwar</a>	Nomination made under the provisions of Section 45-2A of the <a href="#">Banking Regulation Act, 1949</a> entitled the nominee to receive the deposit amount on the death of the depositor.

***41. A consistent view appears to have been taken by the courts, while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination.***

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#### ***Effect of non obstante clause***

***51. In a similar vein, the appellants contend that the “non obstante clause” in Section 109-A of the Companies Act, 1956 confers overriding effect to the nomination over any other law and disposition, testamentary or otherwise, and entitles the nominee absolute rights over the shares/securities. Such a clause was also found in the Banking Regulation Act, 1949 and the Government Savings Certificates Act, 1959. However, while interpreting the provision concerning nomination in those enactments, this Court in Talwar [Ram Chander Talwar v. Devender Kumar Talwar, (2010) 10 SCC 671 : (2010) 4 SCC (Civ) 313] rejected the argument that the nominee would be the absolute owner of the subject-matter, to the exclusion of the legal heirs, because of the non obstante clause.***

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***53. It is settled law that general words and phrases used in a statute, regardless of their wide ambit, must be interpreted taking into account the objects of the statute. The clauses and sections within a statute are***



*not to be read in isolation, but their textual interpretation is determined by the scheme of the entire statute. [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424] Notably, a non obstante clause is to be considered on the basis of the context within which it is used, as has also been observed in R.S. Raghunath v. State of Karnataka [R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] . Applying the aforesaid rule of interpretation, the non obstante clause in Section 109-A of the Companies Act, 1956 should also be interpreted keeping in mind the scheme of the Companies Act, 1956 and the intent of introduction of nomination facility under Sections 109-A and 109-B of the Companies Act, 1956 vide the Companies (Amendment) Act, 1999 wherein emphasis was laid on building investor confidence and bringing the company law in tune with policies of liberalisation and deregulation. **With this backdrop, it can be concluded that the use of the non obstante clause, serves a singular purpose of allowing the company to vest the shares upon the nominee to the exclusion of any other person, for the purpose of discharge of its liability against diverse claims by the legal heirs of the deceased shareholder. This arrangement is until the legal heirs have settled the affairs of the testator and are ready to register the transmission of shares, by due process of succession law.***

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***No third line of succession contemplated under the Companies Act***

*55. The appellants also contend that a nomination validly made under Section 109-A of the Companies Act, 1956 and Bye-law 9.11 of the Depositories Act, 1996 constitutes a “statutory testament” that overrides testamentary/intestate succession. It is worth noting that the argument of nomination as a “statutory testament” in respect of instruments such as life insurance policies, government savings certificates, provident fund, etc. were considered and emphatically rejected by this Court in multiple rulings.*

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***57. The appellants' have contended that nominations under Section 109-A of the Companies Act, 1956 & Bye-law 9.11 of the Depositories Act, 1996 suggest the intention of the shareholder, to bequeath the shares/securities absolutely to the nominee, to the exclusion of any other persons (including legal representatives) and constitutes a “statutory testament”. However, aforesaid argument is not acceptable for the following reasons:***



***(a) The Companies Act, 1956 does not contemplate a “statutory testament” that stands over and above the laws of succession,***

***(b) The Companies Act, 1956 as iterated above is concerned with regulating the affairs of corporates and is not concerned with laws of succession.***

***(c) The “statutory testament” by way of nomination is not subject to the same rigours as is applicable to the formation and validity of a will under the succession laws, for instance, Section 63 of the Indian Succession Act, wherein the rules for execution of a will are laid out.***

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***58. Therefore, the argument by the appellants of nomination as a “statutory testament” cannot be countenanced simply because the Companies Act, 1956 does not deal with succession nor does it override the laws of succession. It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder. In case of a will, it is upon the administrator or executor under the Succession Act, 1925, or in case of intestate succession, the laws of succession to determine the line of succession.***

### ***Conclusion***

***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.***

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***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.”*

(emphasis supplied)

77. In view of the above authoritative pronouncement in *Shakti Yezdani* (supra) on the effect of nomination, the submission on behalf of defendant no.1 that the nomination form be construed as the ‘Will’ of Decedent cannot be accepted.

78. The document relied upon by defendant no.1 is a nomination form executed in a prescribed statutory format for demat transmission. Merely because it is attested by two witnesses or contains a clause contemplating superseding of prior nominations and other testamentary documents, does not change its character into a testamentary instrument in view of law expounded in *Shakti Yezdani* (supra).

79. The submission of Mr. Kakra that the *Shakti Yezdani* (supra) is distinguishable on facts, is also untenable. The ratio therein is not facts specific, but declaratory of legal position *apropos* Section 72 of the Companies Act, 2013 and provisions analogous thereto. Further, reliance placed by Mr. Kakra on *Aruna Oswal* (supra) to contend that the disputes between the parties are directly covered by the principles laid therein as the said decision specifically governs the dispute between the family members of erstwhile nominee regarding shareholding and inheritance, is also misplaced.



80. In *Aruna Oswal* (supra) it was expressly held that question of right, title and interest in the shareholding of the Decedent is to be determined by the Civil Court and the observations made therein are only *prima facie* in nature. However, the said decision did not conclusively hold that the nomination vests absolute ownership, rather the Hon'ble Supreme Court made a pertinent observation that merely disowning a son by late father or by the family, is not going to deprive him of any right in the property to which he may be otherwise entitled in accordance with the law. The relevant paragraphs from *Aruna Oswal* (supra) are reproduced hereinbelow:

*“10.....NCLT and NCLAT ignored and overlooked the rights of the deceased shareholder that would vest in the nominee. The application could not be said to be maintainable. The matter of inheritance is pending adjudication before this Court in another CA No. 7107 of 2017 — Shakti Yezdani v. Jayanand Jayant. It would not be appropriate for NCLT to decide a civil dispute. Respondent 1 did not claim waiver on the rigors of Section 244 of the Act and also did not file an application seeking a waiver under the proviso to Section 244 of the Act.*

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*29. It is also not disputed that the High Court in the pending civil suit passed an order maintaining the status quo concerning shareholding and other properties. Because of the status quo order, shares have to be held in the name of Mrs Aruna Oswal until the suit is finally decided. It would not be appropriate given the order passed by the civil court to treat the shareholding in the name of Respondent 1 by NCLT before ownership rights are finally decided in the civil suit, and propriety also demands it. **The question of right, title, and interest is essentially adjudication of civil rights between the parties, as to the effect of the nomination decision in a civil suit is going to govern the parties' rights.** It would not be appropriate to entertain these parallel proceedings and give waiver as claimed under Section 244 before the civil suit's decision. Respondent 1 had himself chosen to avail the remedy of the civil suit, as such filing of an application under Sections 241 and 242 after that is nothing but an afterthought.*



30. *The learned Senior Counsel for the appellants argued that Respondent 1, is a disgruntled son disowned by family, settled in Australia for the last 25-30 years. He admittedly did not have anything to do with the affairs of the company. On the other hand, it was vigorously argued by Mr Siddharth Dave, learned Senior Counsel appearing for the respondent, that owing to the rampant Covid-19 Pandemic, Respondent 1 is in Dubai. **Be that as it may. Merely disowning a son by late father or by the family, is not going to deprive him of any right in the property to which he may be otherwise entitled in accordance with the law. The pertinent question needs to be tried in a civil suit and adjudicated finally, it cannot be decided by NCLT in proceedings in question. Hence, we refrain from deciding the aforesaid question raised on behalf of the appellants in the present proceedings.** In the facts and circumstances, it would not be appropriate to permit Respondent 1 to continue the proceedings for mismanagement initiated under Sections 241 and 242, that too in the absence of having 10% shareholding and firmly establishing his rights in civil proceedings to the extent he is claiming in the shareholding of the companies.*

31. *We refrain to decide the question finally in these proceedings concerning the effect of nomination, as it being a civil dispute, cannot be decided in these proceedings and the decision may jeopardise parties' rights and interest in the civil suit. With regard to the dispute as to right, title, and interest in the securities, the finding of the civil court is going to be final and conclusive and binding on parties. The decision of such a question has to be eschewed in instant proceedings. It would not be appropriate, in the facts and circumstances of the case, to grant a waiver to the respondent of the requirement under the proviso to Section 244 of the Act, as ordered by NCLAT.*

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33. *We are of the opinion that the proceedings before NCLT filed under Sections 241 and 242 of the Act should not be entertained because of the pending civil dispute and considering the minuscule extent of holding of 0.03%, that too, acquired after filing a civil suit in company securities, of Respondent 1. In the facts and circumstances of the instant case, in order to maintain the proceedings, the respondent should have waited for the decision of the right, title and interest, in*



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*the civil suit concerning shares in question. The entitlement of Respondent 1 is under a cloud of pending civil dispute. We deem it appropriate to direct the dropping of the proceedings filed before NCLT regarding oppression and mismanagement under Sections 241 and 242 of the Act with the liberty to file afresh, on all the questions, in case of necessity, if the suit is decreed in favour of Respondent 1 and shareholding of Respondent 1 increases to the extent of 10% required under Section 244. **We reiterate that we have left all the questions to be decided in the pending civil suit.** Impugned orders passed by NCLT [Pankaj Oswal v. Oswal Agro Mills Ltd., 2018 SCC OnLine NCLT 29970] as well as Nclat [Oswal Greentech Ltd. v. Pankaj Oswal, 2019 SCC OnLine NCLAT 1526] are set aside, and the appeals are allowed to the aforesaid extent. We request that the civil suit be decided as expeditiously as possible, subject to cooperation by Respondent 1. Parties to bear their costs as incurred.”*

(emphasis supplied)

81. At the cost of repetition, it may be observed that subsequently *Shakti Yezdani* (supra) authoritatively clarified the position that 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. It was further held that the Companies Act does not contemplate a “statutory testament” that stands over and above the laws of succession. The Court, therefore, does not find any inconsistency between the aforesaid two decisions.

82. Consequently, the contention of defendant no.1 that nomination validly made under Section 72 of the Companies Act, 2013 constitutes



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“statutory testament” that overrides testamentary/intestate succession is to be rejected. This Court is, therefore, of the considered opinion that the defence predicated on nomination having been found legally untenable, it will not enable the defendant no.1 to succeed in the suit, even after the matter is put on trial. Resultantly, the submission of Mr. Kakra that nomination and its effect is a matter of trial and cannot be decided in a summary manner, is misconceived and cannot be sustained.

83. Another submission of Mr. Kakra that piecemeal order or judgment on a particular fact is neither permissible nor warranted under the provisions of Order XII Rule 6 CPC, is noted to be rejected. The expression “...and without waiting for the determination of any other question between the parties, make such order or give such judgement as it may think fit..” in Order XII Rule 6 makes it plain that the Court in its discretion has the jurisdiction to pass partial decree on the basis of the admitted facts.

84. It was also sought to be contended by Mr. Kakra that this Court in its earlier order dated 22.08.2019 while dealing with an application filed by defendant no. 1 and 2 under Order VI Rule 17 had observed that there are *prima facie no obvious admissions about any right having been inherited by plaintiff*, therefore, there is no admissions made by the defendant no.1. In this regard, it is to be noted that *vide* said order dated 22.08.2019, this Court was only deciding the application filed by defendant no.1 and 2 under Order VI Rule 17 CPC, therefore, any *prima facie* view taken therein cannot have any bearing on the findings recorded herein above while deciding applicant under Order XII Rule 6 of the Code.

85. In view of the above discussion, the application is allowed and this Court holds and declare that the plaintiff is Class-I legal heir of the Decedent namely, Late Abhay Kumar Oswal, who died intestate, and in that capacity



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he shall be entitled to a share in Decedent's estate including in the shares held by Decedent in OAML and OGL at the time of his demise i.e. 29.03.2016. The declaration of plaintiff's or other parties exact share shall be subject to the outcome of the application i.e. IA No. 12380/2025.

86. A decree sheet be drawn accordingly.

**VIKAS MAHAJAN, J**

**MARCH 27, 2026/jg**