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

+ W.P.(CRL) 1471/2010 & Crl. M.A. No. 15539/2010 (Stay)

% Decided on : 9<sup>th</sup> September, 2011

PAWAN SHARMA ..... Petitioner

Through: Mr. Harendra Prasad Sinha,  
Advocate.

Versus

STATE & ORS ..... Respondents

Through: Mr. Kr. Vijayendra, Advocate for Mr.  
Saleem Ahmed, Additional Standing  
Counsel with SI P.N. Verma, PS Neb  
Sarai.  
Mr. Hamid Ali, Advocate for  
Respondent Nos. 2 and 3.

Coram:

**HON'BLE MS. JUSTICE MUKTA GUPTA**

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|---------------------------------------------------------------------------------|---------------|
| 1. Whether the Reporters of local papers may<br>be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not?                                           | Yes           |
| 3. Whether the judgment should be reported<br>in the Digest?                    | Yes           |

**MUKTA GUPTA, J. (ORAL)**

Mr. Siddharth Aggarwal, learned Amicus Curiae appointed by the  
Delhi Legal Services Authority to represent the Respondent Nos. 2 and 3  
seeks discharge as the Respondent Nos. 2 and 3 are now represented by Mr.  
Hamid Ali, Advocate.

Mr. Siddharth Aggarwal, Advocate is discharged from the case.

1. The present petition is filed by a son against his father and elder brother claiming that the order of maintenance dated 15<sup>th</sup> March, 2010 passed by the ADM (South) Maintenance Tribunal (South-District) under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (in short the Act). The grievance of the Petitioner in brief is that his father the Respondent No.2 herein did not make his elder brother Respondent No.3 as the Respondent in the said maintenance petition before the Tribunal and, thus, an order of maintenance has been passed only qua the Petitioner and not the elder brother. Learned counsel for the Petitioner contends that the Petitioner is a driver by profession and earns Rs. 4,000/- per month. The Respondent No.2 is biased towards Respondent No.3 and because of his affection towards Respondent No.3, Respondent No. 2 & 3 are living together.

2. According to him the Petitioner alone is not liable to maintain Respondent No.2, his father and Respondent No.3 is also legally bound to share the said responsibility. The Petitioner was given some portion of the property to live by the mother during her life-time who started living along with his family over there by constructing two rooms over the said plot.

This has become the bone of contention and Respondent No.2 on the W.P. (Crl.) No. 1471/2010

instigation of Respondent No.3 harasses the Petitioner. The income of Respondent No.3 is more than 20,000/- per month from all sources whereas that of the Petitioner is only Rs. 4,000/- and he has no other source of income except the salary. The Learned Tribunal has directed the Petitioner to pay Rs. 2000/- per month to the Respondent No.2 and thus the Petitioner and his family have no means to survive. It is thus prayed that the impugned order be quashed.

3. Learned counsel for the Respondent Nos.2 & 3 on the other hand contends that the Respondent No.3 has shifted to Faridabad and is living over there for the last 15 years. He has no concern with the family. The father i.e. Respondent No.2 is living separately in the property owned by him which is his self-acquired property. The Respondent No.3 despite living in Faridabad is sending regular help and maintenance to Respondent No.2 and thus he has no grievance against Respondent No.3. It is the Petitioner who was not paying any maintenance to the father and thus Respondent No.2 was constrained to file an application before the Learned Tribunal. Hence there is no merit in the present petition and the same be dismissed.

4. I have heard learned counsels for the parties. In the petition filed by the Respondent No.2 before the Learned Tribunal it was alleged that the Petitioner and his wife are committing torture and cruelty physically,

mentally and emotionally. They want to grab the property of the Respondent No.2 and throw him out of his own property. It was alleged that due to illegal acts and omission of the Petitioner, the Respondent No.2 had already disowned him from his immovable and movable properties by publishing notice through his advocate in daily news paper "Punjab Kesri". Respondent No.2 had lodged several complaint against the Petitioner with Police Station Sangam Vihar, New Delhi for beating, quarrelling and threat to kill. Respondent No.2 also made a representation to the Office of Joint Commissioner, Delhi Police H.Q. and DCP South Delhi, Hauz khas seeking protection from the Petitioner. Respondent No.2 has alleged that he was shocked and surprised to see that on the death of his wife the Petitioner did not touch the dead body and refused to extend any help in cremation. The Petitioner went away from the dead body saying that he had no concern with the "Budhia". Respondent No.2 submitted that being a very old man and having no person to prepare food for him, to wash clothes for him and take him to the Doctor in case of his illness inter-alia prayed for directions to the Petitioner to vacate and hand-over the peaceful possession of the property bearing No. E-499 and E-492, Tigri Colony, New Delhi, pass an order of maintenance against Petitioner directing him to pay a sum of Rs.5,000/- per month and take cognizance of the offences under Section 24 & 25 of the

Act.

5. On the said application, the Tribunal after hearing both the parties and taking on record written submissions vide order dated 15<sup>th</sup> March, 2010 directed the Petitioner to extend monthly financial support of Rs.2,000/- per month for the upkeep and maintenance of Respondent No.2; the Petitioner, his wife and son to maintain peace and cordiality and SHO, P.S. Sangam Vihar was directed to keep vigil so that the protection of the senior citizen is ensured. This order of the learned Tribunal is impugned in the present petition.

6. The only issue raised for consideration in the present petition is whether an aggrieved person can file a petition for maintenance under Section 5 of the Act selectively against some or any of the children. At this stage it would be appropriate to advert to the relevant provisions of the Act.

**“2. Definitions :** In this Act, unless the context otherwise requires,—

(a) “children” includes son, daughter, grandson and granddaughter but does not include a minor;

(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;

(d) “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;

(g) “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

(h) “senior Citizen” means any person being a citizen of India, who has attained the age of sixty years or above;

**3. Act to have overriding effect :** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

**4. Maintenance of parents and senior citizens :**

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

**5. Application for Maintenance.** – (1) An application for maintenance under section 4, may be made-

(a) by a senior citizen or a parent, as the case may be; or

(b) if he is incapable, by any other person or organization authorized by him; or

(c) the Tribunal may take cognizance *suo motu*.

*Explanation.-* For the purpose of this section “organization” means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

(2) to (4)      xx                      xx                      xx                      xx

(5) An application for maintenance under sub-section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.”

7. Thus, a perusal of Sub-Section 4(1)(i) and 5(5) itself shows that a senior citizen including a parent who is unable to maintain himself from his earning or out of the property owned by him shall be entitled to make an application under Section 5 against one or more of his children not being a minor. Thus, the contention of the Petitioner that the application of the Respondent No.2 before the Tribunal only against the Petitioner without impleading Respondent No.3 that is his elder brother is not maintainable, is clearly fallacious. This position of law is further fortified by Sub-Section 4 and the proviso thereto wherein unlike a parent seeking maintenance from the child in case of a childless senior citizen the obligation is on the relatives

to pay maintenance in the proportion in which they would inherit his property. Further by virtue of Section 3 of the Act the provisions of this Act have an over-riding effect on anything inconsistent thereto in any other enactments or law. Moreover, the Petitioner has also not filed an application impleading Respondent No.3 as a party before the Tribunal as provided by the proviso to Section 5(5) of the Act. Further as per Respondent No.2, Respondent No.3 is already looking after his needs, which is regarding provision of food, clothing, medical attendance etc., however the Petitioner has failed to do the same. Since Respondent No.3 is already looking after and fulfilling his part of the obligation, there was no need for Respondent No.2 to have filed an application against Respondent No.3.

8. Thus, in view of the provisions of the Act, I find no merit in the present petition. Petition and application are dismissed.

**MUKTA GUPTA, J.**

**SEPTEMBER 09, 2011**  
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