IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2254 OF 2015

Oswald J. Fernandes and another ... Petitioners
versus
John D. Fernandez and another ... Respondents

Ms.Susan Abraham for Petitioners.
Mr.Ravikant R. Thumbre for Respondent no.1.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 20 November 2015

PC :

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (`the Act') and particularly the jurisdiction of the authority thereunder, was invoked by the First Respondent to this petition.

2. It is common ground that the First Petitioner and the Second Petitioner are the sons of Respondent no.1. The mother of Petitioners and the Respondent no.1 are estranged and living separately. There are pending proceedings as between them. We are not concerned with the outcome thereof.

3. The Petitioners, children of the First Respondent, have complained that the provisions of the Act were invoked by their father to claim maintenance from them. However, the Senior Citizens Welfare and Maintenance Tribunal (`the Tribunal') while deciding this application of the First Respondent, has omitted from considering relevant and germane material. The Tribunal proceeds on the footing that the first Respondent is without any financial support. However, he has enough means to support himself even in his old age and to take care of an ailment, if any. In the petition challenging the order passed by the Tribunal, a copy of which is at Annexure-A, it is urged that the First Respondent works at a restaurant in the city of Goa. The Respondent no.1 is working also in hotels in Goa. He rents out flats to tourists visiting Goa and is charging Rs.3,000/- per day for families. It is in these circumstances that the First Respondent was called upon to produce his income tax returns, bank pass books, etc. but he failed to do so. An adverse inference should have been drawn by the Presiding Officer against the First Respondent rather than saddling the Petitioners with monthly monetary liability.

4. We have heard the learned counsel for Petitioners extensively on this complaint and equally the Respondent no.1. The advocate for the First Respondent supports the impugned order and submits that the grown up and employed children have been called upon to pay only Rs.5,000/- each per month

i.e. Rs.10,000/- per month to their father. That is not a sum which they cannot afford and when both of them are working. He, therefore, submits that the writ jurisdiction cannot be invoked to quash and set aside the impugned order dated 18 February 2015.

5. After having heard both sides extensively earlier and even today, we have ensured that the arrears are deposited in this Court without prejudice to the rights and contentions of the Petitioners. We passed the order on 9 October 2015 in that behalf.

6. The Petitioners' advocate produces proof of compliance and states that a sum of Rs.80,000/- has been deposited with the Prothonotary and Senior Master of this Court. We are informed that the amount has been deposited by an Advocate's cheque and which is duly encashed and the amount is lying in the registry. If that is so, then the same be paid over to Respondent no.1 without prejudice to the rights and contentions particularly of the Petitioners.

7. We are of the opinion that the Petitioners are not without any remedy. Even if the application under Section 5 of the Act is decided and the order is against the Petitioners, by Section 10, they can request the Tribunal to recall its earlier order or alter it. That should be on the basis of a proof of

mistake in the initial order or change in the circumstances. We are also of the opinion that the despite the deposit of money in this Court, the Petitioners can invoke this provision and request the Tribunal to recall and set aside this order or alter it suitably.

8. The Petitioners can apply in terms of this provision and on such application, if made, the Tribunal may consider it on its own merits and in accordance with law. It shall pass a reasoned order after hearing both sides, but uninfluenced by any earlier findings and conclusions including the present order. The writ petition is disposed of with a clarification that this Court has not expressed any opinion on the rival contentions. Each of the contentions are kept open for being raised under Section 10(1) of the Act.

9. Before parting, we would like to bring to the notice of Prothonotary & Senior Master a fact that there is always a risk in accepting parties or Advocates' cheques. The Court registry should accept by way of deposit, the money brought in cash or by demand draft or banker's cheque. It is the settled practice. If the understanding of the Prothonotary & Senior Master is that Advocate's cheques are never dishonoured by banks, then possibly, he is inviting such a contingency. If that event takes place, it is the litigant who will suffer and equally the registry officials may invite disciplinary action. It is time that the registry stops accepting such Advocate's cheques. If the

party or litigant represented by the Advocate does not put him in funds, the Advocate may inform his banker to withhold payment. In that event, the Registry may have to initiate legal action against both. That must be avoided at all costs.

10. We direct that no coercive proceedings shall be initiated against the Petitioners as the Petitioners' advocate has assured us that during pendency of the proceedings under Section 19(1) of the Act, the Petitioners will pay the sum of Rs.10,000/- p.m. directly to the Respondent no.1 without prejudice to their rights and contentions.

11. The petition is disposed of. No order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST