

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2707 of 2015

Date of decision: 28.09.2015

Labh Singh

....Petitioner

Versus

Baba Ajit Singh Cold Storage Private Limited and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Mukand Gupta, Advocate
for the petitioner.

Mr. Pradeep Virk, Advocate
for respondents No.1 and 2.

KULDIP SINGH J. (Oral)

Impugned in the present revision is order dated 09.04.2015, passed by learned Additional Civil Judge (Sr. Division), Dera Bassi, vide which in the suit for permanent injunction filed by the plaintiffs for restraining the defendant-petitioner from forcibly entering and interfering in the peaceful possession and functioning of the Company-plaintiff No.1, an application was filed under Order 7 Rule 11 CPC, which has been dismissed.

It comes out that the application was filed on the ground that suit is barred under Section 27 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter read as 'the Act'). It was stated that the dispute is covered under Section 23 of the Act and the matter is *sub judice* before District Magistrate, Union Territory, Chandigarh. Therefore, plaint should be rejected.

Learned counsel has referred to the authority “***Justice Shanti Sarup Dewan, Chief Justice (retired) and another vs Union Territory, Chandigarh and others***”, 2014 (5) R.C.R. (Civil) 656, wherein the house was in dispute which was forcibly occupied by the son though, the said suit was in the name of senior-citizen. The facts of the said case are distinguishable from the present case.

I have heard learned counsel for the parties and have also gone through the record.

A perusal of the plaint shows that plaintiff No.2 who happens to be son of the defendant along with Baba Ajit Singh Cold Storage Private Limited, has filed a suit for permanent injunction mentioned above. It was *inter alia* pleaded in the plaint that the defendant has resigned from the Directorship of the plaintiff-Company and therefore, the injunction was sought.

Learned counsel has argued that Section 3 of the Act,

has over-riding effect on the provisions of Civil Procedure Code. There is no dispute regarding the said proposition Under Section 27 of the Act, the jurisdiction of the Civil Court has barred only regarding the matters to which the Act applies.

The petition by the present petitioner before District Magistrate has been filed under Section 23 of the Act, which is reproduced as under:-

“Petition under Section 5 read with Sections 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with Rule 20 (3) (1) and (2) of the Chandigarh Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 for protecting the life and property of the petitioners as well as declaring the property of the petitioner made by respondent by fraud, coercive and undue influence by declaring it void by this Hon'ble Tribunal and by passing the ad interim order the respondents may kindly be directed to pay maintenance out of estate of the petitioner illegally transferred by the respondent to the tune of Rs.1.00 lac per month so as to enable the petitioners to meet out the medical expenses and other household expenses, etc. and further the respondents be restrained to further alienate leave, mortgage the property of the petitioner to any third person during the pendency of the present petition before this Hon'ble Tribunal in the interest of justice.”

Section 23 of the Act lays down as under:-

“23. Transfer of property to be void in certain circumstances

1. Where any senior citizen who, after the commencement of this Act, has transferred by way of

gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

2. Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

3. If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

Learned counsel further contends that the word 'property' has been defined under Section 2(f) of the Act, which means that ***“property of any kind whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes the rights and interest in such property”***.

The plaint of civil suit shows that son of the defendant claims to be Director of the company. Here, the dispute is as to whether the defendant has resigned from the Directorship voluntarily or under pressure. So, therefore, the dispute *prima facie*

is not covered under Section 23 of the Act. Therefore, there is no ground to reject the plaint outrightly under Order 7 Rule 11 CPC.

It is always open to the petitioner-defendant to show that the facts of this case along with other accompanying facts covers his case under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This can be done only after recording evidence, however, at this stage, there is no ground to reject such plaint.

Accordingly, the revision petition is dismissed.

(KULDIP SINGH)
JUDGE

28.09.2015
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