

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: JUNE 29, 2015

Balbir Kaur

.....Petitioner

VERSUS

Presiding Officer-cum-S.D.M. of the Maintenance & Welfare of Senior Citizen Tribunal, Pehowa, District Kurukshetra and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sudershan Goel &
Ms. Rupinder Kaur, Advocates,
for the petitioner.

Mr. G. S. Wasu, Addl. Advocate General, Haryana,
for the State.

Mr. S. S. Momi, Advocate,
for respondent Nos.2 and 3.

AUGUSTINE GEORGE MASIH, J.

1. Challenge in this writ petition is to the order dated 11.07.2014 (Annexure P-13) passed by the Maintenance and Welfare of Senior Citizens Tribunal, Pehowa (hereinafter referred to as “the Tribunal”) on an application filed under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, “the Act”) by respondent Nos.2 and 3, whereby the petitioner (who is a daughter-in-law of respondent Nos.2 and 3) alongwith her husband, Baljinder Singh, has been ordered to give possession of the house situated in Plot No.13, Village Kalsa, Tehsil Pehowa, District Kurukshetra to respondent Nos.2 and 3 primarily on the ground that this application was not maintainable against the petitioner as the daughter-in-law would not fall within the definition of either ‘children’

or 'relative' as provided for in Section 2 (a) and (g) of the Act.

2. Briefly, the facts of the case relevant for disposal of this writ petition would be that the petitioner was married to respondent No.4 on 08.04.2000 as per Sikh rites and ceremonies. They started living in the house bearing Plot No.13, Village Kalsa. Petitioner alleges that she was subjected to cruelty for bringing less dowry and was, thus, turned out of the matrimonial house in the year 2002 as she was unable to conceive any child. However, with the intervention of the Panchayat, the matter was compromised. Still, again in the year 2007, the petitioner was thrown out of her matrimonial house. Thereafter, under pressure of the Panchayat, the respondents rehabilitated the petitioner in her matrimonial house.

3. On 28.04.2011, respondent No.4, without informing the petitioner, ran away from his house, which was in conspiracy with respondent Nos.2 and 3 with a motive to get rid of her. A D.D.R was lodged and after making efforts, respondent No.4 was found on 23.05.2011. However, again the petitioner was shunted out of the house on 25.05.2011 and she came to reside with her relatives in Faridabad, where she filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (for short, "the 2005 Act"), praying for grant of her right to reside in her matrimonial house under Section 19 of the said Act.

4. On receipt of notice, respondent No.4 put in appearance and made a statement on 05.03.2013 before the Judicial Magistrate Ist Class, Faridabad, that he was ready to take her wife back and will reside with her in a rented accommodation away from village Kalsa. Since the petitioner wanted to live with her husband, she agreed to the said proposal and they started residing at Village Nada Sahib, Sector 3, Panchkula. Respondent

No.4 again deserted the petitioner and left the house on 17.06.2013, on which she filed a complaint at Police Station Chandimandir, which was registered as F.I.R. No.161, dated 19.06.2013 under Section 365 IPC. On 25.06.2013, respondent No.4, Baljinder Singh (husband of the petitioner) gave a statement to the police authorities that he had gone to meet his sister in Village Kalva, District Hoshiarpur and the petitioner being not aware had mistakenly got registered the FIR of kidnapping. However, respondent No.4 never joined the company of the petitioner at Village Nada Sahib and also stopped paying maintenance to her, which was granted by the Judicial Magistrate Ist Class, Faridabad, in a case preferred by her under the 2005 Act.

5. Petitioner did not have any source of income and, therefore, was unable to pay the rent. Accordingly, the villagers of Village Nada Sahib convened a Panchayat and got her shifted to her matrimonial house at Plot No.13, Village Kalsa on 30.07.2013. Thereafter, she made a statement before the Additional District & Sessions Judge, Faridabad (where appeal under Section 19 of the 2005 Act is pending) that she had again started living in her matrimonial home and, therefore, she does not need rent. However, she pleaded for enhancement of maintenance amount, which was enhanced from ₹ 1,500/- per month to ₹ 2,000/- per month vide order dated 31.01.2014. Since the petitioner was living at her matrimonial home against the wishes of the respondents, every effort was made by them to throw her out of their house.

6. In February 2014, respondent Nos.2 and 3 entered in the portion where the petitioner was residing and gave her beatings, which resulted in five injuries on her person, qua which an FIR No.88 dated 27.02.2014 was

got registered against them under Sections 323/506 IPC. Having failed in all their efforts to get rid of the petitioner and to evict her from her matrimonial home, respondent Nos.2 and 3 filed an application on 03.03.2014 (Annexure P-11) under Section 22 of the Act before the Tribunal by making false statements in the said application, alleging that the petitioner and her husband (respondent No.4) had taken their share in the property and since the year 2002 were not residing in Village Kalsa and had shifted to Faridabad. They further alleged that the petitioner had illegally trespassed into their house on 25.12.2013 and, therefore, eviction order be passed against her.

7. The petitioner appeared upon receipt of notice and took an objection with regard to maintainability of the application, apart from explaining the position in her reply dated 11.04.2014 (Annexure P-12). The Tribunal, without deciding the question of maintainability of the application and without giving any reason, ordered eviction of the petitioner from her matrimonial house vide impugned order dated 11.07.2014 (Annexure P-13). The petitioner, in the present writ petition, has taken various grounds with regard to the assertion as to why the impugned order deserves to be set-aside.

8. Reply to the writ petition has been filed by respondent Nos.2 and 3 i.e. father-in-law and mother-in-law respectively whereas respondent No.4 (husband of the petitioner) despite having been duly served has preferred not to put in appearance in Court.

9. In the written statement filed by respondent Nos.2 and 3, the assertions made by the petitioner in the writ petition have been denied. A preliminary objection has been taken with regard to the maintainability of

the present writ petition by asserting that the petitioner has a statutory right of appeal under Section 16 of the Act, which has not been availed of by her. That apart, it has been asserted that as per Section 22 of the Act, an application is maintainable when the same is read in consonance with Rule 23(2)(i) and 23(5) of the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 (for short, “the 2009 Rules”). It has been stated that the petitioner has mis-stated the facts and as a matter of fact, a family partition took place on 17.05.2002 because of insistence on the part of the petitioner, who was born and had been brought up in Faridabad and could not adjust herself in the village after her marriage in the year 2000. The property was distributed into five parts i.e. amongst four brothers and the father. The petitioner and respondent No.4 wrote in their own hands and signed the same separately on 17.05.2012, copies of which have been jointly appended as Annexures R2/1 with the reply. Petitioner alongwith respondent No.4 then started living at Faridabad after selling their share and plot in Village Kalsa.

10. About three years back, matrimonial differences appeared between the petitioner and respondent No.4, leading to filing/registration of civil and criminal cases against respondent No.4 as also respondent Nos.2 and 3. It has been asserted that the cases in which respondent Nos.2 and 3 have been involved are with an intention to grab their property after having sold their share which the petitioner and respondent No.4 got as per family partition in the year 2002. The matrimonial dispute had been going on between the husband and wife (respondent No.4 and the petitioner) and the father-in-law and mother-in-law (respondent Nos.2 and 3) have been roped in without any provocation or interference on their part. It is also asserted

that respondent No.4 is 70% physically handicapped and also not well educated person, which fact was in the knowledge of the petitioner prior to the marriage. However, after spending the amount received by them from the sale proceeds of property fallen to their share, now the petitioner with an intention to grab the share of respondent Nos.2 and 3 has involved them in various cases. It has been stated that the house in question was constructed by respondent Nos.2 and 3 in the year 1986 and the electricity connection is in the name of respondent No.2.

11. On 25.12.2013, with an oblique motive to grab the house where respondent Nos.2 and 3 were residing, the petitioner, with the help of some persons, forcibly entered into the said house and occupied the same by ousting respondent Nos.2 and 3, qua which a D.D.R was got recorded at Police Station Pehowa on 25.12.2013 (Annexure R2/5). Thereafter, an application was moved on 31.12.2013 by respondent No.2 before Superintendent of Police, Kurukshetra, with a prayer that the petitioner and respondent No.4 be evicted from their house. An enquiry in the said application was conducted and report was submitted on 17.01.2014, as per which the assertions made by respondent No.2 were found to be correct and immediate police help was provided to respondent Nos.2 and 3 to protect their lives and liberty. Thereafter there has been complaints and counter complaints between the parties. The order passed by the Tribunal, which has been impugned by the petitioner, is asserted to be in accordance with law and, therefore, sought to be defended. Prayer has, thus, been made for dismissal of the writ petition.

12. I have heard the counsel for the parties at considerable length. Keeping in view the submissions made by the counsel at the bar, it would be

appropriate to first deal with the preliminary issues raised by them, which are culled out in the form of two questions:-

1. Whether an application under Section 22 of the Act is maintainable by the parents-in-law against a daughter-in-law?
2. If the answer to question No.1 is that application is maintainable and further, the same is allowed, whether the remedy of appeal against the order of the Tribunal be available to such an aggrieved daughter-in-law under Section 16 of the Act or not?

13. In **Justice Shanti Sarup Dewan, Chief Justice (Retired) & Anr. Vs. Union Territory, Chandigarh & Ors.,** 2014 (5) RCR (Civil) 656, the Division Bench of this Court, of which I was also a Member, had discussed the scheme of the Act and expressed it in the following words:-

“28. SCHEME OF THE ACT

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not

restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.

29. Section 2 contains the definitions and clause (f) defines 'property' as under:-

Definitions:- In this Act, unless the context otherwise requires:-

a) xx xx xx

b) xx xx xx

c) xx xx xx

d) xx xx xx

e) xx xx xx

“(f) Property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property.” The aforesaid would thus show the definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read alongwith Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

30. Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. However, since the appellants before us are

claiming neither, we are not delving these provisions in any detail. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under:-

“22. Authorities who may be specified for implementing the provisions of this Act

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

31. In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act reads as

under:-

“27. Jurisdiction of civil courts barred

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.”

32. Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of section 32 of the said Act.”

14. With this foundation, now taking up the first question i.e. ‘Whether an application under Section 22 of the Act is maintainable by the parents-in-law against a daughter-in-law?’, which goes to the root of the matter, and if the argument of counsel for the petitioner is accepted with regard to the application under the Act being not maintainable against the daughter-in-law i.e. the petitioner, the effect thereof would be the quashing of the proceedings before the Tribunal and the impugned order as well.

15. It has been submitted by counsel for the petitioner that Section 2 of the Act gives the definitions. Sub-sections (a), (b), (d), (f), (g) and (h) of Section 2, Sections 4 and 22 of the Act would be relevant for disposal of the present writ petition, which read as under:-

“Definitions.-- In this Act, unless the context otherwise requires,-

(a) “children” includes son, daughter, grandson and grand-

daughter but does not include a minor;

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

(c) xx xx xx xx xx

(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;

(e) xx xx xx xx xx

(f) “property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property;

(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 citizens” means any person being a citizen of India, who has attained the age of sixty years or above;

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.

22. Authorities who may be specified for implementing the provisions of this Act.-- *(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall 'exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

16. A perusal of the above would show that so far as application

under Section 4 of the Act is concerned, the assertion of counsel for the petitioner appears to be correct as she would not fall within the definition of Section 2 (a) (children) and (g) (relative) nor would respondent Nos.2 and 3 (applicants) fall within the definition of Section 2(d) (parent) and, therefore, an application against the petitioner for maintenance as defined in Section 2 (b) would not be maintainable. Section 4, as has been reproduced above, deals with maintenance of parents and senior citizens but since respondent Nos.2 and 3 are not seeking any maintenance nor has the application dated 03.03.2014 (Annexure P-11) been filed under the said Section, the same would be of no relevance in the case in hand.

17. It is an admitted fact that the application dated 03.03.2014 (Annexure P-11) has been filed under Section 22 of the Act by respondent Nos.2 and 3, who are senior citizens. When the scope of Section 22(2) of the Act is taken note of, the State Government thereunder is mandated to prescribe a comprehensive action plan for providing protection of life and property of the senior citizens. Section 32 of the Act gives the power to the State Government to make rules. Sub-section (2)(f) of this Section empowers the State Government to enact such rules which provide for a comprehensive action plan for protection of life and property of the senior citizen under Section 22(2) of the Act. In accordance thereto, State of Haryana enacted and notified the 2009 Rules on 19.06.2009.

18. Chapter V of the 2009 Rules deals with the duties and powers of the District Magistrate. Rule 23 (1), (2) (i) and (5), which are relevant for the purpose of present case reads as under:-

“23. Duties and power of the District Magistrate.-

(1) The District Magistrate shall perform the duties and

exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to-

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;”

(ii) to (xi) xx xx xx xx

(3) xx xx xx xx xx

(4) xx xx xx xx xx

(5) In case of a danger to life or property of a senior citizen, it shall be the duty of the District Magistrate or an officer subordinate to him duly authorized to protect the life and property of such senior citizen.”

19. A perusal of the above would show that it is the duty of the District Magistrate to ensure that the life and property of the senior citizen of the District are protected and they are able to live with security and dignity. Further in case of danger to life or property of a senior citizen, a duty has been cast to protect the same on the Duty Magistrate or an officer subordinate to him, who has been duly authorized to do so. This is an independent right conferred upon the senior citizen(s) irrespective of the fact whether the person who has threatened or endangered the life and property of such senior citizen(s) is related to him/her/them or not. This is apparent from the plain language of Section 22 of the Act and the Rules referred to above.

20. This conclusion of mine is further fortified on critical analysis of the Act from another angle. It is worth noting that there is no mention or

even indication with regard to any relationship in the context of terms as defined in Section 2 i.e. 'parent', 'children', 'relative' nor does it relate to 'maintenance'. Though, 'relationship' has a nexus with maintenance, which is dealt in Chapter II but the same has no connection with protection, which is dealt in Chapter V. The heading of Chapter II is "Maintenance of parents and senior citizens", which contains Sections 5 to 18 of the Act, whereas Section 22 falls in Chapter V, with the heading "Protection of life and property of a senior citizen". Chapter II is applicable to both parents and senior citizens whereas Chapter V applies to only senior citizens. Therefore, it is clear that the relationship is of no consequence as far as the applicability of Chapter V of the Act is concerned. Even the definitions, on which reliance has been placed by counsel for the petitioner, would not be applicable as those terms, as defined in the Act, would relate to family relationship, which would be/have no consequence as far as Chapter V is concerned as the terms do not find mentioned here.

21. In view of the above, an application under Section 22 of the Act would be maintainable against any person irrespective of the fact whether the respondent in the application falls within the category of persons as defined in any of the definitions as provided for in Section 2 of the Act or otherwise. The only rider is that the applicant should be a senior citizen as defined in Section 2(h) i.e. a citizen of India, who has attained the age of 60 years or above and further as defined in Section 2 (f), he/she has a property of any kind whether movable or immovable or self acquired, tangible or intangible and includes rights and interest in such property. Accordingly, it cannot be said that the application preferred by respondent Nos.2 and 3 against the petitioner, who is daughter-in-law, would not be maintainable

under Section 22 of the Act.

22. Since the answer to the first question is that the application under Section 22 of the Act filed by respondent Nos.2 and 3 being senior citizens is maintainable, now, I proceed to deal with the second question as the application has been allowed by the Tribunal vide the impugned order dated 11.07.2014 (Annexure P-13) i.e. “would the remedy of appeal under Section 16 of the Act be available to the petitioner, who is daughter-in-law or not?”

23. This is a preliminary objection raised by counsel for respondent Nos.2 and 3 with regard to availability of an effective, efficacious alternative remedy of statutory appeal against the impugned order passed by the Tribunal, which the petitioner's counsel has asserted, is not maintainable under Section 16 of the Act as the said right of appeal is available only to a senior citizen or a parent and not to any other person. At the first blush, the contention of counsel for the petitioner appears to carry some weight. However, counsel for respondent Nos.2 and 3 has placed reliance upon a Division Bench judgment of this Court reported as **Paramjit Kumar Saroya Vs. Union of India and another**, AIR 2014 Punjab 121, where it has been held that Section 16(1), which provides for an appeal, must be read to provide for a right of appeal to any of the affected parties as there is no negative provision in the Act, denying the right of appeal to the parties other than the parents and senior citizens. In the light of the above referred Division Bench judgment of this Court, it would be difficult to accept the contention of counsel for the petitioner that the petitioner would not have a remedy of appeal against the impugned order passed by the Tribunal.

24. In **Paramjit Kumar Saroya's case** (supra), the Division

Bench, in Para 12 of the judgment, culled out this legal question as under:-

“The second anomaly which is one of the legal questions to be examined in the present case arises from Section 16 as it is the appeal provision. It, however, specifically incorporates an appeal by “any senior citizen or a parent”. Was the intention to shut out an appeal by the other aggrieved party? If it is so, could there be a situation where there are two parties both aggrieved from the same order, one preferring an appeal and other taking recourse to the supervisory jurisdiction of the High Court. The proviso to sub section (1) of Section 16 of the said Act mandates that on appeal the children or relative has to pay the amount as determined by the Tribunal during the pendency of the appeal. This would naturally refer to a situation where appeal is by the children or the relative as there can be no question of an appeal filed by the senior citizen or parent qua stoppage of the amount. This also seems to lend credence possibly to an intent not being correctly reflected in the exact wordings. We are observing this here only for purposes of pointing out the requirement of fine tuning and will deal with the aspect of construction of this provision later on.”

25. The Court proceeded to refer to Section 23 of the Act, which deals with the transfer of property to be void in certain circumstances. Section 27 of the Act, which deals with power and jurisdiction of the Civil Court. There in Para 17 of the judgment, it has been stated as under:-

“One other aspect which has been pointed out to us in the context of Section 23 of the said Act is that the only Tribunal

envisaged under the said Act is the Maintenance Tribunal as set out in Section 7 of the said Act. The constitution of the Appellate Tribunal is under Section 15, while the remedy of appeal is under Section 16 of the said Act. An order passed qua Section 23 will have to be in the context of the only Tribunal which can be for declaration whereby the transfer of the property is declared void under the deeming provision as having been made by fraud, coercion or undue influence. This is a sequitur to a failure to take care of the basic amenities and basic physical needs of the transferor by the transferee. Thus, it is also in consonance with a consequence of failure to maintain and would be encompassed within the ambit of Section 7 of the said Act. In such a situation, it can hardly be expected that while dealing with an appeal against such an order, the privilege is conferred only on the senior citizen under Section 16 of the said Act and not on the other affected party.”

26. In Para 21 of the judgment, Sections 15 and 16 of the Act have been reproduced and thereafter in Paras 21-A to Para 25, it has been observed as under:-

21-A. An appeal is envisaged “against the order of the Tribunal”. This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent “aggrieved by an order of the Tribunal”. This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to

only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act.

22. The petitioners assailed the provisions of sub section (1) of Section 16 of the said Act on the ground that there cannot be a right to appeal only to one of the affected parties, as anomalous situation would be created against the same order with which both the parties may be aggrieved i.e. where a greater or lesser claim is made in relation to any property or maintenance, as one party being the senior citizen or parent would prefer an appeal before the Appellate Tribunal, while the party which is liable to give maintenance would have to take recourse to the supervisory jurisdiction of the High Court. Thus, two parallel proceedings in the different forums qua the same order would arise. The submission, thus, is that these

provisions should be struck down as ultra-vires, the intent of the other provisions of the said Act or the constitutional scheme. In the alternative the provision should be read down to make it consistent with the other provisions and, thus, confer a right of appeal even to the other affected party.

23. We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

24. It has been submitted by learned Amicus Curiae that the subject matter of a right of appeal is not merely confined to the issue of maintenance upto the amount of ₹ 10,000/-, but of seriously affecting the rights of parties even qua immovable properties as set out in Section 23 of the said Act. Thus, transfers of immovable properties can be declared void. This

power is vested not only qua family members or children of senior citizens, but qua “every person”. Not only that, as stated aforesaid, the provisions of Sections 15 and 16(1) have to be read harmoniously. Section 15 nowhere mentions that the appeal against the order of the Tribunal be confined to a senior citizen or parent. Similar is the proposition qua the first proviso to sub section (1) of Section 16 which would only have been in case of an appeal by the party liable to be maintained. The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to sub section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to sub section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other

party.

25. Sub section (2) of Section 16 once again refers to causing a notice to be served upon the “respondent” and not the child or the other party which would be the situation if the right of appeal was only to a parent or a senior citizen.”

27. Then in Paras 26 to 29, judicial pronouncements referred to by the learned amicus-curiae have been discussed, followed by the conclusions in Paras 30 to 32, which are reproduced below:-

“30. What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in.

31. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a

*differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in **N. Kannadasan's** case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in **Board of Muslim Wakfs Rajasthan's** case (supra), even while cautioning supply*

(1)N.Kannadasan v. Ajoy Khose, 2009 (7) SCC 1

(2)Board of Muslim Wakfs, Rajasthan V. Radha Kishan and others, 1979 (2) SCC 468

of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

32. We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.”

28. In the end, it was concluded that right of appeal is conferred on a party aggrieved under Section 16 of the Act.

29. In view of the above, the answer to the second question posed is answered by holding that the petitioner, who is a daughter-in-law, being an aggrieved party, has a right of appeal under Section 16 of the Act.

30. Since, it is held that the petitioner has a statutory right of appeal against the impugned order dated 11.07.2014, Annexure P-13 passed by the Tribunal, she is relegated to the alternative statutory remedy of filing an appeal against the impugned order before the Appellate Tribunal. In case the said appeal is filed within a period of 30 days from today, the Appellate Tribunal shall entertain the same treating it as having been filed within time and proceed to decide the same in accordance with law.

31. The interim order dated 06.08.2014 passed in favour of the petitioner shall continue to operate for the period of the above mentioned 30 days from today. In case the appeal is preferred by the petitioner within the time stipulated above, it would be open to the Appellate Tribunal to continue the interim order of stay or pass any other order.

32. It may be added here that this order has not been passed on merits of the case and the pleadings have merely been referred to sketchily for carving out a skeleton of the dispute. Any observation or opinion expressed shall have no bearing on the merits of the submissions or claims of the parties and it shall be open to the parties to raise all pleas available to them, including those taken by them before this Court, before the Appellate Tribunal, except on two aspects, on which this order has been passed.

30. The writ petition stands disposed of accordingly.

31. Copy of the order be given *dasti* to counsel for the parties under the signatures of Special Secretary of this Court.

June 29, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE