

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

906 WRIT PETITION NO. 9484 OF 2014

RAMESHCHANDRA GANGADHARAPPA BOPSHETTY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Gore Ravindra Vitthal
AGP for Respondents 1 & 2 : A.P. Basarkar
Advocate for Respondents 3 to 5 : S.D. Ghayal

...
CORAM : T.V. NALAWADE, J.
DATED : 20th August, 2016.

ORDER :

1. The proceeding is filed to challenge the order made by District Magistrate and Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Appellate Tribunal has set aside the order of Maintenance Tribunal, S.D.O. passed in case No. 2013/MAG/CR-3 (at Aurangabad). Maintenance was awarded to the present petitioner and his wife and daughters were directed to pay monthly maintenance. The Appellate Tribunal has set aside the said order. Both the sides are heard. Nobody turned up for respondent No. 6, married daughter and she was not served. But, she was not appellant before the Appellate Tribunal.

2. The Appellate Tribunal has set aside the order of maintenance Tribunal on following grounds.

(i) The claimant, present petitioner had not taken

any steps for getting maintenance from 2005 to 2013.

(ii) He did not give convincing evidence on income.

(iii) He did not give evidence on the income of the daughters.

3. The learned counsel for petitioner has produced on the record a copy of the judgment delivered in a proceeding filed under section 9 of the Hindu Marriage Act and it shows that the claimant had approached the Family Court for getting relief in the year 2009 and decree was given in his favour. On the other hand, the wife had filed application under section 125 of Criminal Procedure Code for maintenance, but her proceeding was rejected in the past.

4. When there is maintenance proceeding the capacity of both the sides need to be considered. The age of the claimant is now 68 years and this circumstance ought to have been considered by the Tribunal. A man who has earning capacity cannot approach to the Court or Tribunal for getting maintenance. He may approach when he feels that he is no more able to earn. This circumstance needs to be kept in mind

by the Courts. Further capacity of earning and actual earning of respondent in such case is not expected to be considered. Due to these circumstances, the judgment of Appellate Court cannot sustain in law. There are aforesaid circumstances, but the fact remains that the matter was decided exparte against wife and daughters of the present petitioner. In view of these circumstances and provision of section 6 (6), which require that the Tribunal should make an attempt to settle the dispute by sending the matter to Conciliation Officer, this Court holds that the order of the Appellate Tribunal and also the decision of the Maintenance Tribunal need to be quashed and set aside for remanding the matter.

5. In the result, the petition is allowed. The judgment and order of Appellate Tribunal is set aside. The judgment and order of Maintenance Tribunal is also set aside. The matter is remanded back to the Maintenance Tribunal. Parties are to appear before the Maintenance Tribunal on 15.9.2016. It is made clear that it is not within the jurisdiction of Maintenance Tribunal to make order of transfer of property in the name of one party

[T.V. NALAWADE, J.]

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