

CWP No.15474 of 2015

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

**CWP No.15474 of 2015
Date of decision:10.08.2016**

Gurdev Kaur ...Petitioner

Versus

Appellate Tribunal/Appellate Authority & Ors. ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ravish Bansal, Advocate,
for the petitioner.

Mr. Ashish Gupta, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J. (Oral)

This petition is filed to assail the validity of the order dated 20.11.2014 passed by the Sub Divisional Magistrate, Jaitu and the order dated 10.02.2015 passed by the District Magistrate (Appellate Authority), Faridkot.

In short, a petition under Sections 4, 5 and 6 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as the "Act") was filed by respondent No.3 against his wife/petitioner and son Sukhdev Singh, alleging that he is an old man of the age of 64/65 years and unable to maintain himself. The Sub Divisional Magistrate, vide impugned order dated 20.11.2015, directed both the petitioner-wife and his son to deposit ₹2,500/- each month in the account of

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respondent No.3 before 10th of every month so that he may make arrangement for his living, diet and medicines etc..

Aggrieved against that order, both the petitioner-wife and her son filed statutory appeal. The said appeal was dismissed on 10.02.2015.

Counsel for the petitioner has submitted that there is an error on the part of the respondent-authorities in ordering maintenance to be paid by the petitioner to respondent No.3 (her husband) despite the fact that their marriage had already been dissolved by a decree of divorce passed under Section 13-B of the Hindu Marriage Act, 1955, on 05.09.1991, by the Additional District Judge, Faridkot. In support of his submission, counsel for the petitioner has submitted that the persons who are supposed to maintain a senior citizen are defined in Sections 2(a) and (g) of the Act, which is reproduced as under:-

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

xxx xxx xxx xxx

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

According to him, children would include son but a divorced wife is not provided therein to be asked to provide for the maintenance of her ex-husband.

Counsel for respondent No.3 has been fair enough in conceding the argument raised by counsel for the petitioner as there is no provision for a divorced wife to maintain her ex-husband who is claiming maintenance

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being a senior citizen.

In view of the aforesaid, the present petition is hereby allowed and the impugned orders passed by both the authorities, which are patently erroneous and illegal, are set aside in respect of the petitioner-wife. However, the order in respect of the son, which is otherwise not under challenge, is not touched.

August 10, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No