

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

CWP No.18784 of 2015 (O&M)

Date of Decision:26.10.2016

Balbir Kaur

.....Petitioner

Vs.

District Magistrate-cum-Appellate Authority & ors.Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Sudarshan Goel, Advocate and
Ms. Rupinder Kaur, Advocate for
the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. S.S. Momi, Advocate for respondents
No.3 and 4.

RAKESH KUMAR JAIN, J.(Oral)

CM No.15794 of 2015 &
CM Nos.5180-5181 of 2016 &
CM No.9660 of 2016 &
CM No.11104 of 2016 &

Applications are allowed as there is no objection.

CWP No.18784 of 2015

This petition is preferred by the daughter-in-law of respondents
No.3 and 4 against order dated 11.7.2014 passed by respondent No.2 and
order dated 29.7.2015 passed by respondent No.1 on an application filed
under Section 22(2) of the Welfare of Parents and Senior Citizens Act, 2007
(for short, 'the Act').

Shorn of unnecessary details, the petitioner has submitted that respondents No.3 and 4 filed an application under Section 22 of the Act on 3.3.2014 before Maintenance and Welfare of Senior Citizen Tribunal. The said application was allowed by order dated 11.7.2014. Thereafter, the petitioner filed CWP No.15477 of 2014 which was dismissed by this Court in which two issues were addressed by the parties (i) Whether an application under Section 22 of the Act is maintainable by the parents-in-law against a daughter-in-law? and (ii) 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? Both the issues were decided in affirmative by the Court holding that daughter-in-law falls within the definition of Section 22(2) of the Act as it applies to daughter-in-law as well and daughter-in-law has a right to prefer an appeal against the order of Tribunal under Section 16 of the Act. As a result thereof, the petitioner filed the appeal before the Appellate Tribunal. The said appeal has been dismissed by respondent No.1 alone on 29.7.2015.

Counsel for the petitioner has submitted that respondent No.1 had no jurisdiction to decide the appeal alone as it was to be decided by the Appellate Tribunal which has been constituted in terms of Section 15 of the Act. In this regard, the petitioner has referred to Notification No.887/SW(4) 2012 dated 10.12.2012 issued by the Department of Social Justice & Empowerment, Haryana notifying the various Tribunals and Appellate Tribunals constituted including the Appellate Tribunal, Kurukshetra which comprises of three members:- District Magistrate, Kurukshetra, two non-

official members:- i.e. Smt. Shashi Sabarwal, W/o Sh. Vijay Sabarwal, Railway Road, Kurukshetra and Professor Ishwar Singh Retd. Registrar, Kurukshetra University, Kurukshetra. It is submitted that once the power has been given to the Tribunal, the single Member of the Tribunal may be presiding over the Tribunal, has no jurisdiction to take a decision without the concurrence or a majority view of the Tribunal. It is also submitted that the petitioner is separately living from respondents No.4 and 5 and in this regard, he has referred to the ration card attached as Annexures P.3 and P.4. In Annexure P.3, which pertains to the ration card of the family of the petitioner, the house number is mentioned as 539, Village Kalsa, Plot No.13, District Kurukshetra whereas in the ration card of respondents No.4 and 5, they are shown to have been residing in House No.537, Village Kalsa, Tehsil Pehowa, District Kurukshetra. It is further submitted that the petitioner had filed an application under Sections 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act of 2005') much prior to the filing of the application under Section 22(2) of the Act and has submitted that the application filed under the Act is an abuse of process of law and has relied upon a Division Bench of this Court rendered in the case of Major Harmohinder Singh (Retd.) v. State of Punjab and others. decided on 14.10.2014.

Counsel for the respondents, however, submits that respondent No.1 is a Member of Tribunal and could have taken a decision on behalf of the Tribunal and there is no error in his approach. In respect of the argument raised by the petitioner that the petitioner is living separately than respondents No.4 and 5, it is submitted that it is one house which is tried to

be proved by the respondent by way of a site plan. As regards, the argument raised by the petitioner about the non-maintainability of the application under Section 22(2) of the Act in the presence of an application filed under the Act of 2005, it is submitted that respondents No.3 and 4 being senior citizens have altogether different rights enshrined under the Act.

I have heard learned counsel for the parties and perused the record with able assistance and am of the considered opinion that the impugned order passed by the Appellate Authority is patently without jurisdiction because as per the Scheme of the Act, the Tribunal and the Appellate Tribunal are constituted by the State Government by way of notification and the appeal has to be decided by the duly constituted Tribunal. In the present case, notification dated 10.12.2012 has been relied upon to which there is no contrary notification produced before this Court. In this notification, the Tribunal has been specifically constituted for Kurukshetra in which there are three Members. District Magistrate may be the Chairman of the Tribunal but once there is a Tribunal of three Members, the District Magistrate has no jurisdiction to take decision alone and the decision has to be taken unanimously or by way of majority. Therefore, on this ground alone, the impugned order deserves to be set aside and thus the present writ petition is hereby allowed and impugned order is set aside and the matter is remanded back to the Tribunal constituted as per notification dated 10.12.2012 to decide the matter afresh after affording due opportunity of hearing to both the parties and by passing a reasoned order.

Parties are directed to be present before the Tribunal on
23.11.2016.

It is needless to mention that the Tribunal shall decide the lis between the parties as early as possible. The interim order passed by this Court on 14.9.2015 shall operate till the decision is taken by the Tribunal one way or the other.

October 26, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No