

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4005 of 2016 (O&M)
Date of decision: 29.2.2016

Amarjeet Singh

.. Petitioner

v.

Deputy Commissioner and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Pankaj Jain, Advocate for the petitioner.

Mr. Nilesh Bhardwaj, Deputy Advocate General, Punjab.

...

Rajesh Bindal J.

The petitioner has filed the present petition impugning the order dated 5.1.2016, passed by Deputy Commissioner-cum- Presiding Officer, Appellate Tribunal SAS Nagar (respondent No. 1) constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act'), vide which the appeal filed by him has been dismissed as not maintainable.

Learned counsel for the petitioner submitted that respondent No. 3 filed a petition under Section 7 read with Section 23 of the Act for cancellation of registered document executed by respondent No. 3 in favour of the petitioner and other reliefs by taking different grounds, which was disposed of vide order dated 30.10.2015 by Presiding Officer, Maintenance Tribunal-cum-Sub Divisional Magistrate, Kharar (respondent No. 2). Against the order passed by respondent No. 2, the petitioner preferred statutory appeal before respondent No. 1, which was dismissed as not maintainable while referring to Section 16 of the Act.

The aforesaid section came up for consideration before this

court in Paramjit Saroya v. Union of India and another, AIR 2014 (Punjab) 121, wherein it was opined as under:

“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 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.

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.”

In view of the aforesaid interpretation given by this court, the appeal filed by the petitioner against the order passed by respondent No. 2 was maintainable and the dismissal thereof by respondent No. 1 merely on the ground that no appeal was maintainable under Section 16 of the Act deserves to be set aside. Ordered accordingly.

The matter is remitted back to respondent No. 1 to deal with the appeal on merits after affording opportunity of hearing to both the parties. The petitioner shall appear before respondent No. 1 on 11.3.2016 for the purpose.

The petition stands disposed of.

(Rajesh Bindal)
Judge

29.2.2016
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