
Sanjeev Kumar and anotherAppellants

Vs.

Present:- Mr. Jagdish Rai, Advocate for the appellants.

HEMANT GUPTA, J.(Oral)

The challenge in the present Letters Patent Appeal is to an order passed by the Single Bench of this Court on 22.9.2015 wherein challenge to an order passed by the District Magistrate on 6.8.2015 remained unsuccessful.

The appellants are son and daughter-in-law of Bimla, who have invoked the jurisdiction of the District Magistrate under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 claiming shifting of the appellants to their place of residence and be restrained from staying and operating from House No.1719, Nirwana Society, Sector 49-B, Chandigarh. The petition was allowed by the learned District Magistrate. The appellants filed a writ petition challenging the order passed by the Learned District Magistrate before this Court, which has since been dismissed.

Learned counsel for the appellants has raised two-fold arguments. Firstly that the order of District Magistrate violated the

principles of natural justice as the order of eviction was passed on the very first date of hearing without giving any opportunity to the appellants to rebut the claim of Bimla, the mother of the appellant No.1 and mother-in-law of appellant No.2. It is also argued that in one application, two sets of orders shall be passed, one by the District Magistrate for eviction of the appellants and secondly on the claim for of maintenance by the Maintenance Tribunal and when the Appellate Authority against the order of Maintenance Tribunal is District Magistrate itself. Thus the procedure adopted by the learned District Magistrate suffers from patent illegality and irregularities.

Though the argument that the District Magistrate has not complied with the principles of natural justice seems to be attractive but when examined in detail, we find that this argument is only to delay and frustrate the eviction of the appellants from house owned by the mother and mother-in-law of the appellants.

Admittedly, the house is recorded in the ownership of Smt. Bimla – respondent No.3. The argument that the appellants have supplied funds for the purchase of the apartment cannot be examined in view of the provisions of Benami Transactions (Prohibition) Act, 1988 which provides that the person who is recorded as owner shall be deemed to be owner of the property in question. Apart from such plea, the appellants have no other argument in respect of the title of respondent No.3 herein. The stand of the mother, that she wants the appellants to move out of her house does not warrant any rebuttal or any other consideration. As owner, she has a right to say that who are permitted in her house. Therefore, the argument of the principles of natural justice have not been complied with is only a smoke

screen to delay and defeat the rights of respondent No.3 to seek eviction of the appellants who are troubling in her old age.

In respect of the argument that two separate proceedings have been initiated by the District Magistrate arising out of the same complaint is again not tenable. The Act contemplates two remedies, one of summary eviction and another of maintenance, the forum of deciding both these remedies is separate. Whereas the issue of eviction is to be considered by the District Magistrate but that of maintenance is to be considered by the Maintenance Tribunal. Therefore, the learned District Magistrate rightly ordered the eviction of the appellants but also directed the Maintenance Tribunal to consider the claim of maintenance claimed by the applicant in the complaint (Annexure P.6).

We do not find any error in the order passed by the District Magistrate or by the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

Dismissed.

However, it is clarified that the Maintenance Tribunal shall decide the question of quantum of maintenance in accordance with law without being influenced by any of the findings recorded herein.

(HEMANT GUPTA)
JUDGE

January 15, 2016
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(SNEH PRASHAR)
JUDGE