

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1954 OF 2016

Dnyaneshwar Rambhau Shinde
Age 55 years, Occu. Labour,
R/o Near Hotel Pilgrim, Vaiduwadi,
Shirdi, Taluka Rahata,
District Ahmednagar

...PETITIONER

VERSUS

1. Rambhau Govind Shinde,
Age 72 years, Occu. Money Lender,
R/o Vitthal Nagar, Taluka Rahata
District Ahmednagar
2. The Sub-Divisional Officer,
Shirdi, Taluka Rahata,
District Ahmednagar

(Respondent No.2 to be served
through Govt. Pleader, High Court
of Judicature of Bombay,
Bench at Aurangabad)

...RESPONDENTS

.....
Shri P.B. Shirsatha, Advocate for petitioner
Shri N.T. Tribhuwan, Advocate for respondent
.....

CORAM: S. B. SHUKRE, J.

DATED: 1st February, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard
finally by consent of learned counsel for the parties.

2. On going through the impugned order, I find substance in the arguments of learned counsel for the petitioners that the impugned order is vitiated for non-compliance of the mandatory provisions of law in respect of the procedure to be followed in such matters particularly the procedure as laid down under Sections 6 and 8 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, Act of 2007), and no substance in the arguments of the learned counsel for the contesting respondent No.1 that such procedure has been followed.

3. The impugned order nowhere shows that any evidence was recorded and that too in the presence of the petitioners or his relatives. Section 8 of the Act of 2007 contemplates the procedure for disposal of such cases. It does not do away with the need for recording of evidence in a summary manner. Sub-section 4 of Section 6 of the Act of 2007 clearly lays down that all evidence in such proceedings must be recorded in presence of children or relatives against whom an order for payment of maintenance is proposed to be made and shall be recorded in the manner prescribed for summons cases, provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to

hear and determine the case ex-parte. In the present case though the impugned order has been passed by showing the petitioner as absent, no specific order for proceeding ex-parte against the petitioner was passed by the respondent No.2 Tribunal. The say of the petitioner was filed on 10/2/2015 and thereafter, it appears that, no opportunity was granted to the petitioner to defend his case properly.

4. The impugned order also shows that no specific findings have been given by the respondent No.2 regarding inability of the respondent No.1 to maintain himself and how much maintenance amount would be required by him in order to sustain himself as per the same standard of life as of his sons.

5. Learned A.G.P. for respondent No.2 submits that, proper opportunity was certainly afforded to the petitioner and this is evident from the affidavit-in-reply filed by respondent No.2. The affidavit contains the date regarding filing of say by the petitioner and this date apparently stands in conflict with the date of filing of the say by the petitioner, mentioned in the impugned order. The impugned order states that this date was 10/2/2015 while the affidavit states that this date is 9/4/2015. I do not wish to go into the controversy of mentioning of such dates by respondent No.2 and I would only say that, at this juncture, these confusing dates themselves show that the respondent No.2 has not maintained the record properly and the

result would be inevitable conclusion to the effect that the record does not show that any sufficient opportunity was given to the petitioner for presenting his case in the maintenance petition.

6. In the result, I am of the view that the impugned order cannot be sustained in the eye of law and it deserves to be quashed and set aside. The Writ Petition is accordingly allowed. Impugned order is quashed and set aside. The matter is remanded back to the respondent No.2 for a decision afresh by following the procedure prescribed under Sections 6 and 8 of the Act of 2007. Adequate opportunity of hearing shall be granted to the petitioner as well as respondent No.1. The contesting parties shall co-operate with the respondent No.2 in expeditious disposal of the maintenance petition. The maintenance petition shall be disposed of as expeditiously as possible and in any case within two months from the date of appearance of the parties. The petitioner and respondent No.1 shall appear before the respondent No.2 on 13th February 2017.

7. Rule is made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE