

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 209 OF 2016

1. Ajay s/o. Harakchand Karnavat,
Age 42 years, Occu. Nil,
R/o. Kallam, Tq. Kallam,
District Osmanabad.**Petitioner.**

Versus

1. Harakchand s/o. Subhagchand Karnavat,
Age 75 years, Occu. Business,
R/o. Kamdhenu Vradhasram, Beed
Kalwadi, Tq. & District Beed.
2. Sunil s/o. Harakchand Karnavat,
Age 43 years, Occu. Business,
R/o. Shivaji Chowk, Kallam,
Tq. Kallam, District Osmanabad.**Respondents.**

Mr. R.K. Jadhavar, Advocate for petitioner.

Mr. A.R. Salve, Advocate for respondent No. 1.

Mr. S.A. Wakure, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 3rd February, 2017.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) Present proceeding is filed by the opponent of
proceeding filed by respondent Harakchand before the Tribunal
created under the provisions of the Maintenance and Welfare of

Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short). Maintenance at the rate of Rs.5,000/- p.m. was granted against present petitioner and his brother Sunil. This order was challenged by filing appeal before the Collector, the Appellate Tribunal and the Appellate Tribunal has reduced the maintenance and it is made as Rs.3,000/- p.m. This order is challenged in the present proceeding.

3) The learned counsel for present petitioner drew the attention of this Court to the provision of section 6 of the Act, in which the procedure is laid down for the trial of such matters. The provisions of section 6 (3) and (4) show that the Tribunal has the power of Judicial Magistrate First Class as provided in Criminal Procedure Code, 1973 and the evidence needs to be recorded in presence of children and relatives against whom the order of payment of maintenance is proposed. The provision of section 8 of the Act shows that in holding inquiry, the Tribunal is expected to follow summary procedure as laid down by the State Government in that behalf. These provisions together show that the evidence needs to be recorded in the matter and the provision of section 6(4) shows that the evidence needs to be recorded in the manner prescribed for summons case. Admittedly, such procedure was not followed by the Tribunal.

This point is not considered by the Appellate Tribunal. The learned counsel for petitioner submitted that as the procedure was not followed, there was no opportunity to the petitioner to contest the matter properly. For that, he wants remand of the matter.

4) The submissions made show that the age of respondent Harakchand is around 85 years. Respondent was present before this Court on last 2-3 dates and this Court has seen the physical condition of the respondent. In view of these circumstances, it is necessary to see that the respondent gets some amount as interim maintenance. The provision of section 5 (2) of the Act shows that there is power with the Tribunal to pay interim maintenance. The Appellate Tribunal had reduced the maintenance to make it Rs.3,000/- p.m. and this order was not challenged by Harakchand. In view of this circumstance, this Court holds that the present petitioner can be made to pay Rs.3,000/- p.m. as interim maintenance to Harakchand. Interim maintenance will be payable from the date of petition till the date of decision of the matter. Further the provisions show that such matters are expected to be decided expeditiously. The provision of section 5 (4) shows that the period for deciding such matter is fixed as 90 days and the Tribunal can extend the period

by 30 days. In view of these circumstances, this Court holds that matter needs to be decided expeditiously and in any case, within 45 days from the date of receipt of the order made by this Court.

5) In the result, the petition is allowed. The orders made by the Tribunal and Appellate Tribunal are hereby set aside. The matter is restored for fresh trial. However, the order of maintenance made of Rs.3,000/- p.m. is to be treated as order of interim maintenance and such order is being made by this Court under the aforesaid provisions. The procedure laid down in aforesaid provision is to be followed by the Tribunal.

In those terms, rule is made absolute.

[T.V. NALAWADE, J.]

ssc/