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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2651 OF 2017

Mrs. Alka Ravindra Shinde

... Petitioner

vs.

Smt. Chandrabhaga Kondiba Shinde & Ors.

... Respondents

Mr. Rakesh Agarwal a/w Anand Kumar Singh for the Petitioner.

Mr. M.A. Adenwala for Respondent no.1.

Ms. N. S. Jain, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 20th JULY, 2017

P.C.

1. Heard.
2. By this writ petition, the petitioner challenges an order dated 30th March, 2017 passed by the Sub-Divisional Officer, Eastern Suburban Region, Mumbai. The impugned order directs the present petitioner and the respondent no.1 who is the husband of the petitioner to vacate and hand over the premises situate at Room no.303, Building no.1, Mhada, New PMGP Co-operative Housing Society Ltd., Navghar Road, Mulund (E), Mumbai-400081 and also pay maintenance at the rate of Rs.2500/- p.m. from August 2016.
3. The impugned order is passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and specifically under Section 4 read with Section 9. The petitioner is aggrieved by the said order directing her

to vacate the premises. It is her case that the premises have been gifted to the respondent no.1 without her knowledge.

4. It is common ground that divorce proceedings are also pending between the petitioner and respondent no.2. Even prima facie, I find that the impugned order is in excess of the powers granted by the Act to the Sub-Divisional Officer who is stated to be acting as the Tribunal constituted under Section 7 of the Act. In the circumstances, it is appropriate this petition be disposed of at this stage itself.
5. The respondent no.2 has been served with notice. However, he is not represented today. Affidavit of service has also been tendered today. Same is taken on record. Respondent no.1 is represented by the counsel. The learned counsel appearing for the respondent no.1 undertakes to file Vakalatnama within a period of one week. Undertaking is accepted. He states, on instructions, that he has no objection if the impugned order is set aside and the matter is remanded to the Sub-Divisional Officer to be heard afresh after hearing the petitioner.
6. Given the fact that Section 9 does not empower the Tribunal to pass any order beyond an order of maintenance as specified under Section 9(1) and 9(2), the learned counsel for respondent no.1 contends that stay order can be passed by virtue of Section 22. However, since he has no instructions in the matter he will be at liberty to take up this issue before the Tribunal upon remand.
7. In the circumstances, I issue Rule. Rule returnable forthwith and taken up

for final disposal.

8. I accordingly pass the following order by consent of parties before the Court:-

By consent of the petitioner and respondent no.1, the impugned order dated 30th March, 2017 Exhibit D to the petition is set aside.

(ii) The petitioner and the respondent shall appear before the respondent no.4 on 31st August, 2017 at 11.00 a.m.

(iii) On 31st August, 2017 the respondent no.4 shall fix the date for hearing of the application convenient to both the petitioner and the respondent nos.1 and 2.

(iv) The respondent no.4 shall permit the petitioner to file a reply to the application along with all documents and other evidence that she desires to lead. Copies of the same shall be furnished to the respondents in advance.

(v) The respondent no.4 shall decide the matter in accordance with law and without granting unnecessary adjournments.

(vi) Petition is disposed of in the above terms.

(A. K. MENON, J.)