

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2596 OF 2016

Dilkhush Kiritkumar Trivedi and others	...	Petitioners
Vs.		
Kiritkumar Kantilal Trivedi and another	...	Respondents

Mr. Nitin Deshpande for Petitioners.
Mr. Kamalesh Mali for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 25, 2017

P.C. :

Heard Mr. Deshpande, learned Counsel for petitioners and Mr. Mali, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 10.02.2016 passed by the Sub-Divisional Officer-cum-President of the Maintenance Tribunal (for short 'Tribunal') constituted under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 1907 (for short 'Act'). By that order, the Tribunal has allowed the appeal preferred by the respondent No.1 and directed the petitioners to pay Rs.5,000/- each, in all Rs.10,000/- to the respondent No.1 every month on or before fifth day. The Tribunal further held that in case the petitioners do not pay the amount within the stipulated period, petitioners would be liable for criminal case under Section 24 of the Act as also as per the provisions of the Code of Criminal Procedure, 1973.

3. In support of this Petition, Mr. Deshpande submitted that notices were not served on the petitioners. Petitioners were not given a reasonable and fair opportunity to defend their case. In short, he

submitted that the impugned order is passed in gross violation of principles of natural justice. Mr. Deshpande further submitted that aggrieved by the decision passed by the Tribunal, respondent No.1 preferred appeal before the Appellate Authority-cum-Additional Collector, Pune. In that appeal, petitioners filed written statement / written arguments. In written arguments, petitioners specifically contended that petitioners were regularly handing over salary to the first respondent. Respondent No.1 in turn was depositing that amount in his bank account. Rs.12 lakhs are in the account of respondent No.1, which were paid by the petitioners from their salary. He submitted that criminal proceedings are initiated by the petitioners against the respondent No.1. Petitioners have also instituted Special Civil Suit No.989 of 2015 before the Civil Judge, Senior Division, Pune for recovery of Rs.12 lakhs. Respondent No.1 has filed written statement admitting that he was withdrawing amount from the salary of the petitioners. He submitted that the Appellate Authority did not consider the written arguments submitted by the petitioner. He, therefore, submitted that the Petition requires consideration.

4. On the other hand, Mr. Mali supported the impugned order. He submitted that perusal of the order passed by the Tribunal shows that the Tribunal considered the report submitted by the Tahsildar, Haveli which recorded that the monthly income of petitioners is Rs.1,45,000/-. He further submitted that on 31.12.2015, notices were issued by the Tribunal. Despite service, petitioners did not appear before the Tribunal and also did not file their say. After considering the material on record, the Tribunal allowed the appeal and directed the petitioners to pay Rs.5,000/- each, in all Rs.10,000/- to the respondent No.1 every month.

5. Aggrieved by the order passed by the Tribunal, respondent No.1

preferred appeal in terms of Section 16 of the Act. Appellate Authority also considered the written arguments submitted by the petitioners as also documents on record and recorded a categoric finding that petitioners are not maintaining the first respondent. They were also given reasonable opportunity and after considering the material on record, the appellate authority has upheld the order of the Tribunal. He submitted that in fact the criminal case filed by the petitioners is dismissed. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of Section 8 of the Act shows that Tribunal has to follow summary procedure as prescribed in the Rules made in that regard. A perusal of the order of the Tribunal shows that the Tribunal considered the report of the Tahsildar, Haveli which recorded that monthly income of petitioners is Rs.1,45,000/-. Though the notices were issued to the petitioners, they neither appeared before the Tribunal nor filed their say. A perusal of the order passed by the Appellate Authority also shows that it considered the material on record including the written arguments and documents on record. Mr. Deshpande submitted that the Appellate Authority did not consider the written arguments and in particular contention of the petitioners that respondent No.1 has withdrawn Rs.12 lakhs and the same are in his account. As noted earlier, petitioners have already instituted Suit in the Civil Court and the same is pending. Having regard to the scope of inquiry, namely summary inquiry in terms of Section 8 of the Act, I do not find any merit in this submission. The authorities below have considered the material on record and have concurrently held that petitioners are not maintaining the first respondent. There is no dispute about the relationship between

the parties. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab