

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP-20075-2016(O&M)**

**Date of decision : 09.08.2017**

**Devi Bai**

**..... Petitioner**

**versus**

**Narinder Kumar and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

**\*\*\***

Present: Mr. Lekh Raj Sharma, Advocate for the petitioner.

Mr. Parminder Singh, Advocate  
for respondents No. 1 and 2.

Mr. Saurav Mohunta, DAG, Haryana.

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**RAKESH KUMAR JAIN, J. (Oral)**

The petitioner is a widow of about 77 years of age who has moved an application for seeking maintenance and eviction of her two sons namely Narinder Kumar and Gulshan Kumar, arrayed as respondents No. 1 and 2 in this petition, from House No. 330/7, Panipat, District Panipat. The said application was decided by the Tribunal on 27.10.2014 passing an order of eviction. Against the said order, respondents No. 1 and 2 filed their appeal before the Appellate Tribunal which was dismissed on 10.06.2016. Before the Appellate Tribunal, respondents No. 1 and 2 submitted their

respective affidavits in which they averred that they are ready and willing to

pay ₹ 2000/- each every month to their mother as subsistence allowance.

Therefore, they both were directed to pay ₹ 2000/- each every month.

At the outset, learned counsel for the petitioner has realised that the order of eviction could not have been passed by the Tribunal as the jurisdiction lies only with the District Magistrate in terms of Section 22(2) read with Rules and the action plan under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007( for short 'the Act'). Therefore, he has restricted his prayer to the payment of maintenance of ₹ 2000/- each by both the sons. He has argued that the petitioner had prayed for maintenance to the extent of ₹ 10,000/- per month which is the outer limit in terms of Section 9 of the Act but respondents No. 1 and 2 voluntarily offered to pay ₹ 2000/- each to their mother/petitioner.

In order to resolve the controversy, I had asked the petitioner and both her sons to be present in Court. All of them are present. Both the sons have said that they have paid ₹ 2000/- each for some time in terms of the order dated 10.06.2016. However, learned counsel for the petitioner has submitted that 10.06.2016 is the date of order but the maintenance has to be paid from the date when it was claimed. In this regard, he has referred to the date of filing of application i.e. 01.10.2014 and has prayed that respondents No. 1 and 2 may be directed to pay maintenance from 01.10.2014 i.e. of 34 months till July, 2017 minus the maintenance already paid by them separately to the extent of ₹ 2000/- each.

On the other hand, learned counsel for respondents No. 1 and 2 has submitted that the impugned order is not sustainable because the order of eviction could not have been passed by the Tribunal. It is also submitted that the maintenance at the most could have been paid from the date of order and

not from the date of the application.

I have heard learned counsel for the parties and perused the available record and am of the considered opinion that the petitioner had claimed ₹ 10,000/- per month as maintenance from both the sons but they themselves offered to pay ₹ 2000/- each voluntarily by filing their respective affidavits before the Appellate Tribunal, therefore, direction was issued by the Appellate Tribunal to them to pay ₹ 2000/- each to their mother on account of subsistence allowance. The issue is as to whether it is to be paid from the date of order or from the date of application. In my considered opinion the maintenance has to be paid from the date of application because the matter was decided after a period of two years when the application was filed on 01.01.2014 and the subsistence allowance is required by the old lady every month. Therefore, it is clarified that the subsistence allowance has to be paid by both respondents No. 1 and 2 to their mother from 01.10.2014 i.e. of 34 months till July, 2017 minus the amount which they have already paid separately of ₹ 2000/- each.

It is further directed that the said amount shall be paid, either in lumpsum or at least in instalments besides the subsistence allowance of every month of ₹ 2000/- so that in this old age their widowed mother may not live the life of penury. In so far as, the issue as to whether she can maintain her application for seeking eviction of her sons is concerned, since the application has been filed before a wrong forum, therefore, it has no meaning in the eyes of law and, therefore, the petitioner has the liberty to file the application in terms of Section 22(2) of the Act before the competent authority i.e. Deputy Commissioner, Panipat.

With these observations, the present petition is hereby disposed  
of.

( RAKESH KUMAR JAIN )  
JUDGE

August 09, 2017  
sunita

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |