

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

LPA No.1332 of 2017 (O&M)

Date of Decision : 31.07.2017

Smt. Devi

....Appellant

Versus

Maintenance Tribunal, Narnaul and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

...

Present: Mr. Devender Arya, Advocate
for the appellant.

...

MAHESH GROVER, J. (Oral)

The appellant has filed the instant appeal with a delay of 208 days which has been explained to the illness and consequent death of her husband. We find this to be a justifiable cause to condone the delay and while doing so entertain the appeal where the learned counsel representing the appellant while impugning the order dated 28.11.2016 has contended that the learned Single Judge has gone wrong in virtually closing the proceedings before the Maintenance Tribunal. The appellant and her deceased husband had initiated the proceedings under Sections 4, 5, 9 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') asking for multifarious reliefs including the negation of a gift deed in favour of respondent No.2. Maintenance to the tune of Rs.10,000/- was also sought. The grievance of the appellant is that the learned Single Judge has proceeded to determine the issue as it was a case of maintenance only and thus directed the application to be

treated under Section 22 instead of Section 23 of the Act. We may extract Sections 22 and 23 of the Act herebelow :-

“22. Authorities who may be specified for implementing the provisions of this Act. -- (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

23. Transfer of property to be void in certain circumstances – (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under

undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

If the application submitted before the Maintenance Tribunal is to be perused, it clearly makes out a case for negation of the gift deed in favour of respondent No.2 and therefore, the learned Single Judge was indeed wrong in presuming that the prayer should have been only under Section 22 and not under Section 23 of the Act. The maintenance to the tune of Rs.10,000/- as sought by the appellant was indeed given on a concession made by respondent No.2 himself. The learned Single Judge in the concluding paragraphs of the impugned order has observed as under :

“According to this Court, this statement is sufficient to satisfy respondent Nos.2 and 3 also because otherwise in law, the application filed by them is

maintainable under Section 22 instead of Section 23 of the Act and the other legal defects therein because even the order passed by the S.D.O (Civil) Narnaul, directing the vacation of the property in possession of the petitioner at an interim stage is also patently erroneous but in order to do complete justice between the parties, I am of the considered opinion that if an amount of `10,000/- per month as undertaken by the petitioner (in person) is paid to respondent Nos. 2 and 3 from the month of December, 2016 onwards, the issue raised by the respondents shall be settled once for all.

Consequently, in view of the above, not only the impugned orders are set aside but also the application filed before the Tribunal for claiming maintenance are disposed of.”

After perusal of the impugned order and upon hearing the learned counsel for the appellant, we are of the opinion that the entire order of the learned Single Judge proceeds from an assumption that the application was merely under Section 22 and not under Section 23 of the Act. However, in the given set of circumstances, when a helpless widow is seeking relief under the special act, it would not be feasible course to summon the other side in the present proceedings as it is likely to result in delay and largely inconvenience an old widow seeking relief and protection from her own children and thus we intend to dispose it of with a clarification that while keeping the grant

of maintenance of Rs.10,000/- intact, we make it clear that the proceedings initiated by the appellant before the Tribunal seeking relief under Section 23 of the Act will sustain and the Tribunal would be allowed to go into this aspect.

With the aforesaid clarification, the appeal stands disposed of.

The Tribunal shall apprise the parties of the date of hearing. We also clarify that even the order of maintenance would be subject to variation, should the Tribunal choose to do so while concluding the proceedings. The order of the learned Single Judge as affirmed by us in this regard should be treated merely as an interim arrangement.

(MAHESH GROVER)
JUDGE

31.07.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No