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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10860/2015**

NADEEM-UR-REHMAN

..... Petitioner

Through Mr S.N. Gupta, Advocate.

versus

GOVT. OF NATIONAL CAPITAL TERRITORY
OF DELHI & ANR

..... Respondents

Through Mr Ashwani Garg, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 07.10.2015 (hereafter 'the impugned order') passed by the Maintenance Tribunal (Central District) Daryaganj, Delhi (hereafter 'the Tribunal') directing the petitioner to pay a sum of ₹2,40,000/- as arrears of maintenance for the period 21.09.2011 to 20.09.2015 (48 months @ Rs.5000/- per month) along with simple interest at the rate of 15% from 22.12.2014 till the date of actual payment. The Tribunal has also directed that failure to pay would result in the petitioner's arrest.

2. The grievance of the petitioner is that whilst the Maintenance Tribunal has directed recovery of arrears of maintenance, it has failed to consider and decide the petitioner's application under Section 10 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

(hereafter 'the Act'). The petitioner also contends that the Tribunal has exceeded its jurisdiction in directing recovery of arrears of maintenance prior to three months from the date of application.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 The petitioner is the son of respondent no.2, who is a Senior Citizen. Respondent no.2 along with his wife (mother of the petitioner) filed an application for maintenance under the Act, which was allowed by the Maintenance Tribunal on 21.09.2011. The said order reads as under:-

“Having investigated and called both the parents (Mr Anis - UR Rehman and Sh Nadeem UR Rehman) and counseled them, in the process the Tribunal is the opinion that Mr. Nadeem UR Rehman would provide maintenance of Rs.5000/- (Five Thousand) for his father maintenance with immediate effect. Maintenance should be paid by 5th of every calendar month.”

4. The petitioner did not comply with the above order by paying the maintenance as directed. Aggrieved by the same, respondent no.2 preferred an application for execution of the order dated 21.09.2011. The said application was allowed by the impugned order.

5. In the meanwhile, the petitioner had also filed an application under Section 10(2) of the Act claiming that the order dated 21.09.2011 was passed on a misrepresentation as to the financial condition of respondent no.2.

6. Before the Tribunal, the petitioner contended that he had been making the payments as decided; however, the Maintenance Tribunal found that the same was incorrect. The present petition was moved on 23.11.2015 and on that date, the petitioner was directed to pay a sum of ₹50,000/- by way of a pay order within a period of three days and subject to the said payment being made, the impugned order, insofar as it directed the petitioner's arrest, was stayed.

7. The petitioner has, thereafter, paid further sum aggregating ₹1,35,000/-. Thus, in all, the petitioner has paid a sum of ₹1,85,000/-. Respondent no.2, who is present in court confirms that he has been receiving the maintenance amount and has also received a sum of ₹50,000/- out of the arrears of ₹2,40,000, as directed by the Maintenance Tribunal.

8. Although it is not disputed that the Tribunal has the power to implement the orders for maintenance as passed by it, the petitioner contends that no warrants for recovery can be issued for recovery of any maintenance amount prior to three months from the date on which the application for such warrants is filed. The learned counsel submits that in the present case, the application for enforcing the order dated 21.09.2011 was filed on 22.12.2014 and, therefore, in terms of Section 5(8) of the Act, warrants of recovery for any sum due prior to 22.09.2014 could not be passed.

9. The learned counsel for the petitioner further contended that respondent no.2 is not entitled to any maintenance as he has three bank accounts and has substantial funds available with him. He has also produced a copy of respondent no.2's bank account, which indicates that as on

05.10.2017, respondent no.2 had a sum of ₹4,68,041.42 in his bank account. The petitioner also states that respondent no.2 is carrying on his business and is not in requirement of any maintenance. He further claims that he was superannuated from Government service and is also drawing pension from the Government.

10. Respondent no.2, who is present in court does not deny that he has sufficient funds; he contends that his income is not relevant for the purposes of the Act and thus irrespective of his earnings, the petitioner is liable to pay maintenance under the provisions of the Act.

11. Before proceeding further, it would be relevant to refer to Section 5 (8) of Act which reads as under:-

“If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month’s allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.”

12. The proviso to Section 5 (8) of the Act expressly states that no warrant shall be issued for recovery of any amount due under Section 5 of the Act unless an application is made to the Tribunal to levy such amount

within a period of three months from the date on which it became due. Thus, by virtue of the said proviso, warrants for recovery can only be issued for an amount, which has become due within the period of three months prior to making such application. Thus, in this case, the Maintenance Tribunal is entitled to entertain the application for recovery of dues for a period commencing from 22.09.2014 - three months prior to 22.12.2014 - but cannot seek recovery of arrears due for the period prior to 22.09.2014.

13. Thus, the impugned order to the extent that it directs recovery of maintenance for a period of forty eight months is not sustainable.

14. The Statement of Objects and Reasons for enactment of the Act clearly indicates that the purpose of the Act is to ensure a speedy mechanism for senior citizens to receive amounts for their maintenance. The said Act was not intended to be used as an instrument to create rights other than to enjoy what is rightfully theirs and what is necessary for their maintenance. The object is to ensure that senior citizens are not left destitute in the evening of their lives. Clearly, a person of means who has sufficient wherewithal to maintain his lifestyle to which he is accustomed would not be entitled to claim any maintenance under the Act.

15. In the present case, the petitioner claims to have placed the relevant material to indicate that respondent no.2 is a person of sufficient means; however, the same has not been considered by the Maintenance Tribunal. This Court is of the view that the Tribunal ought to have examined this aspect as well, before directing payment of maintenance.

16. The impugned order is set aside and the matter is remanded back to

the Tribunal to verify whether the petitioner has paid the maintenance as directed from 22.09.2014 onwards. The petitioner shall continue to pay maintenance to respondent no.2 as directed till the said order is modified by the Maintenance Tribunal, if at all.

17. This Court also considers it apposite to direct the Maintenance Tribunal to examine the petitioner's application under Section 10 (2) of the Act in accordance with law. It is so directed.

18. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 06, 2017/pkv