

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

CWP No.19118 of 2017 (O&M)

Date of decision: 23.08.2018

Gurmail Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Simmy, Advocate for
Mr. N.S. Lucky, Advocate for the petitioner(s).

Ms. Bhavna Kapur, Advocate
for respondent Nos.3 to 5.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of impugned order dated 06.07.2017 (Annexure P-5) passed by respondent No.2 whereby the application filed by the petitioner under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act (for short 'the Act') was dismissed.

The petitioner being senior citizen and due to his old age is not able to maintain himself. He is getting a meagre amount of Rs.267/- per month towards pension. The petitioner had filed a petition under Section 23 of the Act wherein respondent Nos.3 to 5 were proceeded ex parte and they were directed to pay total maintenance of Rs.5100/- per month to the petitioner vide order dated 18.02.2015

(Annexure P-2). Against the order of maintenance, respondent Nos.3 to 5 filed an application for setting aside the *ex parte* order dated 18.02.2015 which stands dismissed, vide order dated 20.12.2016 (Annexure P-4). However, in appeal, vide impugned order dated 06.07.2017 (Annexure P-5) respondent No.2 had set aside the *ex parte* order dated 18.02.2015 and subsequent order dated 20.12.2016 in an illegal manner and without any jurisdiction. Hence, the present writ petition.

It is asserted by learned counsel appearing on behalf of the petitioner that the impugned order dated 06.07.2017 (Annexure P-5) is illegal and passed ignoring the relevant provisions of the Act. Even at one point of time, respondent Nos.3 to 5 were proceeded against *ex parte* before this Court.

On the other hand, learned counsel for the respondents states that the petitioner was never thrown out from the house, rather, he himself left the company of his wife and respondent Nos.3 to 5, sons of the petitioner in the year 1997 and at that time, respondent Nos.3 to 5 were minors. The *ex parte* order had been obtained without getting the service effected upon the present respondents.

Heard.

The petitioner is aggrieved against the impugned order dated 06.07.2017 (Annexure P-5) passed by respondent No.2 whereby appeal filed by respondent Nos.3 to 5 was accepted. The petitioner is claiming maintenance from respondent Nos.3 to 5, who are sons of the

petitioner, on the ground that the respondent Nos.3 to 5 refused to maintain him and he is unable to maintain himself. A bare perusal of the record would reveal that the petitioner is living separately from his wife and respondent Nos.3 to 5 since 1997. The petitioner had also filed a petition under Section 125 Cr.P.C., which was dismissed and the revision there against was also dismissed and the same have attained finality. It has also come on record that the petitioner himself left the company of his wife and sons when they were minor and he did not pay anything towards their maintenance. Since the petitioner had himself left the company of respondent Nos.3 to 5 in the year 1997, therefore, this Court is not inclined to interfere in the well reasoned impugned order dated 06.07.2017 (Annexure P-5) passed by respondent No.2. Accordingly, the instant petition is dismissed.

23.08.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No