

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

CWP No.3802 of 2016

Date of Decision:22.11.2018

GURVINDER KAUR

...PETITIONER

Versus

STATE OF PUNJAB & OTHERS

...RESPONDENTS

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

Present: Mr. Puneet Singla, Advocate
for the petitioner.

Mr. Suvir Seokhand, Addl. AG, Punjab.

Mr. Ramandeep Singh, Advocate
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the notification dated 27.11.2014 by which the action plan has been notified in terms of Section 22(1) & (2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, “the Act”) and Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012 (for short “Rules”).

In brief, respondent No.4 is the father-in-law of the petitioner who had filed the petition under Section 22 of the Act before the District Magistrate, Ludhiana, for seeking eviction of the petitioner and her husband Gurpreet Singh from his house stated to be his self acquired property, *inter alia*, on the ground that they are causing mental harassment to him. The said petition was allowed on 30.09.2015 and both the petitioner and

her husband were ordered to vacate the house in question within a period of thirty days.

Initially, the husband of the petitioner alone had filed CWP No.24508 of 2015 titled as “Gurpreet Singh Vs. State of Punjab and others” before this Court against the order dated 30.09.2015, which was dismissed on 01.12.2015. The petitioner, however, filed a review application bearing RA-CW-498-2015 claiming her own rights to stay in the property in dispute being the daughter-in-law but her review application was disposed of on 07.01.2016 with the following order:-

“Learned counsel for the applicant-petitioner wishes to withdraw the present review application with liberty to avail such other remedy as may be available to the applicant-petitioner against the order passed by the District Magistrate..

The review application is dismissed as withdrawn with the liberty aforesaid.”

The petitioner, having two daughters, has now preferred the present petition in which her dispossession was stayed from the house in question vide order dated 26.02.2016 and her husband who had been arrayed as respondent No.5 was directed to pay her the litigation expenses to the tune of ₹25,000/-.

Learned counsel for respondent No.4 has submitted that the petitioner had not come to this Court with clean hands because the impugned order, which was unsuccessfully challenged by her husband, is now sought to be challenged by her and hence the present petition is liable

to be dismissed on this ground alone.

Learned counsel for respondent No.4 has submitted that both Gurpreet Singh and the present petitioner remained absent before the District Magistrate, Ludhiana in the petition filed by him for seeking their eviction and now the petitioner has coined a story of having been ditched by her husband. It is further submitted that she should have appeared before the District Magistrate, Ludhiana and contested the petition, insofar as, her rights are concerned.

Learned counsel for the petitioner has then submitted that the petitioner was totally relying upon her husband to protect her rights and had no knowledge that even her husband had not contested the petition filed by her father-in-law.

In reply, learned counsel for the petitioner has submitted that the petitioner had to challenge the impugned order without her husband because he is no more supporting her and the petitioner, having two minor daughters, has no shelter, though it was otherwise the responsibility of her husband or her in-laws. He has further submitted that because of this reason only she had to file the review application in the writ petition, which was filed by her husband alone to challenge the impugned order, in which she had been given liberty to avail some other remedy pursuant to which she has filed the present petition.

Learned counsel for respondent No.4 has submitted that in such circumstances, the Court may set aside the impugned order and remand the case back to the District Magistrate, Ludhiana to afford an opportunity of hearing to the petitioner. It is also submitted that the petitioner may also

bring on record the evidence in support of her contention that her husband is not supporting her.

We have given our thoughtful consideration to the peculiar facts and circumstances of this case in which the daughter-in-law is against the father-in-law for claiming shelter along with two minor daughters and is making hue and cry on the issue that her husband has taken side of his parents and is not supporting her at this juncture when she has been ordered to be evicted from her matrimonial home.

Thus, in view thereof, the impugned order is set aside, insofar as, the petitioner is concerned because the husband of the petitioner who had separately challenged the impugned order has remained unsuccessful as the writ petition has also been dismissed and the matter in hand is remanded back to the District Magistrate, Ludhiana only on limited issue to make an enquiry as to whether the petitioner is not being supported by her husband and is living along with her two minor daughters and as to whether her husband is now taking the side of his father and his non-appearance before the District Magistrate, Ludhiana for not contesting petition filed by his father was only a device for seeking the eviction of the petitioner.

It is needless to mention here that if the evidence, which is sought to be led by the petitioner, being the daughter-in-law is not being supported by her husband, then the District Magistrate, Ludhiana would decide the dispute, in accordance with law.

With these observations, the present petition is hereby allowed and the case is remanded back to the District Magistrate, Ludhiana. The

parties are directed to appear before the District Magistrate, Ludhiana on or before 24.01.2018.

(RAKESH KUMAR JAIN)
JUDGE

November 22, 2018
Jyoti-IV

(AVNEESH JHINGAN)
JUDGE

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