

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

**CWP No. 8220 of 2018 (O&M)**

**Date of Decision: 02.08.2018**

**VICKY SIDANA**

*..... Petitioner*

**V/s.**

**SUDESH KUMARI AND OTHERS**

*....Respondents*

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

Present: Mr. Vikram Anand, Advocate  
for the petitioner.

Mr. Manuj Nagrath, Advocate,  
for respondent No. 1.

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

This petition is against the order dated 25.10.2016 passed by the appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') by which it had set aside the order dated 04.04.2016 passed by the Tribunal and remanded the case back to it to decide it again.

Shorn off the unnecessary details, an application under Section 23 of the Act was filed by Sudesh Kumari-respondent No. 1 before the Maintenance Tribunal, Jalandhar. Her application was dismissed vide order dated 04.04.2016. She filed an appeal under Section 16 of the Act before the appellate authority which was allowed and the order dated 04.04.2016 was set aside but the matter was remanded back to the Tribunal to decide it again. The Tribunal, after remand, vide order dated 15.05.2017, has decided the application filed under Section 23 of the Act in favour of respondent No. 1.

Now, the petitioner filed an appeal against the order of the Tribunal before the appellate authority. But on 10.08.2017, he withdrew the

said appeal on its own without seeking any permission to file it again and the present petition is filed by him to challenge the order dated 25.10.2016.

After notice, respondent No. 1 has put in appearance and has opposed the writ petition on the ground that it is not maintainable as the order dated 25.10.2016 has been accepted by the petitioner because he had appeared before the Tribunal and the Tribunal thereafter took a decision against him on 15.05.2017 and not only that he had also filed an appeal against the order dated 15.05.2017 before the appellate authority but the said appeal was withdrawn by him. It is submitted that the petitioner cannot blow hot and cold in the same breath or play hide and seek with the Court by his act and conduct.

Learned counsel for the petitioner could not contest the said argument of respondent No. 1 on the issue as to whether the writ petition would still be maintainable against order dated 25.10.2016 but made a prayer that he may be allowed to withdraw the present writ petition to challenge the order dated 15.05.2017 by filing the appeal again. This contention of the learned counsel for the petitioner is again contested by the learned counsel for respondent No. 1 on the ground that once the appeal has been withdrawn, it cannot be re-filed until and unless permission was sought from the appellate Tribunal.

I have heard learned counsel for the parties and after taking into consideration the aforesaid facts and circumstances, am of the considered opinion that the present petition is not maintainable against the order dated 25.10.2016 because that order was accepted by the petitioner and as a result thereof, he joined the proceedings before the Tribunal but ultimately lost when order dated 15.05.2017 was passed against him. Not only that he

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challenged the said order in appeal and withdrew the same on 10.08.2017 perhaps he knew that he may not succeed before the appellate authority and sought to challenge the order dated 25.10.2016 by way of this writ petition.

I am of the considered opinion that petitioner had already missed the bus when he joined the proceedings before the Tribunal after remand with the hope that Tribunal may again dismiss the application of respondent No. 1 as was done earlier. The petitioner has, thus, accepted the order dated 25.10.2016 and cannot be allowed to turn around and challenge the same order even after withdrawal of the appeal on 10.08.2017, filed against order dated 15.05.2017. The petitioner can also not be given permission to file the appeal again as there is no such provision.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed, though without any order as to costs.

**August 2, 2018**

Ess Kay

**[ RAKESH KUMAR JAIN ]  
JUDGE**

|                                      |                                  |
|--------------------------------------|----------------------------------|
| <b>Whether speaking / reasoned :</b> | <div>✓</div> <div>Yes / No</div> |
| <b>Whether Reportable :</b>          | <div>Yes / No</div>              |