

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3198 OF 2019

Mohammad Mustafa Sayeed .. Petitioner

Versus

The District Magistrate,
Bandra, Mumbai & Ors. .. Respondents

-
- Dr. S.P. Ashok for the Petitioner
 - Mr. M.M. Pable, AGP for the State
-

CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : NOVEMBER 22, 2019.

P.C.:

1. Heard both sides.

2. We are aghast by the lack of elementary and basic knowledge of law of the appearing parties before us. The present Writ Petition is filed in order to give a false impression to the litigants particularly senior citizens like the petitioner before us that this Court will assist him in execution and enforcement of the order passed in his favour.

3. The senior citizen has in the petition stated before us that he had moved an application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, '**the Act of 2007**') before the Competent Authority. That authority has passed an order on 29.5.2018. That order was challenged by filing an appeal before the Appellate Authority. The Appellate Authority also disposed of the appeal on 3.8.2018. A copy of the order passed by the Appellate Authority is annexed at Exh. A to the petition.

4. The appeal was filed by the present appellant. It was filed under Section 16. The Appellate Authority has come to the conclusion that there is merit in the appeal and it has partly allowed it. It has set aside the order passed by the original authority. By the said order, it has further directed that the appellant (the petitioner before us) should stay in the closed room on the ground floor of the premises and the opponents to the appeal were restrained and directed not to obstruct his peaceful possession of the room. Further, a monthly sum of Rs. 10,000/- was directed to be paid to the appellant. This order is not executed although a

communication has been addressed by the office of the Collector, Mumbai Suburban District to the Senior Police Inspector, Nirmal Nagar Police Station, Bandra (E), Mumbai - 400 051.

5. We do not think that the authorities under this Act have assisted the senior citizen. They have rather defeated and frustrated the mandate of this Act by exhibiting their lack of knowledge. The Act is very clear inasmuch as if an order of maintenance is passed in favour of the senior citizen, then it has to be enforced in the manner set out in Section 11 of this Act. Section 11 reads as under:-

"11. Enforcement of order of maintenance. - (1) A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by any Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

(2) A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be executed in the manner prescribed for the execution of such order by that Code."

6. A perusal of Section 11 leaves us in no manner of doubt that a senior citizen is entitled to a copy of the order free of cost. The Tribunal has not only to hand over the copy of the order but to enforce the order. The Tribunal has been empowered to enforce it and in any event, the maintenance order under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in a manner prescribed for execution of such order by a competent Criminal Court. Chapter IX of the Code of Criminal Procedure is titled as 'Order for Maintenance of Wives, Children and Parents'. Section 125 is in that Chapter. Sub-section (3) of Section 125 states that if any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue 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 or the interim maintenance and expenses of proceedings, 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. There are two provisos to this sub-section and it is very clear that no warrant shall be issued for the recovery of any amount due under Section 125 unless an application is made to levy such amount within a period of one year from the date on which it became due. The second proviso enables the Court to record the satisfaction in terms of the same.

7. There are amendments made to this Section and in so far as sub-section (3) is concerned, there is no amendment made by the State of Maharashtra to the Code.

8. In the instant case, the order has been passed by the appellate Authority on the application of the appellant under Section 16 of the Act of 2007. That order has been passed on the own showing of the petitioner on 3.8.2018. Therefore, an application will have to be made to the Court which is empowered to pass an order under Section 125 of the Code of the Criminal Procedure and the Magistrate presiding over that Court can take due note of the fact that the order

passed on 3.8.2018 directs maintenance to be paid within the specified time. The normal and ordinary understanding is that the order becomes enforceable on communication. If on communication of an order which directs payment to be made from month to month and commencing from the month subsequent to passing of that order, then, it is clear from a perusal of the order of the Appellate Authority which is at Exh. A to the petition that it is indeed enforceable.

9. To our mind, therefore, the petitioner is well advised to move the concerned Magistrate's Court and seek enforcement and execution of the order passed in his favour by invoking Chapter IX of the Code of Criminal Procedure and particularly Section 3 and Sections 125 thereof. This Writ Petition could never have been a remedy of the petitioner. This Court is not a Court of execution and it cannot in the garb of a power to issue prerogative writs displace the mechanism created by law for enforcement and execution of the order passed by the competent Tribunal and the appellate Authority under the Act of 2007.

10. This Writ Petition is, therefore, dismissed subject to above. No costs.

[R.I. CHAGLA, J.]

[S.C. DHARMADHIKARI, J]

Ravindra
M.
Amberkar

Digitally
signed by
Ravindra M.
Amberkar
Date:
2019.11.27
12:40:53
+0530