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

CWP No.40375 of 2018

Date of decision:-07.01.2019

Hariom

.....Petitioner

versus

Appellate Tribunal-cum-District Magistrate and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sumit Sangwan, Advocate for the petitioners.

Mr. N.K. Parmar, AAG, Haryana.

TEJINDER SINGH DHINDSA, J.(ORAL)

Pleadings on record indicate that in pursuance to an application moved by private respondents No. 3 and 4 herein, the Sub Divisional Officer (Civil)-cum-Tribunal, Charkhi Dadri, passed an order dated 08.09.2017, directing the son i.e. the present petitioner to give Rs.10,000/- as maintenance.

That apart directions have been issued against the petitioner as also his wife not to oust private respondents from the premises illegally and forcibly.

Petitioner is stated to have preferred an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, before the Appellate Tribunal-cum-District Magistrate, Charkhi Dadri and which has been declined vide order dated 19.09.2018 (Annexure P-3) only on the basis that an appeal under Section 16 of the Act, is maintainable at the hands of the senior citizen or parents alone and no other person can file such appeal against order of the Tribunal.

Notice of motion confined to respondents No.1 and 2.

On the asking of the Court, Mr. Narender Kumar Parmar, AAG, Haryana, accepts notice on behalf of respondents No.1 and 2 and waives service. A complete copy of the writ paper-book has been furnished to learned State counsel.

In the light of the order that this Court intends to pass, there would be no requirement for filing of reply on behalf of respondents No.1 and 2. Furthermore, notice is not being issued to respondents No.3 and 4 in view of the fact that they are senior citizens and to avoid the unnecessary burden of litigation expenses upon them.

The precise issue with regard to maintainability of an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizen, Act 2007 came to be considered by a Division Bench of this Court in ***Paramjit Kumar Saroya Versus Union of India and another 2016 (3) RCR (Civil) 146*** and wherein it was clearly held that Section 16 (1) of the Act, has to be read to provide for the right of appeal to any of the effected parties.

As per dictum laid down in ***Paramjit Kumar Saroya's case (supra)***, the appeal that had been preferred by the present petitioner against the order dated 08.09.2017, passed by the Sub Divisional Officer (Civil)-cum-Tribunal, Charkhi Dadri, ought to have been entertained by the Appellate Tribunal-cum-District Magistrate, Charkhi Dadri, and for a decision to be taken on merits.

In view of the above, the instant petition is partly allowed. Order dated 19.09.2018 (Annexure P-3), passed by the Appellate Authority is set aside. The matter is remanded back to the Appellate Tribunal-cum-District Magistrate, Charkhi Dadri, to consider and to pass an order afresh on the

appeal that has been preferred by the present petitioner on merits and after affording an opportunity of hearing to the parties concerned.

Final order be passed by the Appellate Tribunal-cum-District Magistrate, Charkhi Dadri, within a period of four months from the date of receipt of the certified copy of this order.

It is however, clarified that this Court has not examined the case on merits and as such has not gone into the validity of the order dated 08.09.2017 (Annexure P-2), passed by the Sub Divisional Officer (Civil)-cum-Tribunal, Charkhi Dadri.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

07.01.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No