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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1595/2019**

SHRI SUNIL DUA AND ANR.

..... Petitioners

Through: Ms Shalini Gandharva with Mr G.
P. Thareja, Advocates.

versus

THE STATE (NCT OF DELHI) AND ORS. Respondents

Through: Ms Warisha Farasat and Ms
Rudrakshi Deo, Advocates for R-1
and R-2.

Mr P. D. Gupta, Sr. Advocate with
Mr Atul Gupta, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.02.2019

CM No.7362/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 1595/2019 & CM No.7361/2019

2. The petitioners have filed the present petition impugning an order dated 15.01.2019 passed by the District Magistrate under Rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereafter 'the Rules'), whereby the petitioners have been directed to vacate the ground floor and the top floor of the property bearing No. A-7, Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi-110026 (hereafter 'the said property'). The petitioners have also been directed to remove their belongings from the garage on the ground floor, and, the

second floor of the said property.

3. The petitioners contend that the said order is without jurisdiction as the same has been passed in an application filed under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'), and the District Magistrate had no jurisdiction to entertain the same.

4. The said contention is unmerited. Although, the application filed by respondent no.3 was titled as an application under Section 4 of the Act, the relief sought for by way of the application also included a prayer for a direction to the petitioners to remove their belongings from the ground floor of the said property and to hand over vacant and peaceful possession of the entire ground floor and the garage, alleged to have been occupied by them. Respondent no.3 had also made a prayer for maintenance at the rate of ₹50,000/- per month.

5. Respondent no.3's prayer for directing the petitioners to be evicted was considered by the District Magistrate as an application under Rule 22(3) the Rules, as amended from time to time, and this Court finds no infirmity with the same. It is well settled that substance would override the form. Thus, a reference to section 4 of the said Act would not preclude the District Magistrate from considering the plea under the Rules. The relief granted to respondent no. 3 by way of the impugned order is within the jurisdiction of the District Magistrate.

6. Insofar as the merits of the petitioners' contentions are concerned, the petitioners have an equally efficacious remedy before the Divisional Commissioner in terms of Rule 22(3)(iv) of the Rules. In view of the above, the petition is dismissed leaving it open for the petitioner to avail

of the alternative remedies. It is further directed that in the event the petitioner files an appeal within a period of one week from today, the same would be considered by the Divisional Commissioner, uninfluenced by the question of delay.

7. The pending applications stand disposed of.
8. Order *dasti* under signatures of the court master.

VIBHU BAKHRU, J

FEBRUARY 18, 2019
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