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

+ W.P.(C) 4133/2019

MANISH KUMAR AND ANR.

..... Petitioner

Through: Mr Prem Chhetri Mr Manoj
Choudhary and Mr Pramod Kumar,
Advocates for R-1 and R-2.

versus

PRAKASH CHADN & ANR.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.04.2019**

CM No. 18619/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 4133/2019 & CM No.18620/2019

2. The petitioners have filed the present petition, *inter alia*, impugning the order dated 04.02.2019 passed by the Divisional Commissioner, rejecting the appeal preferred by the petitioners under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009, against the order dated 10.09.2018 passed by the District Magistrate (Case No.32/2017 titled '*Prakash Chand v. Manish Kumar & Anr*').

3. Petitioner no.1 is the son of respondent no.1 and petitioner no.2 is the wife of petitioner no.1. Respondent no.1 (Shri Prakash Chand) is a senior citizen and had filed an application under Rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009,

seeking eviction of the petitioners from his property bearing no.B-98, 2nd Floor, Double Storey, West Patel Nagar, New Delhi.

4. Respondent no.1 further alleged that petitioner no.1 was ill-treating him. He claimed that the petitioner was using filthy language and also used to repeatedly threaten respondent no.1. He had also stated that he had received threats by the family of petitioner no.2 as well.

5. The petitioners had resisted the said application on the ground that petitioner no.1 had also contributed funds for purchase of the said property. It was asserted by petitioner no.1 that he had furnished all his income to his father (respondent no.1), and the property in question was also purchased from joint funds.

6. In view of the aforesaid complaint, the District Magistrate had called for a report from the concerned SDM. The SDM had submitted a report indicating that the documents relating to the property in question, were in the name of respondent no.1. Admittedly, respondent no.1 had produced a Sale Deed dated 15.11.2012 in respect of the property in question. In addition, he had also produced electricity bill dated 24.05.2017, establishing that the electricity connection was also in his name.

7. Considering the report of the SDM, and also considering the fact that the petitioners were unable to provide any documents or material in support of their claim that petitioner no.1 had also contributed to the purchase of the said property, the District Magistrate passed an order dated 10.09.2018, directing the petitioners to vacate the property in question and handover the peaceful possession to respondent no.1, within a period of 30 days from the date of the said order.

8. The petitioners had appealed against the said order. However, the

same was rejected by the order dated 30.10.2018 by the Divisional Commissioner on the ground that an appeal was maintainable only by senior citizens and not their children/relatives.

9. Aggrieved by the said decision, the petitioners had preferred a Writ Petition (W.P.(C)13291/2018 titled '*Manish Kumar & Anr. v. Prakash Chand & Anr.*'). The said petition was disposed of by an order dated 10.12.2018, remanding the matter to the Appellate Authority (Divisional Commissioner) to consider the appeal on merits.

10. In compliance with the aforesaid order, the Appellate Authority (Divisional Commissioner) considered the appeal on merits. He noticed that it was an admitted fact that the property in question was in the name of respondent no.1, and that the petitioners had not produced any documentary evidence to establish that petitioner no.1 had also contributed for the payment of the purchase consideration.

11. The petitioners relied upon the statement of the sister of petitioner no.1, wherein she had supported their stand that petitioner no.1 had paid part of the purchase consideration for the property in question. The Divisional Commissioner found the same to be wholly inadequate for the petitioners to establish title over the property in question.

12. This Court finds no infirmity with the aforesaid decision. Admittedly, the property is in the name of respondent no.1. He is entitled to live in peace in his own property, and the decision of the District Magistrate directing the petitioners to vacate the premises in question cannot be faulted.

13. The learned counsel appearing for the petitioner had contended that the impugned decision is invalid as the petitioners were not permitted any representation through an advocate. He also relied on the decision of the

Bench of Punjab and Haryana High Court in '*Paramjit Kumar Saroya V. The Union of India: AIR 2014 Punjab and Haryana 121.*

14. Before proceeding, it would be relevant to refer to Section 17 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereafter 'the Act'), which is set out below:-

"17 Right to legal representation. - Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner."

15. As is apparent from the above, Section 17 of the said Act contains a non obstante clause, and expressly provides that no party to the proceedings before the Tribunal or the Appellate Tribunal would be represented by a legal practitioner.

16. It is important to note that the validity of the said Section has not been challenged in this petition. In view of the express language of section 17 of the Act, the petitioners' contention that the impugned order is vitiated on account of denial of representation by an advocate is unsustainable.

17. The petition is, accordingly, dismissed. The pending application is disposed of.

VIBHU BAKHRU, J

APRIL 22, 2019
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