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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7613 OF 2020

Kailas s/o Gulabdas Bhatia

... **PETITIONER**

VERSUS

Smt. Kalawati Gulabdas Bhatia

... **RESPONDENT**

.....
Shri Uday S. Malte, Advocate for petitioner
Shri S.S. Bora, Advocate for respondent (appointed)
.....

CORAM : R. G. AVACHAT, J.

DATE : 17th FEBRUARY, 2021

ORDER :

The challenge in this Writ Petition is to the order passed by the appellate authority on 18/9/2020 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the Act).

2. The respondent is the mother of the petitioner. She filed an application for maintenance under Section 4 of the Act before the Maintenance Tribunal constituted under Section 7 of the Act. It appears that, the said application was disposed of by the Tribunal as withdrawn, vide its order dated

1/8/2019. The respondent thereafter preferred the appeal before the Appellate Tribunal on 6/7/2020. The appellate Tribunal/ District Magistrate allowed the appeal with a direction to the petitioner to pay the respondent Rs.10,000/- per month for her maintenance w.e.f. 19/7/2020. The Appellate Tribunal further directed the petitioner to allow the respondent to reside in the residential house, being C.T.S. No.345. The Police Inspector, Erandol and Social Welfare Officer, Jalgaon were directed by the appellate Tribunal to see that the respondent is residing in the residential house C.T.S. No.345. They were further directed to deal with the petitioner in accordance with law if he harassed the respondent. This order is under challenge in this Writ Petition.

3. Shri Uday S. Malte, learned counsel for the petitioner would submit that, the population of Erandol town is not more than 35000. There is only one Court of the rank of Civil Judge, Junior Division and Judicial Magistrate, First Class. The petitioner is an Advocate by profession. The petitioner's income from the legal profession is very meagre. He has no other source of income. His wife and two children are dependent on the petitioner. The respondent has one more son. He is gainfully employed. A plot admeasuring

10000 sq.ft. Is in the name of the respondent. The father of the petitioner would run a saw mill on the said plot. The petitioner has given a consent to transfer the saw mill licence to the name of the respondent. A sum of Rs.1000/- per month is received by the respondent under the Scheme – Sanjay Gandhi Niradhar Yojana. Besides, a sum of Rs.2250/- per month is received by the respondent from the Community Trust – Seth Gokuldas Tejpal Trust, Mumbai. During the lockdown imposed due to Pandemic Covid-19, the petitioner has not been getting any income even to make his both the ends meet. According to the learned counsel, the respondent is quarrelsome. She has on her own started residing separately. The petitioner's younger brother resides with the respondent. They have sufficient income for their maintenance. According to learned counsel, without giving the petitioner an opportunity of leading evidence in support of his case, the appellate Tribunal passed the impugned order. He, therefore, urged for setting it aside.

4. Mr. Satyajeet S. Bora, learned counsel readily agreed to assist this Court in the matter, since the respondent could not mark her appearance despite service of notice. Shri Bora, learned counsel took me through the scheme of the Act

and the rules framed thereunder. According to him, the petitioner being the earning son of the respondent, has an obligation to maintain his age old mother, respondent, who is 80 plus. According to the learned counsel, the appellate Tribunal was, in the facts and circumstances, justified in passing the impugned order. He, therefore, urged for dismissal of the petition.

5. A glance at the relevant provisions of the Act is necessary before deciding the matter on its own merits. Section 2 of the Act speaks of definitions. The definitions of the relevant terms necessary to decide this petition are as under :-

(2) Definitions:- In this Act, unless the context otherwise requires, ----

“(a) “children” includes son, daughter, grandson and grand-daughter but does not include a minor.

(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;

(c)

(d) “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.

Chapter II speaks of maintenance of parents and senior citizens. Section 4 thereof reads as under :-

4. Maintenance of parents and senior citizens

:-

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 in case of ---

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii)

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4)

5. Application for maintenance :-

(1) An application for maintenance under Section 4, may be made ---

(a) by a senior citizen or a parent, as the case may be; or

(b) if he is incapable, by any other person or organisation authorised by him, or

(c) the Tribunal may take cognizance suo motu.

Explanation :- For the purposes of this Section “organisation” means any voluntary

association registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may, from time to time direct.

(3) On receipt of an application for maintenance under sub-section (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4)

Provided that

(5) An application for maintenance under sub-section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6)

(7)

(8)

6. The Tribunal, before hearing an application under

Section 5 may refer the same to conciliation officer. The conciliation officer has to submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect. The procedure for hearing of the application has been described under Section 6 of the Act. The maximum maintenance allowance which may be ordered by the Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees. (Section 9).

Rule 14 of the Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules, 2010 states :-

14. Maximum maintenance allowance :-

The maximum maintenance allowance which a Tribunal may order the Opposite Party to pay shall, subject to a maximum of rupees ten thousand per month, or be fixed in such a manner that it does not exceed the monthly income from all sources of the Opposite Party, divided by the number of persons in his family, counting the applicant or applicants also among the opposite party's family members.

7. The petitioner is elder son of the respondent. His father (husband of the respondent) is no more. The respondent is more than 80 years of age. This Court cannot go into disputed questions facts. Petitioner is 52 years of age.

He is practicing Advocate. He has been residing in a house inherited from the father. True, a wife and two children are dependent on the petitioner. The Court is also conscious of the fact of the sufferings of every person due to Pandemic Covid-19. The impugned order directing the petitioner to pay the respondent a sum of Rs.10,000/- per month has been passed by the appellate Tribunal without there being evidence in the case, since the Tribunal has disposed of the application as withdrawn. It has, therefore, become necessary to remand the matter back to the Tribunal to decide it afresh after affording the parties thereto an opportunity to produce evidence in support of their claim. The Court is, however, not precluded from passing an order granting interim maintenance (Section 5(ii)). The petitioner submits to the order of this Court regarding grant of interim maintenance. In the fitness of things, it would be desirable and justifiable as well to direct the petitioner to pay the respondent Rs.6000/- (Rupees six thousand) per month towards interim maintenance with effect from October 2020.

8. The petition thus stands disposed of in terms of the following order :

ORDER

(i) The order dated 18/9/2020, passed by the Appellate Authority, Senior Citizens Maintenance and Welfare Act and Collector, Jalgaon is hereby set aside. The matter is remanded to the Tribunal, Sub-Divisional Officer, Erandol. The Sub-Divisional Officer, Erandol shall, after giving the parties an opportunity of hearing, decide the application within a period of four months from the date of receipt of copy of this order.

(ii) The petitioner shall pay the respondent Rs.6000/- (Rupees six thousand) per month towards interim maintenance from October 2020. He shall deposit the said amount with the Tribunal, which shall ensure that the same is paid to the respondent on or before 10th of each month.

(iii) Rest of the terms of the impugned order to stand unaltered.

[R. G. AVACHAT, J.]

fmp/-