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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4016 OF 2021

YOGESH RAMESH GHOPAL & ANR.	..PETITIONERS
VS.	
DISTRICT MAGISTRATE THROUGH SUB-DIVISIONAL OFFICER, KALYAN & ORS.	..RESPONDENTS

Dr. Abhinav Chandrachud a/w. Sayali Puri, Vikas Kumbhar for the petitioners.

Smt. M.S. Bane, AGP for the respondent No.1.

Mr. S.P. Ashok I/b. Ashok Law Associates for respondent Nos. 2 and 3.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 31, 2021

P.C.

Heard learned counsel for the parties.

2. The order passed under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the said Act' for short) evicting the petitioners is under challenge. The respondent Nos. 2 and 3 – senior citizens, the parents of petitioner No.1 filed an application under Section 5 of the said Act for maintenance and eviction. The competent authority passed an order of eviction.

3. Relying upon the decision of this Court in the case of **Dnyaneshwar Rambhau Shinde vs. Rambhau Govind Shinde and another** in Writ Petition No. 1954 of 2016, learned counsel for

the petitioners contended that the procedure contemplated under the provisions of the said Act for disposal of the application is not followed. He submits that under Sub-section (4) of Section 6 of the Act, which lays down that 'all evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases', has not been followed. It is further contended that the impugned order does not record any finding about inability of the respondent Nos. 2 and 3 to maintain themselves and how much maintenance amount would be required for their sustenance.

4. It is the contention of learned counsel for the petitioners that the petitioner No.1 and the respondent No.2 had entered into a Partnership Deed in respect of the hotel business to be conducted in the suit premises. Though specific averments are made that the petitioner No.1 is a partner on which basis he claims an interest in the premises, however, the said aspect has not been considered by the Tribunal. The Tribunal proceeds to evict the petitioners only on the premise that the respondent Nos. 2 and 3 are the absolute owners of the property. Furthermore, even the Deed of Dissolution which is relied upon by the respondents in this Petition has not been produced before the Tribunal.

5. Learned counsel for the respondent Nos.2 and 3 on the other hand supported the impugned order. It is contended that the

Tribunal has recorded a finding that the respondent No.2 is the owner of the suit property on the basis of the Partition Deed and the Gift Deed.

6. Heard. From the findings recorded by the Tribunal, it is seen that only on the basis that the respondent No.2 is the absolute owner of the suit property, the Tribunal comes to a conclusion that the petitioners are unauthorised occupants of the suit premises. The documents relied upon by the petitioners, especially the Partnership Deed is not even adverted to. The Deed of Dissolution is produced in this Court for the first time.

7. The Tribunal has not recorded any finding that there has been failure on the part of the petitioners to maintain the respondent Nos. 2 and 3. Having initially opposed the Petition, learned counsel for the respondent Nos. 2 and 3 submits that, if the matter is to be remitted, the Tribunal be directed to decide the same expeditiously.

8. The matter, in my opinion, requires reconsideration in the light of the decision rendered by this Court in the case of **Dnyaneshwar Rambhau Shinde** (supra). The documents on which the petitioners are placing reliance upon and produced before this Court need to be considered by the Tribunal in the first instance. There is nothing indicated in the impugned order as to the reason for dispensing with the procedure under Section 6(4) of the said Act, if at all such a course is warranted.

9. The impugned order is, therefore, set aside.

10. The matter is remitted back to the Tribunal for deciding the application afresh and on its own merits and in accordance with law.

11. The application be decided expeditiously and preferably within a period of three (3) months from today. The parties to appear on 16/9/2021 before the Tribunal and co-operate.

12. The petitioners to continue to pay a sum of Rs.10,000/- per month, as directed by the Tribunal, to the respondent Nos. 2 and 3 during the pendency of the application. Arrears, if any, to be cleared within a period of two weeks from today.

13. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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