

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.299 of 2021 (O&M)
in CWP No.17632 of 2018
Date of Decision :12.10.2021

Manjit Kaur ..Appellant

Versus

The State of Punjab and others ..Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.S.S. Swaich, Advocate for the appellant

Mr.Avinit Avasthi, AAG, Punjab

ASHOK KUMAR VERMA, J.

CM No.789-LPA-2021

This is an application filed under Section 151 of the CPC for condonation of delay of 473 days in re-filing the appeal. The application is supported by an affidavit. For the reasons recorded therein and in the interest of justice, CM is allowed and the delay in re-filing the appeal is condoned.

LPA No.299 of 2021 (O&M)

1. We have heard learned counsel for the appellant and the State and gone through the paper-book.
2. A cursory glance at the facts of the present case would reveal that respondent No.4-Rachan Singh is an old man being a Senior Citizen who is father of the appellant. He had transferred the

land measuring 34 kanals 17½ marlas, situated at Village Naulakha, Tehsil and District Fatehgarh Sahib in favour of the appellant vide registered deed of transfer Vasika No.2885 dated 09.03.2016. Respondent no.4 filed an application under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act of 2007”) before the Maintenance Tribunal-cum-Sub Divisional Magistrate, Fatehgarh Sahib (for short “the SDM”) stating that after the transfer of the property, he had no source of income and the appellant is not looking after him. The appellant is said to have thrown respondent no.4 out of the house and as a result thereof, he had to live at Prabhu Asra Home, Jhanjeri, Tehsil and District SAS Nagar, Mohali. He had also given ₹ 5.00 lacs to the appellant in cash. The application filed by respondent No.4 was allowed by the Tribunal vide order dated 05.02.2018 (Annexure P-4) and Vasika No.2885 dated 09.03.2016 has been ordered to be cancelled and the Assistant Collector 2nd Grade (C.R.O.), Fatehgarh Sahib has been directed to take necessary action for cancellation of the mutation sanctioned on the basis of the aforesaid Vasika. The aforesaid order (Annexure P-4) was upheld by the Deputy Commissioner-cum-Appellate Maintenance Tribunal, Fatehgarh Sahib vide its order dated 30.05.2018 (Annexure P-5). Aggrieved against the aforesaid orders (Annexures P-4 and P-5), the appellant filed writ petition which has also resulted into dismissal vide impugned order dated 07.09.2018 passed by the learned Single Judge of this Court. Hence, the appellant challenged the aforesaid order of the learned Single Judge in the present LPA.

3. Learned counsel for the appellant, *inter alia*, submits that the learned Single Judge of this Court has grossly erred in passing the impugned judgment and has failed to consider that the appellant has been condemned unheard since no opportunity of hearing as well as leading of evidence was granted to the appellant by the SDM. Learned counsel also submits that the SDM has acted in contravention of the provisions of the Act of 2007 and there is nothing on record to show that the appellant was not looking after respondent no.4.

4. Learned counsel for the State submits that the orders passed by the SDM and the Appellate Tribunal have already been implemented by making necessary entries in the revenue record in favour of respondent no.4, in accordance with the aforesaid orders.

5. We have anxiously considered the submissions of the learned counsel for the appellant with which we are not impressed.

6. The submission of the learned counsel for the appellant that the SDM acted in contravention with the principles of natural justice is belied. From a perusal of the order dated 05.02.2018 (Annexure P-4) passed by the SDM, it is crystal clear that the appellant was summoned by the SDM for putting forth his version and accordingly, Mr.Gursharanjot Singh Sandhu, Advocate appeared and filed power of attorney on behalf of the appellant and filed reply. The SDM heard the learned counsel for the parties personally. After hearing both the parties and appreciating the evidence on record, the SDM came to the conclusion that respondent no.4 is an old man and he is not being looked after and due to lack of means with him to meet

out his daily needs and shelter etc., he is living in Prabhu Asra Home, Jahnjeri, SAS Nagar, Mohali in spite of the fact that he had already transferred his land measuring 34 kanals 17 ½ marlas, the value of which was shown at ₹ 63.00 lacs, vide transfer of ownership Vasika No.2885 dated 09.03.2016 in favour of the appellant. The SDM came to the conclusion that appellant was not discharging her moral and legal responsibility of maintaining her father. As a result thereof, the SDM has cancelled the aforesaid Vasika which was also upheld by the learned Appellate Tribunal after hearing both the parties. As such, the appellant cannot be allowed to demonstrate that she has been condemned unheard.

7. To ensure social security of the elders, a special law, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted by the Parliament to uphold the dignity and respect of senior citizens at the last phase of their life. State had serious concern about the challenges faced by the people in their old age. Apart from physical vulnerabilities, they face emotional and psychological challenges. On account of these frailties, they are totally dependent in the last phase of their life. The moral law formulated through the legislation is necessary to rationalise the well-being of all in the society. The moral values that prevailed in the society in the past have been accepted as universal values. The State in its wisdom, considering the acceptance of these values, seeks to promote the common good through the Maintenance of Parents and Senior Citizens Act, 2007. These values carried duties and obligations. In the present case, the fact remains that after hearing the both parties, the

SDM and Appellate Tribunal passed detailed, well-reasoned and speaking orders. It has come on record that respondent no.4 is living in old age home. The SDM even interacted with the parties and came to the conclusion that the appellant neglected her father and not provided the basic amenities despite the fact that the property was transferred in her name. The orders passed by the SDM as also by the Appellate Tribunal are well-reasoned and speaking orders which have rightly been maintained by the learned Single Judge of this Court vide impugned order dated 07.09.2018.

8. Moreover, the SDM has rightly exercised his jurisdiction available under the provisions of the Act of 2007 and cancelled the Vasika. Section 23 (1) of the Act of 2007 explicitly stipulates that in case the children fail to take care of their parents after transfer of their parent's property in their favour, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. The provision under Section 23 (1) of the Act of 2007 attempts to provide a dignified existence to the elderly people. It is often seen that after receiving the property from their parents, the children abandon them. In such situation, the Maintenance of Parents and Senior Citizens Act, 2007 is an enabling lifeline for such old aged parents and senior citizens who are not looked after by their children and become neglected lots. Section 23 of the Act of 2007 is a deterrent to this and hence is beneficial for the elderly old aged people who are incapable of taking care of themselves in the last phase of their life. The children are expected to look after their elderly parents

properly which is not only a value based principle but a bounden duty as enshrined within the mandate of the Act of 2007.

9. In the present case, there is clinching evidence on record to establish the fact that respondent no.4 has been driven out of the home at the hands of the appellant and as such he has been compelled to live in an old age home. We have no hesitation in observing that the appellant has acted in erosion of legal and moral values of maintaining his old aged father in his twilight years compelling him to live in an old age home. If such an act is permitted, it would amount to igniting the problems faced by old aged people in the last phase of their life resulting in mushrooming of old age homes.

10. In view of the above, we are of the considered opinion that the impugned order passed by the learned Single Judge of this Court is well-reasoned and we find no valid ground to interfere with the findings of the learned Single Judge of this Court. Consequently, this LPA is dismissed. Consequent upon the dismissal of the LPA, Miscellaneous Application for grant of stay i.e CM No.791-LPA-2021 shall stand disposed of accordingly.

(ASHOK KUMAR VERMA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

12.10.2021
MFK

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>