

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

129

RSA-1364-2021 (O&M)
Date of decision: 23.11.2021

ROHIT DHAWAN AND ANOTHER

..Appellants

Versus

REETA DHAWAN AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushant Kareer, Advocate for the appellants.

Ms. Ragini, Advocate for the respondents.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing
on account of restricted functioning of the Courts.

The defendants assail correctness of the concurrent findings of
fact arrived at by the Courts below while decreeing the suit filed for grant of
mandatory injunction directing the appellants to quit, vacate and hand over
the vacant physical possession of the suit property.

Undisputedly, the appellants have no right, title or interest in the
property. Respondent No.1-Reeta Dhawan is the mother of appellant No.1
(Rohit Dhawan). She is the exclusive owner of the residential house pursuant
to a sale deed dated 18.09.2007. As per the case of the plaintiff, she had
permitted her son along with his family to stay in the house as a gratuitous

licensee. Since the appellants misbehaved with her, therefore, the respondent (mother) terminated the licence and sought possession by way of filing the suit. Both the Courts below have concurrently recorded that the appellants neither have any right, title or interest in the property nor they have any right to continue to stay in the house.

Learned counsel representing the appellants contends that in view of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short 'the Act'), the exclusive jurisdiction in such matters lies with the Tribunal constituted under Section 22 of the Act. He further contends that the jurisdiction of the Civil Court is barred under Section 27 of the Act.

On a Court's question, learned counsel representing the appellants admits that the defendants did not take up this defence or raised this point before the Courts below. However, learned counsel contends that since it is a legal plea, therefore, the Court should permit the appellants to raise it for the first time in the regular second appeal.

Keeping in view the aforesaid position, this Court permits the appellants to take up an entirely new plea, at this stage. The Act has been enacted with a view to make more effective provisions for maintenance and welfare of parents and senior citizens. It is evident that there is no specific provision in the Act enabling the parents and senior citizens to seek eviction

of the licensees from the premises. The Tribunal constituted under that Act has the jurisdiction only with regard to the matters dealt with in the Act and not on all matters arising between a parent and child. Furthermore, the jurisdiction of the Civil Court under Section 9 of Code of Civil Procedure is plenary in nature covering all matters of civil nature. A strong presumption exists in favour of the jurisdiction of a civil Court with respect to the adjudication of disputes of civil nature and the same can only be rebutted by an unequivocal, express or implicit provision excluding the same.

Now let us analyse Section 27 of the Act which reads as under:-

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

It is evident from a careful perusal of Section 27 that the jurisdiction of the Civil Court is excluded only in respect of any matter to which any provision of the Act applies. Learned counsel for the appellants has failed to draw the attention of the Court to any provision of the Act enabling the Tribunal to decide the dispute involved in the present case and pass the order of eviction. Such a provision has been made under the Punjab Action Plan-2014.

Once the object behind the Act is to ensure the protection and welfare of the parents and senior citizens, the provisions of the Act cannot be

social welfare legislation has been enacted.

Moreover, the Act is a beneficial social welfare legislation in its essence. The provisions of the Act cannot be interpreted in a manner which would result in defeating the object sought to be achieved. The Parliament had enacted the Act so as to ensure that the senior citizens/parents can claim maintenance and their valuable rights are protected. The Act, itself, recognizes that claiming of maintenance under the Code of Criminal Procedure, 1973, is both time consuming as well as expensive. Therefore, in order to simplify the procedure and grant a special, inexpensive and speedy remedy, the Act has been enacted. In the considered opinion of the Court, if the matter is kept pending, it shall contravene the object sought to be achieved by the legislature while enacting the Act.

The question is as to “whether a senior citizen (a parent) is entitled to file a suit before the Civil Court seeking the eviction of a family member, from their own property, particularly when there is no specific provision in the Act, itself?” It may be noted here that some States have framed a scheme to confer power upon the Tribunal to decide such matters but the validity of such schemes conferring such jurisdiction on the Tribunal constituted under the Act, is a subject matter of challenge. It is noted here that the Act has been enacted in order to provide sustenance and protection to the older people. From the reading of the statement of object and reasons, it is

evident that the Parliament, after noticing that the traditional morals and values of the Indian society, which adhered to the principles of utmost respect and care towards the elders, have started withering away and many older persons are, increasingly, becoming victims of emotional neglect and physical, verbal & economic abuse, enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The State of Punjab notified the Punjab Maintenance and Welfare of Parents and Senior Citizens scheme enabling the aggrieved to file an application to the Tribunal constituted under the Act. However, the same was struck down by the High Court in **Simrat Randhawa vs. State of Punjab and ors, CWP No.4744 of 2018, decided on 23.01.2020**. A LPA against the aforesaid judgment is pending. Another Coordinate Bench in **Mamta Sharma vs. Additional Deputy Commissioner cum Maintenance Tribunal and others (CWP No.38040 of 2018) decided on 05.11.2020** has held that an eviction petition in such circumstances is maintainable before the Tribunal. Hence, as of now, there is no absolute clarity in the matter.

As already noticed, the question of jurisdiction of the Tribunal, in such matters, is in a state of flux. The question is whether the Court should keep the appeal pending and prolong the agony of a senior citizen or the Court should proceed to decide the matter, particularly when there is no clear provision in the Act which enables the Tribunal to a grant decree of eviction?

In the considered opinion of the Court, it is not appropriate to keep the matter pending particularly when the jurisdiction of the Civil Court is plenary.

It may be noted here that while examining the question of lack of jurisdiction or the bar to the jurisdiction of the Civil Court in entertaining civil disputes, the Court must keep in mind that such cases are required to be put in different categories. The cases where there is an inherent lack of jurisdiction constitute a specific category. In such a matter, the judgment of the Civil Court is without jurisdiction. On the other hand, there is a second category in which because of an existing provision in the relevant special Act, the jurisdiction is conferred on a specialised Tribunal and consequently, the jurisdiction of the Civil Court is excluded. In such cases, in the considered view of the Bench, the Court is required to take a practical view of the matter. The Courts have been established to ensure speedy and effective justice to the parties. Hence, the objections taken only to thwart the process of justice, must be interpreted in a manner so as to advance the cause of substantive justice.

A five Judge Bench of the Hon'ble Supreme Court in **Dhulabhai etc. vs. State of Madhya Pradesh and another, AIR 1969 SC 78** has laid down seven tests to examine the question of exclusion of jurisdiction of the Civil Court. The relevant discussion is in para 32 which is extracted as under:-

“32. Neither of the two cases of Firm of Illuri Subayya(1) or Kamla Mills(2) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

Applying the seven tests laid down by the Hon'ble Supreme Court, since the validity of the scheme framed by the State of Punjab is, at present, the subject matter of judicial scrutiny, therefore, the suit is maintainable under test No.4. Even under test No.7, the exclusion of the jurisdiction of the Civil Court is not to be readily inferred.

Keeping in view the aforesaid facts, the present appeal is dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

23.11.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE