

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

**LPA-1209-2021 (O&M)
Date of decision: 20.12.2021**

Pardeep Kumar and Others

... Appellants

Versus

Daya Rani and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present:- Mr. Gautam Kaile, Advocate
for the appellants.

SANDEEP MOUDGIL, J.

CM-2839-LPA-2021

There is a delay of 36 days in filing the accompanied appeal and the instant application is seeking condonation of such delay.

In the light of reasons stated in the application under Section 5 of Limitation Act, 1963 and the submissions made by the learned counsel for the applicants-appellants, the instant application is allowed and delay of 36 days in filing the accompanied Letters Patent Appeal (LPA) is hereby condoned.

CM-2840-LPA-2021

The application is allowed and the documents i.e. disability certificate and the loan statement of e-richshaw pertaining to appellant No.3 are taken on record as Annexure A-1 and Annexure A-2 respectively, subject to all just exceptions.

LPA-1209-2021

The appellants have put challenge to the orders dated 18.08.2021 and 14.10.2021 passed by the learned Single Bench of this

Court, wherein, while issuing notice of motion on 18.08.2021, the appellants were directed to deposit/pay a sum of Rs.50,000/- in favour of Smt. Daya Rani - respondent No.1, who happens to be mother of appellant No.1, within a period of 10 days from the date of passing of that order and, thereafter, to continue paying a sum of Rs.7,500/- per month and subsequent order dated 14.10.2021, in an application bearing No. CM No.15630-2021 for modification of the order dated 18.08.2021, while dismissing the application being devoid of any merits.

The factual matrix leading to the dispute involved in the present appeal is that respondent No.1 - Smt. Daya Rani (mother of appellant No.1) filed a petition against the appellants, who were living happily with Haveli Ram (father) and Daya Rani (mother). Thereafter, Rashmi i.e. sister of appellant No.1 also started living with them. It is the case set up by the appellants that Rashmi started instigating Smt. Daya Rani against appellant No.1 and other appellants having an eye, out of greed over the residential house where all the appellants along with Sh. Haveli Ram and Smt. Daya Rani were living. Sh. Haveli Ram alleged to have executed a registered Will dated 19.03.2015 in favour of appellant No.1 to the effect that he will be the absolute owner of the movable and immovable property, bank/post office accounts, gold and silver ornaments and bank lockers etc. after the death of Sh. Haveli Ram (since deceased). Subsequently, an unregistered Will has also been said to be executed by Sh. Haveli Ram (since deceased) dated 22.12.2016, revoking the earlier Will dated 19.03.2015, which was never in the knowledge of appellant No.1. Appellant No.1 has also made an attempt to support the averment stating that the registered Will dated 19.03.2015 has not been cancelled and no such

application for cancellation was ever made before the Office of Sub-Registrar, Jagadhri. Appellant No.1 has also averred that he is having a certified copy of the said registered Will dated 19.03.2015, which was got issued on 26.07.2021.

Learned counsel for the appellants has vehemently argued that on the instigation of Rashmi, dispute started creeping between the appellants and their parents. Since Rashmi was also working as a private typist at District Court, Jagadhri, she got an application moved before the Presiding Officer and Sub-Divisional Officer (Civil), Jagadhri on 13.10.2016, under the Maintenance and Welfare of Parents & Senior Citizens Act, 2007. During the pendency of the said application, Sh. Haveli Ram passed away on 03.03.2017 and the application was dismissed observing that the appellant No.1 namely Pardeep Kumar is ready to serve and maintain her mother, whereas, Smt. Daya Rani-respondent No.1 (mother of appellant No.1) only wishes to get her house vacated and is not expecting any expenses for her livelihood from her son-appellant No.1. The instigation from Rashmi did not stop here, who yet again got an application filed from Smt. Daya Rani under Section 22(2) of the Act of 2007.

The application was adjudicated vide order dated 04.12.2020 and the Registrar (Tehsildar) issued notice to appellant No.1 to handover the vacant possession of the house in question upto 15.07.2021.

It is the aforesaid order dated 04.12.2020, for which appellant No.1 approached this High Court vide CWP No.15835-2021, wherein, a conditional order of stay dated 18.08.2021 came to be passed, the relevant extract of which reads as under:-

"... Notice of motion to respondent No.1 for

14.10.2021.

In the meanwhile, the operation of order passed by Additional Deputy Commissioner cum Additional District Magistrate, Yamuna Nagar is ordered to remain stayed, subject to the condition that petitioners would deposit/pay a sum of Rs.50,000/- to Smt. Daya Rani within 10 days from today and thereafter continue paying Rs.7,500/- to her per month and in case Smt. Daya Rani does not accept the amount then the same be deposited in her name with the Maintenance Tribunal."

Appellants have averred in the instant appeal that an application for modification of order dated 18.08.2021 was moved bearing CM No.15630-2021, showing inability to pay such an amount of Rs.50,000/- being on the higher side, the copy of which is not attached with the present Letters Patent Appeal (LPA).

We have heard learned counsel for the appellants.

It is abundantly clear without any *iota* of doubt that respondent No.1-Smt. Daya Rani, widow of Sh. Haveli Ram (since deceased) is a senior citizen and is aged about more than 80 years. The report sought from the Office of the Sub-Divisional Officer (Civil), further depicts that the house in question measuring 190 square yards situated at C-3/1576, Manohar Colony, Jagadhri is in the name and ownership of respondent No.1-Smt. Daya Rani, widow of Sh. Haveli Ram (deceased) as per the records of Municipal Corporation, Yamuna Nagar after the death of Sh. Haveli Ram on 03.03.2017. Sh. Haveli Ram was the owner in possession of the property vide registered sale deed No.1932 dated 09.09.1975. There seems to be a dispute with regard to the genuineness of the alleged registered Wills dated 19.03.2015, 22.09.2015 and unregistered Will dated 22.12.2016 and the title

is yet to be adjudicated upon. Even if it is assumed that Sh. Haveli Ram (since deceased), had gifted the house to appellant No.1, even then the transfer of property is to be held void in certain circumstances.

Coming to the moot question involved in the present appeal i.e. the quantum of payment i.e. Rs.50,000/- to be paid by appellant No.1 in favour of respondent No.1 - Smt. Daya Rani, which was sought to be modified being on the higher side, the learned Single Judge of this Court has declined the said prayer.

A perusal of both the orders under challenge dated 18.08.2021 and 14.10.2021 passed by the learned Single Judge of this Court shows that the final question involved in the Civil Writ Petition is yet to be adjudicated and no decision either on facts or on law has yet been made by it, and therefore, at the very outset, we had put a query to the learned counsel for the appellants regarding maintainability of the instant Letters Patent Appeal (LPA) filed against the interim orders.

Ex-facie, the orders which are being assailed are interim/interlocutory in nature which do not finally decide any question or issue in controversy in the main case either. Likewise, the directions given in the orders dated 18.08.2021 and 14.10.2021, do not finally decide any issue which materially and directly affects the final outcome in the writ petition or even a collateral issue which does not form part of the subject matter of the controversy. Thus, even if it is assumed that the impugned orders have caused some inconvenience or prejudice to the appellants, still they do not finally determine the rights and obligations of the parties. We consider it expedient to refer to the decision rendered by the Hon'ble Supreme Court in ***“Midnapore Peoples’ Cooperative Bank Limited and***

Others versus Chunilal Nanda and Others (2006) 5 SCC 399”, wherein, the Apex Court held as under:-

15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term “judgment” occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, “judgments” for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments” for the purpose of filing appeals provided under the Letters Patent.”

Thus, it is seen that the issue in the main case is yet to be adjudicated by the learned Single Judge and the present appeal fails to pass the test laid down in “*Midnapore Peoples’ Cooperative Bank Limited and Others (Supra)*”.

In the wake of the above, we are dissuaded to interfere with the impugned orders dated 18.08.2021 and 14.10.2021. The appeal being bereft of merit is accordingly dismissed.

The stay application bearing No.CM-2841-LPA-2021 is also disposed of accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

20.12.2021
Chetan Thakur

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No