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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th March, 2021

+ **W.P.(C) 3348/2021 & CM APPLs. 10209-10/2021**

RAJU & ANR.

..... Petitioners

Through: Mr. Abdul, Advocate (M:
9810429488) with the Petitioners in
person.

versus

SABIR HUSSAIN

..... Respondent

Through: Ms. Saumya Tandon, Standing
Counsel.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. The present petition challenges order dated 7th October, 2020 passed by the District Magistrate, North-East Delhi, by which the Petitioners have been evicted from property bearing No. 833, Gali No. 8, Old Mustafabad, Dlehi -110094 (*hereinafter, 'suit property'*), as well as interim order dated 21st December, 2020, by which the application for interim relief has been rejected by the Divisional Commissioner.

2. The brief background is that the Petitioners are the son and daughter-in-law of the Respondent. The Respondent filed an eviction petition before the District Magistrate under the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016. Vide order dated 7th October, 2020, the Id. District Magistrate observed that this was a case of ill-treatment and misbehaviour with the Respondent by the Petitioners and accordingly, directed the Petitioners to vacate the suit property within 30

days. The operative portion of the order reads as under:-

“After carefully pursuing the matter, it can be said that the app ice had raised the allegation of ill-treatment during hearing of case tut opposite parties had miserably failed to rebut the allegation of ill treatment. Thus, the third issue also stands establishes favour of the applicant.

Lastly, Even if the opposite parties wants that undersigned authority may consider their plea that eviction order should not be passed for concern of opposite party and their mino kids In any case, if this plea is allowed to be considered, then subsequently in every such case the eider parents will have to face burden of their son(s) and daughter in law and legal heir for non maintenance and ill-treatment and no order for eviction would be passed. This is not the Scheme of the present act and it is meant for maintenance man welfare of parents and senior citizens. The senior citizens do have a cants enjoy peaceful possession of property which is protected under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (as amended up to date) act and rules under Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016 especially when their children ill-treat them.

In view of the above, I am of the view that since this is a case of ill treatment and misbehaviour with the applicant by the opposite parties, it would be appropriate to pass an eviction order against the opposite party(s) Sh. Raju and SMt. Nishi. The minor kids who were living with support of parents i.e. opposite parties and present order of eviction which is passed against their parents is also applicable to them in the light of settled law as discussed in Writ petition.(C) 347/2018, AAPSHYA SULATI (THROUGH: NEXT READ MRS, DILYA GULATI) AND ORS. versus GOVERNMENT OF NCT DELHI AND Ors decided by Hon’ble High Court of Delhi vide

order dated.

I, therefore, in exercise of the powers conferred 5905(sic) me under The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2015 The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, hereby direct the opposite parties namely sh. Raju and Smt. Nishi to vacate the part property in question within 30 days from the date of order and handover the vacant and peaceful possession to the application.

The Deputy Commissioner of police, District North East shall take coercive measures to enforce the eviction order through SHO concerned to handover the possession of property in question to the applicant within 07 days, if the opposite parties failed to evict the premises on their own within the time specified as above. A compliance report of the same will be filed thereafter. The file be consigned to record room."

3. The Petitioners filed an appeal challenging this order before the Divisional Commissioner and also sought interim relief. Vide the impugned order dated 21st December, 2020, the prayer for interim relief has been rejected. The operative portion of the order reads as under:-

"I have gone through the stay application and the impugned order dated 07.10.2020 and have given my considerable thoughts.

On perusal of the impugned order the District Magistrate evicted the appellants on the ground of ill-treatment. Also it is very much evident from the appeal itself that appellants wanted to grab the suit property. Appellants in their appeal submitted that appellant no. 1 has given 500 Rs. to respondent i.e. their father on two occasions which shows the intention of the appellants that rather serving their elders dutifully, they are showing obligations in serving their elders which is a weird face of society and can see how much

respect appellants have for the respondent.

The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi Rules 2009 amended time to time, is a welfare legislation and balance of convenience lies in favour of protection of senior citizens/Parents, so that they can spend their twilight years peacefully.

Thus, this appellate authority is of the view that no prima-facie case for stay is made out on the grounds stated by the appellants and no irreparable harm will be caused to them if they shifted to rented accommodation during the pendency of the appeal. Therefore, application for grant of interim stay is accordingly hereby dismissed.

The next date of hearing in the case is fixed for 06/01/2021 at 11.00 A.M. All the parties are directed to appear on the scheduled date and time.”

4. Ld. counsel for the Petitioners submits that the Petitioners have two minor children and would need some time to make alternate accommodation available for themselves. However, when the Court expressed its opinion that it is not inclined to entertain the petition, ld. counsel for the Petitioners, under instructions from both the Petitioners who are present in Court, submitted that the Petitioners undertake to vacate the suit property which is under their possession on or before 30th June, 2021. Accordingly, on humanitarian grounds, considering that there are two minor children, this Court permits the Petitioners time till 30th June, 2021 to vacate the suit property.

5. It is made clear that if the suit property is not vacated by the said date, steps may be taken for enforcement and implementation of order dated 7th October, 2020.

6. The present order be communicated to the Id. Divisional Commissioner, who shall dispose of the appeal in view of the undertaking given by the Petitioners herein. The affidavit of undertaking in terms of the above order shall now be filed within a period of two weeks before this Court and a copy of the same shall also be filed before the Id. Divisional Commissioner. The Id. Divisional Commissioner shall ensure that the present order is duly implemented and complied with by the parties.

7. Ms. Saumya Tandon, Id. Standing Counsel., who is present in Court, is directed to accept notice and communicate the present order to the Id. Divisional Commissioner. Copy of this order also be communicated to the Respondent on his mobile number as mentioned in the memo of parties.

8. With these observations, the present petition, along with all pending applications, is disposed of. If the Respondent wishes to seek modification of the present order, liberty is granted.

9. List for compliance on 6th April, 2021.

**PRATHIBA M. SINGH
JUDGE**

MARCH 17, 2021
MR/T