

LPA No.466 of 2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.466 of 2022 (O&M)

Date of decision : 02.06.2022

Karanbir Singh

.....Appellant

VERSUS

Deputy Commissioner-cum-Chairman Maintenance
Appellate Tribunal, Sirsa and others

....Respondents

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

Present: Mr. Ajay Jain, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

CM-1116-LPA-2022

Prayer in this application is for exemption from filing certified copy of order dated 27.05.2022 passed in CWP No.13485 of 2020.

For the reasons stated in the application, the same is allowed. Exemption is granted from filing certified copy of order dated 27.05.2022 passed in CWP No.13485 of 2020, subject to all just exceptions.

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In this appeal, challenge has been posed to the order dated 27.05.2022 passed by the learned Single Judge by the appellant, who, in the writ petition, had challenged the order dated 27.07.2020 (Annexure P-3) passed by the Tribunal under the Maintenance and Welfare of Parents and

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Senior Citizens Act, 2007 (hereinafter referred to as 'Tribunal'), whereby transfer deed No.6535 dated 28.12.2009 executed by Jasbir Singh son of Shri Gurnam Sing – respondent No.3 in favour of the appellant has been ordered to be cancelled/set aside and said respondent No.3 – Jasbir Singh has been declared owner in possession of the land in question and the appellant has been permanently refrained from interfering in the ownership and possession of the same, the revenue record has also been ordered to be corrected in favour of respondent No.3 – Jasbir Singh, who is held entitled to recover the possession of the land as per law, appeal against which preferred by him stands dismissed vide order dated 28.08.2020 (Annexure P-5) passed by the Deputy Commissioner-cum-Chairman of the Tribunal, upholding the order impugned. While passing the impugned order dated 27.05.2022 in the writ petition, learned Single Judge has proceeded to order monthly interim maintenance of ₹10,000/- to be paid by the appellant, who is nephew and ₹10,000/- to be paid by respondent No.4, who is son of respondent No.3 – Jasbir Singh, with effect from the date of institution of original petition being filed before the Tribunal along with arrears to be paid within a period of six weeks.

It is the contention of the learned counsel for the appellant that without an application having been filed for grant of maintenance, the impugned order could not have been passed. In support of this contention, he has placed reliance upon the provisions of Sections 4, 5 and 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act'). His contention is that there is a procedure prescribed for fixing an amount of maintenance, which has not

been followed by the learned Single Judge especially when no such order had been passed by the Tribunal or the Appellate Authority in the proceedings which were pending before the said authorities, which had been preferred by respondent No.3 – Jasbir Singh. That apart, it has been asserted that the appellant would not be covered within the definition of children or relative as provided under Section 2 (a) and 2 (g) of the 2007 Act. In the absence of any liability on the part of the appellant, no maintenance could have been ordered against him as the appellant does not fall within the ambit and scope of Section 2 (a) and 2 (g) of the 2007 Act, he being nephew of respondent No.3 – Jasbir Singh.

Counsel for the appellant, on the basis of the above, asserts that the impugned order dated 27.05.2022 passed by the learned Single Judge is not sustainable qua the appellant as no liability can be imposed upon him according to the law.

Perusal of the impugned order dated 27.05.2022 passed by the learned Single Judge would indicate that the pleas, as have been taken in the present appeal by the appellant, were neither agitated nor were the provisions of the statute referred to and relied upon by the counsel for the appellant brought to the notice of the learned Single Judge. The impugned order is an interim order which has been passed by the learned Single Judge which can be varied and changed by the Court. Let the appellant first approach the learned Single Judge by way of an appropriate application putting forth all the grounds/pleas as have been taken in the present appeal so that the learned Single Judge may have an occasion to consider and opine on the aspects as have been pointed out by the counsel before this Bench.

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We refrain ourselves from expressing any opinion on the arguments which have been put forth by the counsel for the appellant for the reasons stated above and dismiss the present appeal by observing that the appellant may first approach the learned Single Judge by way of an appropriate application.

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In the light of the disposal of the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

02.06.2022

Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No