

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

CWP-24877-2018 (O&M)

Date of decision: April 05, 2022

Santokh Singh

....Petitioner

versus

The District Magistrate-cum-Deputy Commissioner, Hoshiarpur
and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S. Atwal, Advocate for the petitioner.

Mr. P.S. Bajwa, Addl. AG for respondents No.1 and 2.

Mr. Arun Takhi, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing/setting aside the order dated 23.08.2018 (Annexure P-3) passed by learned District Magistrate-cum-Deputy Commissioner, Hoshiarpur vide which the application/petition dated 19.07.2018 filed by respondent No.3 against the petitioner has been allowed and the order dated 28.12.2015 (Annexure P-1) passed by Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Hoshiarpur, as well as the order dated 29.09.2016 (Annexure P-2) passed by Deputy Commissioner-cum-District Magistrate Hoshiarpur vide which the applications/petitions filed by respondent No.3 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, have been allowed.

2. Respondent No.3 (mother) had filed an application under Sections 4 & 5 of the Maintenance and Welfare of Parents and Senior

Citizens Act, 2007 (for short 'the Act') before the Maintenance Tribunal. The said application was allowed on 28.12.2015 and the petitioner was directed to pay Rs.1000/- per month as maintenance to respondent No.3. Respondent No.3 filed an appeal against the said order before the Maintenance Appellate Tribunal which was allowed on 29.9.2016 and the amount of Rs.1000/- was enhanced to Rs.3000/- per month. Respondent No.3 filed another application for execution of the order dated 29.9.2016 passed by the Maintenance Appellate Tribunal after two years which was allowed by the Deputy Commissioner, Hoshiarpur on 23.8.2018 directing the petitioner to vacate the house of respondent No.3.

3. Learned counsel for the petitioner has submitted that the Deputy Commissioner, Hoshiarpur has committed an error in law in passing the impugned order. In this regard, he has referred to Section 11 of the Act which deals with the 'enforcement of order of maintenance'. Learned counsel for the petitioner has submitted that the order of maintenance would have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") and is to be executed in the manner prescribed for the execution of such order by that Code. He has thus referred to Chapter IX of the Cr.P.C which deals with the order for maintenance of wives, children and parents. It is submitted that in none of the provisions of this Chapter, power has been given to the executing authority to pass an order of eviction.

3. On the other hand, learned counsel for respondents No.3 opposes the prayer of the petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. Admittedly, petitioner is not paying maintenance to his mother-respondent No.3 in terms of the orders passed by the Maintenance Tribunal as well as Maintenance Appellate Tribunal.

6. In the premise, petition is dismissed. However, interim order dated 28.09.2018 passed in the writ petition shall remain in force for a period of 30 days with liberty to the petitioner to seek revival of the instant writ proceedings provided he furnishes proof of electronic remittance in the account of his mother-respondent No.3 at the rate of Rs.3,000/- per month w.e.f. the date when the petition was first filed before the Maintenance Tribunal/Sub-Divisional Magistrate, Hoshiarpur or a demand draft is prepared and appended with the application seeking revival of the proceedings.

(ARUN MONGA)
JUDGE

April 05, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No