

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 25148 OF 2018

DATE OF DECISION : 14.07.2022

Surindera Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present : Mr. Avnish Mittal, Advocate,
For the petitioner.

Ms. Simran Grewal, AAG, Punjab.

Mr. R. S. Sidhu, Advocate for
Mr. G. S. Nahel, Advocate,
For respondent No.5.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of certiorari for quashing impugned appellate order dated 08.08.2018 (Annexure P-6) passed by respondent No.3, being illegal, non-speaking and contrary to provisions of Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Act"). Further prayer has been made for implementation of order dated 06.12.2016 (Annexure P-3) passed by the Maintenance Tribunal.

2. The controversy involved herein is summed up succinctly in an order dated 01.10.2018 passed by my learned brother R. K. Jain, J. (as he then was in this Court) which is reproduced as under :

"Petitioner is the mother of respondent No.5. She filed an application under Sections 4, 5, 22 & 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] before the Maintenance Tribunal which was allowed. The Maintenance Tribunal has annulled the document of transfer. The appeal was filed by respondent

No.5 before the Maintenance Appellate Tribunal in which the order of the Maintenance Tribunal has been set aside and the matter has been remanded back for deciding it again.

*Although, learned counsel for the petitioner has initiated his submission challenging the maintainability of appeal before the Maintenance Appellate Tribunal filed by respondent No.5 but in view of a decision rendered by the Division Bench of this Court in the case of “**Paramjit Kumar Saroya Vs. The Union of India and another**” 2016 (3) RCR (Civil) 146, the said argument is hereby rejected.*

*Learned counsel for the petitioner has then submitted that the order of remand is not maintainable. In this regard, it is submitted that firstly, there is no provision in the Act to involve all the provisions of the Code of Civil Procedure, 1908 [for short ‘the CPC’] because the procedure of inquiry is summary in nature in view of Section 8 of the Act as per which the Tribunal shall have the powers of the Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents but it would not have the power to remand the case in terms of Order 41 Rules 23 & 25 of the CPC. In this regard, he has relied upon the decisions rendered by this Court in the cases of “**Mohd.Hussain Vs. Mohd. Ashgar**” 2017(2) RCR (Rent) 3, “**Krishan Lal Seth Vs. Pritam Kumari**” 1961 PLR 865 and “**Om Parkash and others Vs. The Joint Director of Rural Development and Panchayat Punjab, Chandigarh and another**” 1987 RRR 12.*

Notice of motion for 02.11.2018.

In the meantime, operation of the impugned order shall remain stayed.”

3. In the aforesaid background, it would be apposite to reproduce the relevant Sections 8 and 16 of the Act under which appeal is filed to determine whether the appellate authority has the power to remand the appeals or is mandatorily required to be decided on merits instead of *de novo* reconsideration of the same by the Tribunal below, in case even if admittedly there is some irregularity committed by the Tribunal below:

“Section 8 Summary procedure in case of inquiry.

(1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

16 Appeals.

(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal: Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal: Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost."

4. A perusal of the aforesaid two Sections *interse* read harmoniously reflects that not only it is a special statute enacted for maintenance and welfare of senior citizens, but in order to make it more effective given the advanced age of some of the senior citizens, who are

compelled to approach the Court in twilight of their life, summary powers have been conferred to the Tribunals for adjudicating the pending complaints as speedily as possible in order to meaningfully implement the intent of the legislature. In this context, reliance may also be had to similarly enacted special statute under which certain protections have been envisaged for the landlords vis-à-vis tenants i.e., East Punjab Urban Rent Restriction Act, 1949 wherein Section 15 empowers the appellate Court to hear the appeal against orders passed by the Rent Controllers. In somewhat similar circumstances issue of whether the appellate authority in the absence of special statute specifically conferring the power of remand can exercise the same under the meaning of being an appellate authority having the power to set aside the order under challenge. After careful consideration thereof, it was held by a Division Bench of this Court in case titled “***Mohd. Hussain v. Mohd. Ashgar***” 2017 (2) RCR (Rent) 3 as below :

*“19. To conclude therefore the history of the legislation, its object and purpose, the specific language of Section 15(3) of the Act and both principle and precedent, all tend to render an answer in the negative to the mention formulated at the outset. It is, therefore, held that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision and the view in **Moti Ram s/o Daulat Ram v. Ram Sahai s/o Chamba Ram, C.R. No. 641 of 1975 decided on April 29, 1958 and Shri Krishan Lal Seth v. Shrimati Pritam Kumari, 1961 Punjab Law Reporter 865**, is reaffirmed.*

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25. In accordance with the answer to the main question of law rendered earlier, both the revision petitions are hereby allowed and the order of the Appellate Authority is hereby set aside with the direction that he shall proceed to decide the appeals himself in the light of the observation made above.

Appeal allowed.”

5. The aforesaid Division Bench judgment hold the field as on today as the same has been followed consistently by this Court in the subsequent cases arising on the same point.

6. In this background, the meaning and intent of Section 16 of the Act assumes even more significance inasmuch as a bare reading of the same would reveal that while the appellate authority has been specifically conferred the power to examine the appeal and the records and either call for same before it from the Tribunal and thereafter either to allow it or reject it. The words ‘remand’ are missing in Section 16 of the Act, unlike the case under Order 41 Rules 23 and 25 of CPC where the appellate Court is specifically conferred the power of remand. In that context, for better appreciation the said Rules are reproduced herein below:

“Order 41 Rule 23 of CPC

Remand of case by Appellate Court : *Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.”*

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25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from – *Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate court essential to the right decision of the suit upon the merits, the Appellate court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;*

And such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

7. In the totality of circumstances and as an upshot of the above discussion, I am of the view that the appellate Tribunal is not conferred with the power of remand under Section 16 of the statute and upon entertaining the appeal must either reject or accept the same, wholly or partly as the case may be. Therefore, the impugned appellate order herein is not sustainable and is accordingly set-aside. The matter is remanded back to the appellate Tribunal for fresh consideration and adjudication. The parties are at liberty to move appropriate application before the appellate Tribunal.

JULY 14, 2022
Shalini/vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No