

Ct. 05
Item No.12
15.03.2023
(Suvendu)

WPA 934 of 2023

Hirendra Nath Maitra
Vs.
The State of West Bengal and Ors.

Mr. Kamlesh Jha
Mr. Biswajit Tiwari
....for the petitioner

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
...for the State

Mr. Masud Karim
Mr. Abijit Chatterjee
Mr. Musharraf Alam Sk.
Mr. Galib Ahasan
Ms. Susmita Ghorai
.....for the private respondent no. 5

The petitioner has challenged an order of the Appellate Authority under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By the impugned order, the petitioner's appeal was rejected and the order of the SDO was accepted on the basis that the case related to dispute between the petitioner and his younger brother and is hence not maintainable under the 2007 Act. The reason given is that the Act is for assisting Senior Citizens to get maintenance from their direct legal heirs which was not the case before the Appellate Authority.

Learned counsel appearing for the petitioner places the concerned Deed which was the subject matter of dispute between the petitioner and the private respondent. The Deed of Gift was from the petitioner to the private respondent no.5. The petitioner sought to revoke the Deed before the first forum. Although counsel for the petitioner has placed the relevant part of the Deed, it appears that the Deed does not have any condition for the transferee/ private respondent to provide the basic amenities and basic physical needs to the petitioner/ transferor as required under Section 23(1) of the 2007 Act.

Section 23(1) makes it clear that the transfer of property may be void in certain circumstances where any Senior Citizen after commencement of the Act has transferred his property by way of a Deed of Gift subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and where the transferee refuses or fails to provide such amenities and physical needs to the transferor. It is clear from the provision that in the absence of any such provision in the Deed, the Deed cannot be adjudged as void under Section 23(1) of the Act. This was the view taken by the Division Bench of this Court in *Debashish*

Mukherjee @ Zenacharya Vs. Dr. Sanjib Mukherjee, 2018(1) CHN (CAL) 481. This decision was also followed by a learned Single Judge of this Court in *Mita Panda & Others Vs. Minati Chakraborty & Another, 2019(1) WBLR (Cal) 668.*

Upon comparing the relevant portion of the Deed of Gift and the condition to be attached to the Deed under Section 23(1) of the Act, it is clear that the Deed of Gift did not contain any such condition for the transferee/private respondent to look after the basic needs and amenities of the petitioner. The Court cannot impute any such condition from the attending circumstances under which the Deed was executed by the petitioner in favour of the private respondent. That would amount to an extrinsic aid of construction adding to the intention of the parties which cannot be done by the Court. Hence, this Court does not find any fact or law in support of the petitioner's contention that the impugned order dated 27th July, 2022 should be quashed.

WPA 934 of 2023 is accordingly dismissed without any order as to costs.

Although not required to be stated, dismissal of the present writ petition shall not preclude the petitioner from seeking any remedies

which the petitioner may be entitled to under the law before an appropriate forum.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)