

AD-18
Ct No.09
22.08.2023
TN

WPA No. 2535 of 2023

Sri Bijay Kumar Aich
Vs.
State of West Bengal and others

Mr. Dhiman Ray,
Mr. Dip Chanda,
Mr. Rounak Majumdar

.... for the petitioner

Despite attempt to serve, the intended service on the private respondent has failed since the envelope has returned with the endorsement “unclaimed”, which tantamounts to good service.

The petitioner has challenged orders of both the forums below under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the 2007 Act”). Both the forums turned down the application of the petitioner for eviction of his daughter-in-law, the private respondent, under the 2007 Act on the ground that the dispute was civil in nature and hence outside the purview of the said forum.

Learned counsel for the petitioner cites a coordinate Bench judgment reported at *AIR 2022 Calcutta 192 (Debaki Nandan Maiti vs. State of West Bengal)* for the proposition that in respect of a

discomfort expressed by a senior citizen towards his children, a single complaint is good enough evidence and eviction ought to be granted.

Learned counsel further submits that since the 2007 Act applies not only to parents but also to senior citizens, the daughter-in-law has also to be counted as a relative within the contemplation of the Act for the purpose of seeking maintenance in the form of residence.

It is further contended that the Act itself provides for maintenance, which includes residence and, as such, the petitioner is entitled to the relief as sought before the forums below.

Learned counsel for the petitioner places specific reliance on paragraph no. 13 of the cited judgment, which also quotes, *inter alia*, paragraph no. 9 of the judgment of *Ramapada Basak vs. State of West Bengal and Ors.*, reported at 2021 SCC OnLine Cal 2161.

Insofar as the cited judgment is concerned, the same pertains to a relief sought for eviction by a senior citizen before the writ court. The court, while approving of the judgment delivered in *Ramapada Basak* (supra), in paragraph no. 13 of the said judgment, refers to paragraph no. 9 of *Ramapada Basak* (supra), where it was observed as follows:

“9. However, the right of senior citizen to exclusively reside in his own house, must be viewed from the prism of Article 21 of the Constitution of India. To compel a senior citizen to approach either a civil court (the jurisdiction of which is any way barred under Section 27 of the 2007 Act) or take recourse to a special Statute like the 2007 Act would in most cases be extremely onerous and painful for a person in the sunset days of life. This Court is therefore of the view that the principle of alternative remedy cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.”

Insofar as the said observation is concerned, it pertains to the right of a senior citizen to exclusively reside in his own house, which according to the court must be viewed from the prism of Article 21 of the Constitution of India.

In the said case, it was observed that a senior citizen cannot be compelled to approach a civil court or take recourse to a special Statute like the 2007 Act, which would in most cases be extremely onerous and painful for a person in the sunset days of life.

The principle of alternative remedy, it was held, cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.

In paragraph no. 17 of the cited judgment, the learned Single Judge observed in the facts of the case that in respect of a discomfort expressed by a senior citizen towards his children, a single complaint is good enough evidence. Further, in the said case, there were no disputed questions of fact, that is, the house admittedly belonged to the father of the writ petitioner therein. There was a decree for divorce in that matter, albeit ex parte. Admittedly, in the said case the son had already taken up separate residence before the writ petition was filed. The applicant daughter-in-law therein had not claimed any right of residence, nor had she alleged violence against her father-in-law/writ petitioner or husband. The bad blood between the applicant daughter-in-law on one side and her husband and father-in-law on the other was also recorded.

However, in the instant case, there is nothing on record to show that the respondent has submitted her version of facts before the forums below.

Insofar as the first forum is concerned, the order of the Sub-Divisional Officer and Tribunal Officer is annexed to the present writ petition at page-16 thereof. It is recorded there that the petitioner was present and filed hazira and the opposite party was absent. The petitioner was heard and considered.

The petitioner had submitted that his daughter-in-law, the opposite party in the said case, was not vacating his flat and that he is a pensioner and does not want any maintenance from his daughter-in-law or his son. He also submitted that he has not gifted his flat at Rajdanga Main Road to anyone. It appeared from the submission, it was recorded, that the matter was civil in nature and was not maintainable before the Tribunal. Accordingly, the case was dismissed, without inviting any pleadings from the respondent.

Before the District Magistrate, both the parties had appeared and the District Magistrate had decided the matter as per direction of a coordinate Bench.

However, it has to be taken note of that the District Magistrate is the Appellate Authority under the Statue-in-question and not the first forum. As such, there was no occasion for any pleadings to be filed by the private respondent/alleged daughter-in-law, before the said forum for the first time. The District Magistrate, upon recording the submissions and allegations of the parties, affirmed the finding of the Sub-Divisional Officer to the extent that the issue involved was the subject-matter of a civil dispute and ought to be heard before a civil court.

Hence, as opposed to the cited judgment by the petitioner, in the present case, it cannot be said that

any of the allegations made by the writ petitioner was “admitted” by the private respondent at any point of time, since she did not have an opportunity to file pleadings before the first forum.

Unlike *Debaki Nandan Maiti (supra)*, the present challenge is not an original application by the writ petitioner for grant of eviction by the writ court but a challenge preferred against the concurrent findings of both forums that the matter is not maintainable before the said forums.

The writ petitioner, in the present case, has not approached the writ court for the first time but submitted to the jurisdiction of the competent authority under the 2007 Act by filing an application under Section 4 of the said Act.

Section 2(h) of the Act defines “senior citizen” to mean any person being a citizen of India, who has attained the age of sixty years or above. "Parent" has been defined in Clause (d) of Section 2 as the father or mother, whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.

Section 4 (1) of the Act provides that a senior citizen including parent who is unable to maintain himself from his own earning or property owned by

him, shall be entitled to make an application under Section 5 in case of –

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2 of the Act.

(g) of Section 2 defines "relative" to mean any legal heir of a childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

It is conspicuous to mention that, in the present case, the writ petitioner has not preferred the application against his son but his daughter-in-law, who is neither the child of the petitioner nor a relative of the petitioner within the definition of Section 2(g) of the 2007 Act.

Upon a consideration of Section 4(1) of the Act, it is also clear that the petitioner does not fall within the zone of a childless senior citizen and the eviction proceeding has not been filed against such of his relative as referred to in Section 2(g).

The subsequent sub-sections of Section 4 as well as the other sections pertain only to senior citizens, in case they fall within the contemplation of

the definitions of Section 2 as well as Section 4(1) of the 2007 Act.

Here the writ petitioner specifically invoked the provisions of the 2007 Act without being competent under the said Act to maintain the eviction proceeding against his daughter-in-law simpliciter.

As such, there is no illegality or irregularity in the decision-making process of the forums below in observing that the matter pertains to a civil dispute and the said authorities do not have jurisdiction under the 2007 Act to decide the eviction proceeding initiated by the petitioner. As such, there is no scope of interference in the present writ petition.

Accordingly, WPA No. 2535 of 2023 is dismissed, without any order as to costs.

However, nothing in this order shall preclude the petitioner from instituting a proper eviction suit before a competent civil court, if the petitioner is so entitled in law. In case such a proceeding is initiated, the said court shall decide all issues in accordance with law and also adjudicate upon any interim application, if filed by the petitioner in connection with such suit, without being influenced on merits by any observation made herein.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)