

Item No. 3
25.07.2023
Court. No. 19
GB

C.O. 1132 of 2022

Pritam Giri
Vs.
Sukumar Giri

*Mr. Tanmoy Mukherjee,
Mr. Sounak Mondal,
Mr. Souvik Das,
Mr. Rudranil Das,
Mr. K.R. Ahmed*

...for the Petitioner.

*Mr. Partha Pratim Roy,
Mr. Lakshminath Bhattacharya*

...for the Opposite Party.

The revisional application has been filed against an order dated November 14, 2019, passed by the Sub-Divisional Magistrate, Diamond Harbour, District – 24 Parganas (South) in Case No.01/SC/SD/DH of 2019, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner assails the order passed by the learned tribunal on the ground that the deed of gift bearing no.1108 of 2013, could not have been directed to be cancelled and declared void as the transfer was made by the father at a time when he was not a senior citizen. In term of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the ‘2007 Act’), only transfer by a senior citizen would attract the said provision.

Mr. Mukherjee places the provision in detail and submits that where a senior citizen who, after the

commencement of the Act, transfers by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the transfer of the property shall be deemed to have been made by fraud or coercion or undue influence.

The learned tribunal, without taking into consideration the age of the father when the deed was executed, invoked the power under Section 23 of 2007 Act and cancelled the deed.

According to Mr. Mukherjee, Section 23 of the 2007 Act can be broken up into four parts:-

- a) The doner has to be a senior citizen at the time of executing the deed of gift;
- b) The deed of gift has to be executed after coming into force of the 2007 Act;
- c) There has to be a condition in the deed of gift for maintaining and providing the basic amenities to the parent/doner;
- d) Lastly, the donee or the son or daughter must fail to provide such amenities.

Without the aforementioned four conditions being fulfilled, the question of cancellation of the deed would not arise.

Mr. Mukherjee further contended that the Court tribunal had to come to a specific finding that the son had not provided the basic amenities to the father.

Mr. Roy, learned advocate appearing on behalf of the opposite party, categorically denies the contentions of Mr. Mukherjee and submits that the learned tribunal proceeded on the facts available and had come to a specific finding that the son did not maintain the father.

During the course of arguments, this Court finds that the issues can be settled, if the parties are willing to give up their personal ego and other acrimonious issues by behaving in a mature and civilised manner. The Court, therefore, requests the learned counsel for each of the party to speak to their clients. Ultimately, this Court finds that the issue need not be decided on the legal questions raised by either party as the dispute is compromised, on the following terms set out by the court which will be binding on the parties:

- A) The right acquired by the petitioner in terms of the deed of gift, shall remain with the petitioner. However, as a son is bound to provide shelter to the father, the father and the biological mother of the petitioner will be residing in the said building, of which the petitioner is the owner.
- B) Mr. Roy, upon instruction from his client, submits that the father has made arrangements for a separate accommodation for the second wife and she will not enter the petitioner's house.
- C) The parents will live on the first floor of the three storeyed building. They will live in a separate mess, but use the common areas in the building.

D) The opposite party shall not create any disturbance and shall not disturb the peace and tranquillity of the petitioner and vice versa. They shall live independently and separately for all practical purposes.

E) The petitioner will pay Rs.10,000/- per month jointly for the father and for his own mother. All medical expenses and cost of hospitalization shall be borne separately by the petitioner. The petitioner shall ensure that the father and mother are treated well and their health conditions are looked after. The income of the father is not considered at this stage.

With the settlement arrived at between the parties, the entire issue is disposed of accordingly. The parties are directed to comply with this order.

The order impugned dated November 14, 2019 passed by the Sub-Divisional Magistrate, Diamond Harbour, District – 24 Parganas (South) in Case No.01/SC/SD/DH of 2019, is set aside.

Accordingly, the revisional application is disposed of on compromise.

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

(Shampa Sarkar, J.)