

September 18, 2023
Sl. No.03
Court No.19
s.biswas

CO 1868 of 2023

Sri Harihar Bag
vs.
Sri Aniruddha Bag

Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty

... for the petitioner

Affidavit of service filed by the petitioner is taken on record.

Despite service, none appears on behalf of the opposite party.

The order impugned before this court is an order of dismissal of the application filed by the father under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The application was registered as Misc. Case No.03 of 2021 and was pending before the learned Maintenance Tribunal at Bardhaman Sadar (South). The application was filed under Sections 4 and 23 of the said Act.

It appears to the court that the petitioner, as the father and a senior citizen alleged that the son was not maintaining him and prayed that the deed of gift which was executed in favour of the opposite party should be declared void, in view of the violation of the condition incorporated in the said deed of gift with regard to the maintenance of the father.

From the order impugned dated December 28, 2022, it appears that the Chairman of the said

tribunal disposed of the application filed by the petitioner on the following grounds, without granting any relief :

- a) The opposite party did not have any stable income.
- b) The opposite party was looking after the mother.
- c) The opposite party undertook not to disturb the petitioner.

This court finds that the case of the petitioner was neither considered nor discussed. The rejection of the petitioner's application was only based on the unstable income of the son and the statement of the son that the mother was being looked after by him. Whereas, in the application filed by the petitioner, it had been categorically mentioned that the opposite party had driven out his mother and his wife from the house. The employment of the opposite party was also mentioned.

In any event, this court is of the view that the learned Chairman ought to have decided the issues on their merits and on the basis of the records and evidence. A summary rejection of the father's application was not warranted by law. This is a case where the learned Chairman failed to exercise the jurisdiction vested by law inasmuch as, the provision

of Section 23 was not at all considered. Had the tribunal decided the said issue on the basis of the deed of gift and denied the relief, the father had the alternative remedy to prefer a statutory appeal. However, when a court or tribunal fails to exercise jurisdiction vested upon it by law, application under Section 227 of the Constitution of India is entertainable on the ground of perversity.

Under such circumstances, the revisional application is allowed. The order impugned is set aside. The matter is remanded to the Chairman, Maintenance Tribunal, Bardhaman Sadar (South) for fresh hearing of the application under Sections 4 and 23 of the said Act, in accordance with law.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)