

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7677 OF 2022
WITH
INTERIM APPLICATION NO.20008 OF 2022

Anirudh Vijay Mayekar and Anr. ...Petitioners
Versus
Vijay Ramchandra Mayekar and Anr. ...Respondents

...

Mr. Sanjiv A. Sawant a/w Ms. Samiksha Mane i/by Mr. Abhishek Deshmukh,
for Petitioners.

Mr. Nitin Sejpal a/w Mr. Krunal Thakkar for Respondent Nos.1 & 2.

Mr. A.P. Vanarse, A.G.P. for Respondent Nos.3 to 6.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 26, 2023.

P.C.:

1. Petitioners have filed the present Petition challenging order dated 25 May 2022 passed by the Maintenance Tribunal under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By the impugned order dated 25 May 2022, the Maintenance Tribunal has partly allowed the application filed by Respondent Nos.1 & 2 by directing the Petitioners to vacate Flat No.1504, 15th Floor, D-Wing, Unique Greens, Near Kasarwadvli Police Station, Ghodbunder Road, Kavesar, Thane (W). The

Maintenance Tribunal has also directed the Petitioner No.1 to pay maintenance amount of Rs.10,000/- to Respondent Nos.1 & 2.

2. I have heard the learned counsels appearing for the parties. It is the case of the Petitioners that the Flat No.1504 in building Unique Greens is purchased by the father by utilizing the funds of mother of Petitioner No.1. On the basis of this contention, Petitioner No.1 claims a share in Flat No.1504. Apparently, the parties have already filed two suits bearing Special Civil Suit No.278 of 2022 and Special Civil Suit No.563 of 2020 which involve the issue inter alia with regard to the rights and entitlements between Petitioner No.1 and Respondent Nos.1 & 2 with regard to Flat No.1504. The claim raised by Petitioner No.1 about share in Flat No.1504 would be decided by the Civil Court in the said two Suits. Therefore, the order passed by the Maintenance Tribunal on 25 May 2022 would not be determinative of the issue of title in Flat No.1504. What the Maintenance Tribunal has essentially directed is that Respondent Nos.1 & 2 should be permitted to reside in Flat No.1504 without any obstruction by Petitioners. In my view the said arrangement of residence of Respondent Nos.1 & 2 in Flat No.1504, without any obstruction of Petitioners, can be continued till the Civil Court decides Special Civil Suit No.278 of 2022 and Special Civil Suit No.563 of 2020. Till

the decision of the said Suits, while Respondent Nos.1 & 2 can reside in Flat No.1504, they should not create any third party rights in the said flat to avoid any further complications till decision of the said suits.

3. So far as the direction for payment of maintenance of Rs.10,000/- per month to be paid by Petitioner No.1 to the Respondent Nos.1 & 2 is concerned, the learned counsel appearing for Respondents would fairly submit that it is up to the Petitioner No.1 to pay the said amount and that if the amount of Rs.10,000/- towards maintenance is offered by the Petitioners, then only the Respondent Nos.1 & 2 would accept the same. He would submit that till date, Petitioner No.1 has failed to pay any amount in terms of order of the Maintenance Tribunal. It appears that there is some evidence on record to show that Respondent No.1 is earning some income. It is the case of Respondent Nos.1 & 2 that the entire consideration for purchase of Flat No.1504 has been borne by them. This is yet another factor which would indicate some income being earned by the Respondent Nos.1 & 2. It is not the case of Respondent Nos.1 & 2 that they are totally incomeless. Also whether Petitioner No.1 is liable to pay maintenance to Respondent No.2, who is his paternal aunt becomes debatable. Admittedly Respondent No.1 has remarried after death of his first wife (mother of Petitioner No.1). It is

therefore difficult to believe that Respondent No.1 is wholly dependent on Petitioner No.1. In that view of the matter, the order directing payment of maintenance of Rs.10,000/- by Petitioner No.1 to Respondent Nos.1 & 2 cannot be sustained and deserves to be set aside.

4. Accordingly, I proceed to pass the following order:

- i) The Respondent Nos.1 & 2 are permitted to occupy and reside in Flat No.1504, 15th Floor, D-Wing, Unique Greens, Near Kasarwadvli Police Station, Ghodbunder Road, Kavesar, Thane (W) without any obstruction by Petitioners in any manner till decision of Special Civil Suit No.278 of 2022 and Special Civil Suit No.563 of 2020 . Petitioners shall not enter in Flat No.1504.
- ii) The rights and entitlements of the parties in respect of Flat No.1504 shall be decided by the Civil Court while deciding the said two Suits without being influenced by the order passed by the Maintenance Tribunal.
- iii) Till decision of the Special Civil Suit No.278 of 2022 and Special Civil Suit No.563 of 2020, Respondent Nos.1 & 2 shall not create any third party rights or part with possession of Flat No.1504.

iv) The direction of the Maintenance Tribunal for payment of maintenance of Rs.10,000/- by Petitioner No.1 to Respondent Nos.1 & 2 is set aside.

5. With the above directions, the Writ Petition is disposed of. In view of the disposal of Writ Petition, Interim application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)