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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12286 OF 2023

Shantaram Shankar Desai

...Petitioner

V/s.

The State of Maharashtra thru'
the Additional Collector & Ors.

...Respondents

Mr. Sumit S. Kate for Petitioner.

Mr. C.D. Mali, AGP for Respondent No.1-State.

Mr. Prashant D. Patil for Respondent No.2.

Mr. C.D. Jadhav for Respondent No.3

CORAM: MADHAV J. JAMDAR, J.

DATE: 3rd November 2023

P.C.:

1. Heard Mr. Sumit Kate, learned Counsel appearing for the Petitioner, Mr. C.D. Mali, learned AGP for Respondent No. 1-State, Mr. Prashant D. Patil, learned Counsel appearing for Respondent Nos. 2 and Mr. C.D. Jadhav, learned Counsel appearing for Respondent No.3.

2. The Petitioner, who is a senior citizen, by the present Writ Petition has challenged legality and validity of order dated 17th August 2023 passed by the Appellate Tribunal @ Additional Collector, Mumbai Sub-urban District in Appeal No.15 of 2023.

The challenge in the said Appeal was limited to the extent of not granting order of maintenance by the learned Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "**said Act**"). However, the learned Appellate Tribunal has in the Appeal filed by the senior citizen set aside entire order dated 19th June 2023 passed by the learned Tribunal i.e. even the order which has been passed in favour of the senior citizen.

3. It is the contention of Mr. Kate learned Counsel appearing for the Petitioner that the order dated 19th June 2023 passed by the learned Tribunal is in fact in favour of the Petitioner and only order of maintenance, which has been sought by the Petitioner before the learned Tribunal has not been granted and therefore the Appeal has been filed under Section 16 of the said Act.

4. Thus, it is clear that the learned Appellate Tribunal has committed grave illegality and irregularity by which the entire order dated 9th June 2023 of the learned Tribunal passed in favour of the senior citizen has been set aside. Accordingly, impugned order dated 17th August 2023 passed by the learned Appellate Tribunal in Appeal No.15 of 2023 deserves to be quashed and accordingly the same is set aside and said Appeal No. 15 of 2023 is remanded back to the learned Appellate Tribunal. It is clarified that said Appeal No. 15 of 2023 is

concerning only with respect to not granting maintenance order by the impugned order dated 19th June 2023 of the learned Tribunal and other directions given by the learned Tribunal are not at all challenged.

5. Accordingly, said Appeal No. 15 of 2023 is remanded to the learned Appellate Tribunal. All the parties to said Appeal shall remain present before the learned Appellate Tribunal on **1st December 2023 at 2.30 pm.**

6. The learned Appellate Tribunal to dispose of said Appeal No. 15 of 2023 on or before 29th February 2024.

7. It is clarified that this Court has not considered the contentions on merits regarding said claim of maintenance and all contentions in that regards are expressly kept open.

8. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)