

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15679 OF 2022

Shri. Shailesh Vasant Prabhu

...Petitioner

Versus

Smt. Ujwala Vasant Prabhu & Ors.

...Respondents

...

Mr. Shailesh A. Chavan, for Petitioner

Mr. S.S. Redekar, for Respondent No.1.

...

CORAM : SANDEEP V. MARNE, J.

DATE : NOVEMBER 09, 2023.

P.C.:

1. By this Petition, Petitioner challenges order dated 21 June 2022 passed by the Maintenance Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, by which the Tribunal has directed the Petitioner to vacate Flat No.1301, 13th Floor, Sampda Heights, Parel, Mumbai with further directions for cancellation of the Affidavit dated 23 August 2010. The Maintenance Tribunal has further directed Petitioner and his two brothers Sachin Prabhu and Sanjay Prabhu to pay amount of Rs.1,500/- each and to the daughter Smt. Sapana Sawant to pay Rs.250/- per

month to the mother towards maintenance.

2. I have heard Mr. Chavan, the learned counsel appearing for the Petitioner. He would submit that the Maintenance Tribunal has erroneously directed the Petitioner to vacate Flat No.1301 ignoring the position that the Petitioner has no other place for residence. That Petitioner has been residing in Flat No.1301 along with his wife and two minor daughters and there is no other alternate residence for the family. He would further submit that the mother herself had agreed to transfer title in respect of Flat No.1301 in favour of the Petitioner since the other two brothers were given sale proceeds in respect of another property sold by the father before the marriage of Petitioner. That Petitioner has always taken care of his Mother and is willing to take care of her in future as well.

3. *Per contra* Mr. Redekar, the learned counsel appearing for Respondent No.1 would oppose the Petition and support the order passed by the Maintenance Tribunal. He would submit that the Petitioner has admitted in his reply that he has purchased one BHK flat at Shahapur and that therefore his contention that there is no other flat for his residence is incorrect. He would further submit that the Maintenance Tribunal has considered the fact that the Petitioner is addicted to alcohol and has been mistreating the Mother.

He would further submit that no error is committed by the Maintenance Tribunal in passing the impugned order dated 21 June 2022. He would further submits that the order dated 21 June 2022 has already been executed on 13 October 2022.

4. I have considered the submissions canvassed by the learned counsel for the parties. The main ground of challenge to the order of Maintenance Tribunal by the Petitioner is absence of any other alternate residence for Petitioner and his family. The learned counsel appearing for the Petitioner has strenuously contended before me that the Petitioner, his wife and two minor daughters do not have any other alternate residence. This contention however appears to be factually incorrect in that the Petitioner has admitted in Paragraph-7 of his reply filed before the Maintenance Tribunal on 21 October 2021, that he has purchased 1 BHK Flat at Shahapur. The learned counsel for the Petitioner attempted to suggest that the said flat has been sold during Covid-19 pandemic. However this again appears factually incorrect in that reply filed by Petitioner on 21 October 2021 does not raise any contention about the sale of the Flat at Shahapur. Even when the proceedings were heard before Maintenance Tribunal on 21 June 2022, the Petitioner never raised any contention about sale of the Flat at Shahapur by him. In fact the Maintenance

Tribunal has taken the factum of ownership of Flat at Shahapur by the Petitioner while passing the impugned order. Therefore the contention about absence of other residence for Petitioner sought to be raised in the present Petition deserves to be rejected.

5. So far as the certain documents executed by the Mother in favour of Petitioner in respect of Room No.1301 is concerned, reliance is placed on the Will dated 22 September 2011 executed by the Mother in respect of Room No.56/6 Hiraseth Aagri Chawl, G.D.Ambedkar Road, Parel, Bhoiwada, Mumbai. It appears that Room No.56/6 in Hiraseth Aagri Chawl, has been redeveloped and the permanent alternate accommodation received in lieu thereof is Flat No.1301 on 13th Floor of the building Sampda Heights. The Petitioner cannot place reliance on the Will dated 22 September 2011 in view of the fact that the mother is still living. Therefore the Will will not in any effect during the lifetime of the mother.

6. Undoubtedly, the mother is owner of the Flat No.1301. She does not have any other place of residence. She is entitled to decide as to who will stay along with her in Flat No.1301. She has come up with a specific case that the Petitioner has been ill treating her. Allegations are made about withdrawal of amount from her accounts by Petitioner. In such circumstances no fault can

be traced in the order of the Maintenance Tribunal in directing Petitioner to vacate Flat No.1301.

7. However, the order passed by the Maintenance Tribunal on 21 June 2022 can be modified in respect of direction to pay monthly maintenance of Rs.1,500/- by the Petitioner. On account of vacation of Flat No.1301, the Petitioner will have to reside along with his family either at Shahapur or will have to make some arrangement on rental basis. In that view of the matter, since additional expenditure will have to be incurred by the Petitioner for arranging a separate rental residence or for travelling from Shahapur, it would be appropriate that the order directing payment of monthly maintenance of Rs.1,500/- qua the Petitioner to the Mother can be set aside.

8. Accordingly the Petition is disposed of by modifying the order dated 21 June 2022 passed by the Maintenance Tribunal to the limited extent that the Petitioner alone shall not be liable to pay any monthly maintenance amount to the Mother. Rest of the order would remain undisturbed. With the above directions, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)