

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 325 OF 2023**

Dhirumal P Karnani

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr Mayur Khandeparkar, *with Apurva Manwani, Minal Chandnani, Sumeet Gemnani & Zoheb Merchant, i/b JS Chandnani, for the Petitioner.*
Mrs AA Purav, AGP, *for the State.*
Mr Monish Bhatia, *for Respondent No.4.*

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 6th April 2023

PC:-

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SANKPAL

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1. The Petitioner is the father of the 3rd Respondent and father-in-law of the 4th Respondent. The Petitioner is aggrieved in part by an order of 7th October 2022 by the Chairman of Senior Citizen Welfare Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act 2007. By that order, the Petitioner was awarded maintenance of Rs. 10,000/- per month but prayer clauses (c) and (d) which impugned certain Deeds of Gift were not considered and not dealt with. The approach taken was that this was

the remit of a Civil Court and that the Petitioner should file a civil suit.

2. We believe the law in this regard is well-settled including by a recent judgment of the Supreme Court in *Sudesh Chhikara v Ramti Devi & Anr.*¹ The question of whether or not the Deed is subject to a condition is always a matter of fact and of evidence to be proved. Section 23 of the Act was completely overlooked. The condition can never be presumed to be absent. This does not divest the tribunal of taking up these issue and allowing parties to place their respective cases before the tribunal constituted specifically for that purpose. In fact, 11 to 14 of the Petition specifically aver that the Gift Deed of the commercial shop was conditional, and that the condition was not met or was breached. That would require an adjudication under Section 23.

3. The contentious property is a commercial shop. There was a partition wall put up by Respondents Nos. 3 and 4. It has been removed under directions of the Tribunal. Both Petitioner and Respondents Nos. 3 and 4 claim to be running their respective business from different parts of the same shop. The purpose of the Act is not to protect children against parents, but the other way around. If the Petitioner is running his business in the shop he is entitled to do so without interference from Respondents Nos. 3 and 4 against whom there is also a finding for maintenance. The Deed of Gift, until adjudicated, cannot make that kind of a difference because after all it is the father who is the donor and the Deed of

1 (2022) SCC OnLine SC 1684.

Gift itself is predicated on the premises belonging to the father in the first place. The business is that of a Home Decor provisioning store.

4. We are now told for the first time that the 3rd Respondent has by yet another Deed of Gift transferred of the very property to his wife, the 4th Respondent. Neither Respondents Nos. 3 and 4 will effect any further transfers. The second Gift Deed is supposed to have September 2022. Prima facie this only fortifies our view that urgent relief is required until the Tribunal decides the question of the Gift Deed following the directions set out below.

5. We do not want any further controversy on site. We now take the liberty of appointing the Court Receiver as the Receiver of the premises in question namely, Basement, Ground, first and second floor of Unit No. 7, Sheet No. 48, Plot Nos. 9 and 14, Sector 6-A, Furniture Bazar, Ulhasnagar, District Thane. The Court Receiver will put is board inside the premises in an inconspicuous spot. The Court Receiver will appoint the Petitioner as his only agent in respect of the entire shop without payment of royalty or a security deposit. The Petition will have to put the Receiver funds for the routine amount required. This is to be done by Monday, 10th April 2023. The Receiver will proceed to take symbolic possession of the premises, tomorrow itself, 7th April 2023. This is without prejudice to the rights and contentions of Respondents Nos. 3 and 4.

6. The Receiver will attend the premises on 7th April 2023, 11.00 am. The 3rd Respondent will be entitled to be present only in

the presence of the Court Receiver to identify his belongings so that these can be inventoried. The 3rd Respondent will identify the goods that he claims are his with sufficient proof of ownership or title to those goods.

7. Until the Receiver takes possession there is an injunction against all parties from creating any third party rights, parting with possession or put it anyone else in possession of the premises.

8. Application No. 10 of 2022 is restored to the file of the Chairman/President of the Senior Citizens Welfare Tribunal. The matter is restored for the limited purpose of prayer clauses (c) and (d) which relate to a Gift Deed dated 29th November 2020 registered under No. 1452 of 2020 and the prayer clause (c) for possession of the premises in question covered by that Gift Deed.

9. If the order of the Tribunal is against the Petitioner in regard to the Gift Deed, it will not be acted on for a period of three weeks thereafter to permit the Petitioner to approach this Court.

10. All contentions before the tribunal in regard to the restored Petition and prayer clauses (c) and (d) are also expressly kept open.

11. The rest of the order is not disturbed.

12. We request the tribunal to dispose of the Application at his earliest convenience.

13. In view of this order that has become necessitated only after the disclosure was made in Court, we will not dispose of the Petition today but list it high on board, on Tuesday, 11th April 2023 for the Court Receiver's report.

(Neela Gokhale, J)

(G. S. Patel, J)