

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 1657 OF 2018**

Rajesh S/o Rajkumar Pande

Aged about 37 Years, Occupation :
Private R/o Wasvi Archades Flat
No.303, Plot No.34, Divyanagari, Bus
Stop Godhni road, Nagpur 440016

...Petitioner

// VERSUS //

1. Assistant Commissioner of Social Welfare
Department, Nagpur-cum-Appellate
Tribunal under Senior Citizens Act, 2007
Office Address : Dr. Babasaheb Ambedkar
Social Justice Building, Wing-B, First Floor,
in front of Government ITI,
Shradhanandpeth, Nagpur-22
2. Sub-Divisional Magistrate-cum-President,
Maintenance Tribunal under Senior Citizens
Act, 2007 Office of Sub-Divisional
Magistrate, Nagpur Gramin, Nagpur
3. Shri Rajkumar Ramdayal Pande,
Aged 68 years, Occ. Retired
4. Smt. Sandhya Rajkumar Pande,
Age 60 Years, Occ. Nil
Both Nos. 3 & 4 C/o Natrajan Pillai Shashi
Apartment, Opp : Dolphin Schools,
Meshram Layout, Digdoh, Nagpur

... Respondents

Shri A.S.Dhore, Advocate for the petitioner.

Ms. H.N.Jairpurkar, AGP for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 22nd FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of
the parties.

2. In this writ petition, the challenge is raised to the order dated 14th February, 2018 passed by the respondent no.1 in Appeal No. 862 of 2017-18, rejecting the appeal filed by the petitioner under the provisions of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as “Act, 2007”), on the ground that respondent no.1 could not hold the hearing on 14th February, 2018, because of internal dispute between both the parties.

3. The petitioner is a son of respondent nos. 3 and 4. It is submitted that the petitioner is ready to maintain the parents i.e. respondent nos. 3 and 4, but they made the complaint to Sub Divisional Magistrate under the Act, 2007 alleging that the petitioner and his wife have driven out them out of the house on 18th October, 2017. Accordingly, the respondent nos. 3 and 4 prayed for grant of maintenance.

4. The petitioner has filed his written statement and resisted the claim. However, Sub Divisional Magistrate granted interim maintenance to pay Rs.9000/- to each to the respondent nos. 3 and 4 and total amount of Rs.18,000/- per month.

5. Learned counsel for the petitioner further points out that against the said order the appeal was preferred, however, it was rejected without recording any reason on merit and therefore submits that the impugned order is erroneous.

6. On the other hand, learned Assistant Government Pleader is not disputing the fact that no reason is recorded by the Appellate Authority while rejecting the appeal.

7. In the backdrop of rival contentions, I have perused the petition, documents filed alongwith the petition and the impugned orders.

8. Admittedly, the Appellate Court did not consider the case on merit and without recording any reason, dismissed the appeal on the ground that on 14th February, 2018 when the matter was fixed for hearing the Appellate Court could not hold the hearing because of the internal dispute between the parties. It is surprising to note the reason recorded by the Appellate Court for rejecting the appeal. It is obvious when the appeal is filed there is a dispute subsists between both the parties and if that is the fact how the authority could dismiss the appeal because there is an internal dispute between the parties and therefore the hearing could not be held and how it can be a reason for rejection of the appeal.

9. In this writ petition, while issuing notice, the petitioner was permitted to pay Rs.10,000/- each to the respondent nos. 3 and 4, which the petitioner has been paying regularly.

10. In the circumstances, I am of the opinion that present petition needs to be allowed by continuing the interim order with modification that the petitioner shall pay Rs.12,000/- per month (i.e. Rs. 6000/- each) till the decision of the appeal. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order dated 14th February, 2018 passed by the Assistant Commissioner of Social Welfare Department, Nagpur in Appeal No. 862 of 2017 is hereby quashed and set aside and the matter is remanded back to the Assistant Commissioner, Social Welfare, Nagpur to decide the same afresh after hearing both the parties;
- iii. The Assistant Commissioner of Social Welfare Department, Nagpur is directed to decide the appeal expeditiously in any case before **31st May, 2023;**
- iv. The petitioner shall pay Rs.12,000/- per month (i.e. Rs.6000/- each) to the respondent nos. 3 and 4 till the decision of the appeal.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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