

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.779 OF 2022

Sanjay S/o. Krushnaji Sakdeo,
Aged : 52 Yrs.,
R/o. Bhiwapur Ward behind
Vaishali Budhha Vihar,
Division 10, Chandrapur

.... **PETITIONER**

// VERSUS //

1. Krushnaji S/o. Sitaram Sakdeo,
Aged about 83 Yrs.,

2. Pramila W/o. Krushnaji Sakdeo,
Aged about 71 Yrs.,
Both R/o. Old BNR Railway Station,
Samrat Ashok Chowk, Chandrapur

.... **RESPONDENTS**

Mr Harish Thakur, Advocate for the petitioner
Ms S. S. Jachak (Gaikee), Advocate (appointed) for respondents

CORAM : G. A. SANAP, J.
DATED : 8th FEBRUARY, 2023

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

3. In this writ petition, the petitioner has challenged the order dated 15.09.2022 passed by the presiding officer of the Tribunal constituted under Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (For short 'Act of 2007'), whereby the presiding officer of the Tribunal allowed the application made by the respondent Nos. 1 and 2 under Section 9 of the Act of 2007 and quantified the maintenance @ of Rs.10,000/- per month for the respondent Nos. 1 and 2.

4. There is no dispute that the petitioner is the son of the respondent No.1 and respondent No. 2 is the step mother of the petitioner. This petition is argued by the learned Advocates for the parties on preliminary issue as to whether the presiding officer of the Tribunal had followed the procedure prescribed under the Act of 2007 and Rules framed there under in the matter of conducting the inquiry, leading evidence etc. Learned Advocate for the petitioner drew my attention to the Sections 4 and 8 of the Act of 2007 and submitted that the order passed by the presiding officer of the Tribunal does not satisfy the requirements of Sections 4 and

8 of the Act of 2007. Learned Advocate also relied upon Rule 13 of the Maharashtra Maintenance of Welfare of Parents and Senior Citizens Rules, 2010 (For Short 'Rules of 2010') and submitted that the provisions of this Rule had not been complied with in the matter of granting an opportunity to the parties to lead the evidence.

5. Learned Advocate appointed to represent the respondent Nos.1 and 2 submits that the order of maintenance has to be granted only when the senior citizens including parents proves that he or she is unable to maintain himself or herself from his or her own earnings or out of the property owned by him or her. Learned Advocate for the respondents has not disputed the procedure required to be followed by the Tribunal as contemplated under Section 8 of the Act of 2007 and Rule 13 of the Rules of 2010.

6. Learned Advocate for the petitioner in order to make good his submissions has placed on record the copy of the order-sheet /roznama from the proceeding initiated before the Tribunal.

Learned Advocate on the basis of this order-sheet/roznama pointed out that the proceeding was not fixed by the Tribunal for recording the evidence of the parties. On the basis of this, learned Advocate submitted that since the matter was not fixed for leading the evidence by the parties, the parties had no notice that they would be required to lead the evidence to substantiate their rival contentions.

7. The combine reading of Sections 4, 8 and 9 of the Act of 2007 and Rule 13 of the Rules of 2010 would show that the stage for recording the evidence is contemplated under the Act as well as by the Rules. Rule 13(1) specifically provided that Tribunal shall give to the parties an opportunity of leading evidence in support of their respective claims, and shall, after holding a summary inquiry as provided in sub-section (1) of Section 8, pass such order as it may deem fit. It is true that the proceedings before the Tribunal has to be tried summarily. As provided in Rule 13 (1) of the Rules of 2010 a stage for evidence has been contemplated. The duty is cast upon the Tribunal to see that the parties are given

an opportunity to lead the evidence to substantiate their rival claims. This mandatory provision cannot be deviated unless and until there is a specific mention in the order-sheet/roznama that there is no such need to record the evidence or that the parties despite granting them an opportunity to lead the evidence have chosen not to lead the evidence. In my view, on both these counts the order-sheet/roznama does not contain necessary statement. In this case, admittedly, the parties did not adduce the evidence. It is to be noted that the parties may not have adduced the evidence or made a request to adduce the evidence because of the failure on the part of the Tribunal to fix the case on a particular date after completion of pleadings for adducing the evidence. If the matter had been fixed for adducing evidence the parties would have got the notice of the same and acted accordingly. In my view, therefore, the grievance made by the petitioner is supported by the provisions and the Rules, as above. Learned Advocate for the respondents submit that they have no objection to go before the Tribunal and to lead the evidence or to take a decision on that aspect and make an appropriate statement before the authority.

8. Learned Advocate for the respondents submits that considering the precarious position in which the respondents are placed, this Court may set aside the order, but direct the petitioner to continue to pay the maintenance @ of Rs.10,000/- per month till the disposal of the matter. In my view, this submission is fair and reasonable. Learned Advocate for the petitioner submits that the Court may pass an appropriate order on this point, however, he submits that the Tribunal may be requested to dispose of the matter expeditiously. In my view, his submission is reasonable.

9. In view of the above, the petition is **allowed**.

10. The impugned order dated 15.09.2022 is quashed and set aside.

11. The matter is remanded to the Tribunal for deciding it afresh by granting an opportunity of leading evidence to the parties, if they so desire. The Tribunal shall grant a specific opportunity to both the parties to lead the evidence. In case, the parties chose not

to lead the evidence then the Tribunal shall make note of the same in the Roznama and proceed further.

12. Learned presiding officer of the Tribunal is requested to dispose of the application within three months from the date of the appearance of the parties.

13. It is made clear that till the decision of the application the petitioner shall continue to pay sum of Rs.10,000/- to the respondent Nos. 1 and 2 per month. After this order, the monthly maintenance be deposited before the Tribunal on or before 15th day of every month. The parties are directed to appear before the Tribunal on 20.02.2023.

14. The fees of Rs.7,000/- be paid to learned appointed Advocate for respondents, as remuneration. Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

