

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(207)

CWP-917-2020

Date of decision: - 17.10.2023

Mohini Abrol

....Petitioner

Versus

Kiran Abrol and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rajesh Sethi, Advocate
and Mr. Ajay Pal Singh Malhi, Advocate
for the petitioner.

Mr. Chandan Deep Singh, Advocate
for respondent No.1.

Ms. Rajni Gupta, Additional Advocate General, Haryana
for respondent No.6.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for setting aside order dated 09.07.2019 (Annexure P-20) passed by the Appellate Authority, Faridabad under the Maintenance and Welfare of Parents & Senior Citizen Act, 2007 (for short 'Act of 2007') as per which the order dated 12.05.2016 (Annexure P-3) and other orders dated 25.05.2016 (Annexure P-6) and dated 02.05.2018 (Annexure P-11) have been set aside.

2. Learned counsel for the petitioner has submitted that the

petitioner is a senior citizen and had filed an application under the Act of 2007, which was decided by the Maintenance Tribunal, Faridabad, vide order dated 12.05.2016 (Annexure P-3) and the respondents therein were ordered to be evicted. It is further submitted that against the said order, an appeal was filed by respondent No.1-Kiran Abrol before the Appellate Tribunal, Faridabad under Section 16 of the Act of 2007 and the Appellate Tribunal, Faridabad, vide order dated 09.07.2019 (Annexure P-20) had allowed the said appeal. Learned counsel for the petitioner has raised a preliminary issue and has submitted that the order passed by the Appellate Authority was heard and decided by one member i.e. Sh. Atul Kumar IAS, whereas, as per the provisions of Rule 17 of the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 (for short 'Rules of 2009'), the Appellate Tribunal, which is to hear the appeal, from the orders passed by the Tribunal, shall consist of three members and the Appellate Tribunal shall be presided over by the District Magistrate of the District or any officer as may be nominated by the State Government not below the rank of District Magistrate and thus, the impugned order dated 09.07.2019 (Annexure P-20) deserves to be set aside on the said ground alone. The relevant portion of Rule 17 of the Rules of 2009 is reproduced herein below: -

“The Appellate Tribunal shall consist of three members. The Appellate Tribunal shall be presided over by the District Magistrate of the District or any officer as may be nominated by the State Government not below the rank of District Magistrate. The non-official members shall be nominated from the following category: --

- (i) a social worker or representative from Non-Governmental Organization working for the welfare of senior citizens; and*

(ii) *an advocate who has worked in the filed of social welfare.”*

3. Learned counsel appearing for the State as well as for respondent No.1 have submitted that in fact, the appeal/application was filed by respondent No.1 before the Appellate Tribunal and not before the appellate authority and has prayed that in view of the provisions of Rule 17 of the Rules of 2009, the impugned order dated 09.07.2019 be set aside and the Appellate Tribunal consisting of three members be directed to decide the appeal of respondent No.1 afresh in a time bound manner and till the time the said decision is taken, status quo with respect to possession be maintained.

4. Learned State counsel, on instructions from Mr. Mohit, Law Officer, Social & Justice Department, Haryana, has submitted that the Appellate Tribunal, having three members, is hearing the appeals in District Faridabad.

5. Learned counsel for the petitioner, in rebuttal, has submitted that he has no objection to the said course of action, but has prayed that the Appellate Tribunal be directed to decide the appeal as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this order.

6. Keeping in view the above-said facts and circumstances and also the provisions of Rule 17 of the Rules of 2009 and also the consensus between the parties, the impugned order dated 09.07.2019 is set aside with the following directions: -

(i) The Appellate Tribunal, consisting of three members, as mentioned in Rule 17 of the Rules of 2009 and is hearing

appeals as per the instructions of State counsel, would consider the appeal filed by respondent No.1 against order dated 12.05.2016 (Annexure P-3) as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this order.

- (ii) Till the decision of the said appeal, status quo with respect to possession be maintained. The grant of the said interim order would not be construed as an expression on the merits of the case and the Appellate Tribunal would decide the matter independently, in accordance with law, after considering the submissions made by the parties concerned, uninfluenced by the grant of interim protection to respondent No.1 till the decision of the appeal.
- (iii) Parties are directed to appear before the Appellate Tribunal on 30.10.2023 and place the certified copy of this order before it.

7. Disposed of in the above-said terms.

October 17, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No