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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8097-2020 (O&M)
Date of decision: 11.12.2023

Uttam Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Garv Malhotra, Advocate
(Through Video Conferencing) and
Mr. Rohit, Advocate for the petitioner.

Mr. Kunal Muthreja, AAG, Punjab.

Mr. Vishal Sharma, Advocate for respondent Nos.4 and 5.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus and certiorari for quashing/setting aside the order dated 08.05.2018 (Annexure P-1) passed by the Deputy Commissioner, Pathankot and final order dated 02.07.2019.

2. Learned State Counsel as well as learned counsel appearing on behalf of respondent Nos.4 and 5 have submitted that the impugned order dated 02.07.2019, a complete copy of which has been placed on record as Annexure-B with the reply filed by respondent Nos.2 and 3, has been passed by the Sub Divisional Magistrate-cum-Maintenance Tribunal, Pathankot and the said order is appealable under Section 16 of The Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 whereas in para 32 of the writ

petition, it has been stated that there is no alternative remedy of appeal or revision.

3. Today, learned counsel for the petitioner has appeared through Video Conferencing and has submitted that the petitioner could not file an appeal at that stage since the certified copy of the said order was not made available to him in spite of repeated requests. It is further prayed that in view of the objection taken, the petitioner be permitted to withdraw the present writ petition with liberty to file an appeal before the Appellate Authority and since, the petitioner is pursuing the present writ petition thus, in case he files an appeal within a period of one month from today then the Appellate Tribunal be directed not to dismiss the same solely on the ground of limitation. It is contended that the Appellate Tribunal be directed to decide the case expeditiously.

4. Learned counsel for the petitioner has made a prayer to the effect that respondent Nos.4 and 5 be directed to clear the unauthorized wooden partition on the ground floor as the same is violating the right of the petitioner to easement as that is stopping fresh air and sunlight.

5. Learned counsel for respondent Nos.4 and 5 has fairly submitted that within a period of two weeks from today, respondent Nos.4 and 5 would clear the wooden partition on the ground floor but has prayed that they be permitted to go to the first floor of the house where respondent Nos.4 and 5 are residing, from the staircase which starts from the room on the ground floor which is in occupation of the petitioner.

6. Learned counsel for the petitioner, in rebuttal, has submitted that respondent Nos.4 and 5 can use the staircase peacefully.

7. Keeping in view the abovesaid facts and circumstances and also the submissions made by learned counsel appearing on behalf of the petitioner as well as respondent Nos.4 and 5, the present Civil Writ Petition is dismissed as withdrawn with liberty to the petitioner to take up all the points which have been raised in the present writ petition before the Appellate Tribunal by filing an appeal against the order dated 02.07.2019. In case such an appeal is filed within a period of one month from today, then the Appellate Tribunal would not dismiss the same solely on the ground of limitation. Till the decision of the said appeal, as has been agreed between the parties, respondent Nos.4 and 5 would clear the wooden partition on the ground floor within a period of two weeks from today and the petitioner would permit respondent Nos.4 and 5 to go to the first floor by using the stairs which start from the room on the ground floor which is in the possession of the petitioner. The said arrangements would continue only till the final decision of the appeal by the Appellate Tribunal in case, it is filed. The Appellate Tribunal, before whom the appeal would be filed by the petitioner, is directed to decide the said appeal as expeditiously as possible.

8. This Court has not opined on the merits of the case and the interim arrangement made should also not be construed as an expression on the merits of the case and the Appellate Tribunal would decide the appeal independently in accordance with law after hearing both the parties.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

11.12.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

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Whether reportable:-	Yes/No
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