

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

CWP-9168-2019

Date of decision : 09.03.2023

Deepak Kumar Gupta

...Petitioner

Vs.

**Additional Deputy Commissioner-cum-Sub
Divisional Magistrate, Ludhiana and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rishav Jain, Advocate and
Mr. Arihant Jain, Advocate for the petitioner.

Mr. Gurcharan Dass, Advocate for respondent No.2.

MANOJ BAJAJ, J.

By means of this writ petition under Article 226 Constitution of India petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 28.12.2018 (Annexure P-3), whereby application moved by respondent No.2 under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was accepted and petitioner was ordered to vacate the residential property.

Briefly, the facts leading to the writ petition are that Prem Chand Gupta-respondent No.2 was initially married to Chameli Devi and out of this wedlock, petitioner-Deepak Gupta and his brother, namely, Ajay Gupta were born, but after demise of Chameli Devi in the year 2000, respondent No.2 performed marriage with Indu Gupta in the year 2004, who was already having son, namely, Amit Gupta from her first marriage. Respondent No.2 along with his second wife and Amit Gupta was residing in House No.298-A, Agar Nagar

'A' Ludhiana from where rental income of Rs.15,000/- was also derived by them. The marriage of petitioner was solemnized in the year 2009 with Bhawna and out of this wedlock, a daughter was born and thereafter, the family settlement took place between the parties. The petitioner is residing in House No.B-XXXI-1703/4B/A, built on Plot No.327-328, Tibba Road, Ludhiana consisting of two rooms, one bathroom, one kitchen and one store, whereas respondent No.2/Prem Chand Gupta being owner in possession of House No.298-A, Agar Nagar, Ludhiana is residing separately along with his second wife and son Amit Gupta. Respondent No.2/Prem Chand Gupta brought a petition under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking eviction of the petitioner on various grounds from the property bearing No. B-XXXI-1703/4B/A built on Plot No.327-328, Tibba Road, Ludhiana.

The eviction petition was contested by the petitioner by filing a written statement dated 28.12.2018 (Annexure P-2). As per the averments, the said petition was filed by respondent No.2 at the instance of his second wife and the petitioner never refused to maintain his father, who is only elderly person in the family after the demise of his mother and brother.

The Maintenance Tribunal, Ludhiana vide impugned order dated 28.12.2018 (Annexure P-3) proceeded to accept the application thereby ordering eviction of petitioner from the subject property. Hence this writ petition.

Learned counsel for the petitioner has argued that the impugned order is not sustainable in law as there is nothing on record to indicate that the son of respondent No.2 ever neglected his father and admittedly the parties

were residing separately even before the petition for eviction was filed by respondent No.2. He submits that the summary procedure provided under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been misused by the senior citizen to seek eviction of the petitioner, who was in legitimate possession of the property. Learned counsel has drawn the attention of the Court to the impugned order dated 28.12.2018 to contend that the Additional Deputy Commissioner-cum-Additional District Magistrate, Ludhiana proceeded to accept the application of the senior citizen in a mechanical manner by passing a non-speaking order, whereby the petitioner has been directed to vacate and deliver the possession of the property to the senior citizen within one month. He submits that the operation of the said decision was also stayed by respondent No.1 to enable the petitioner to produce the stay order of the higher court. He prays that the impugned order be set aside and the application filed by the senior citizen be dismissed.

On the other hand, Mr. Gurcharan Dass, learned counsel for respondent No.2 opposed the prayer and argued that the petitioner had not only refused to maintain the father, but he also misbehaved with the senior citizen and on some occasions gave beatings to him. He submits that by virtue of family settlement arrived at between the parties in the year 2012, three properties were transferred by senior citizen in favour of the petitioner, but despite that his son is not satisfied, who is bent upon to grab the property bearing No.B-XXXI-1703/4B/A built on Plot No.327-328, Tibba Road, Ludhiana, therefore, the application under the The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was filed by the senior citizen.

During the course of hearing, learned counsel has produced the

site plan of property situated at Tibba Road, Ludhiana and submitted that the three properties shown in the red colour have already been transferred in favour of the son, whereas the other three properties shown in the green colour are under the ownership of the senior citizen. He submits that considering the conduct of the petitioner, respondent No.1 has rightly exercised the jurisdiction, therefore, the impugned order does not warrant any interference.

After hearing learned counsel for the parties and considering their rival stands, it transpires that the family settlement was arrived at between the parties in the year 2012 and admittedly the parties were residing separately when Prem Chand Gupta filed application under Section 23 under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. A perusal of this application shows that it contains the entire background of the family as well as details of their respective marriages and the settlement in their business disputes, whereby the senior citizen got retired on 31.03.2017 and handed over the business to son, but he allegedly failed to keep his words and did not repay the capital standing, loan and interest. The division of other properties is also explained in the application, and the eviction of the petitioner from the property bearing No.B-XXXI-1703/4B/A built on Plot No.327-328, Tibba Road, Ludhiana is founded upon the averment that the son, who had been given possession of this property for a period of two months has failed to vacate it. There is no averment in the entire application relating to the neglect of the father or refusal by son to maintain him. The averments may offer a valid cause of action for the senior citizen to invoke the jurisdiction before the Civil Court for breach of any condition of settlement deed relating to the business, but for lack of essential averments relating to the maintenance, the

application could not have been maintained. Further, a perusal of the impugned order reveals that the respondent No.1 has simply noticed the pleadings of the parties, who without giving any reasoning allowed the claim of the senior citizen ordering eviction of the petitioner.

In view of the above discussion, this Court has no hesitation in holding that the impugned order is not based upon correct appreciation of facts and law, therefore, calls for interference by exercise of the writ jurisdiction.

Resultantly, the writ petition is allowed and the impugned order dated 28.12.2018 (Annexure P-3) is set aside and the application filed by respondent No.2 under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 stands dismissed.

(MANOJ BAJAJ)
JUDGE

09.03.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No