

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.9589 of 2023

Date of Decision: May 04, 2023

Chandresh Kapoor & another

...Petitioners

Versus

Chairman, Appellate Tribunal, Senior Citizen-cum-Deputy Commissioner,
Rohtak & others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr.Vivek Puri, Advocate,
for the petitioners.

MANOJ BAJAJ, J.

Petitioners have filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 01.02.2023 (Annexure P-6), whereby the appeal filed by respondent No.3 against the order dated 13.09.2022 (Annexure P-3) has been accepted and the petitioners have been ordered to be ejected from the ground floor of House No.547, Ward No.19, Housing Board Colony, Rohtak. Further challenge is to the order dated 29.03.2023, whereby the application moved by petitioners for setting-aside the ex-parte order dated 01.02.2023 and seeking permission to appear for final argument, has been dismissed. It is also prayed that by way of a writ of mandamus, respondent Nos.1 and 2 be directed to not to execute the orders dated 01.02.2023 and 29.03.2023 during the pendency of the writ petition.

Learned counsel submits that respondent No.3-senior citizen brought his claim under the provisions of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 seeking eviction of the petitioners

from the subject property bearing House No.547, Ward No.19, Housing Board Colony, Rohtak through his application Annexure P-1 and the said claim was contested by the petitioners by filing a reply. He submits that upon examining the material on record, Maintenance Tribunal-respondent No.2 vide order dated 13.09.2022 dismissed the application filed by senior citizen. Learned counsel further submits that aggrieved against this decision, senior citizen preferred appeal before respondent No.1, wherein the petitioners continued to appear, but on 27.01.2023 their counsel could not reach in time and later made a request before respondent No.1 for hearing his submissions as the arguments on behalf of the senior citizen were heard. In this regard, learned counsel has drawn the attention of the court to the application moved by the petitioners on 27.01.2023 itself. He submits that without deciding the application, the appellate authority proceeded to accept the appeal thereby ordering ejectment of the petitioners vide order dated 01.02.2023, and subsequently through order dated 29.03.2023, application for setting aside ex-parte proceedings was also dismissed. He submits that the impugned orders are not sustainable and warrant interference.

After hearing the learned counsel and considering his submissions, it transpires that the petitioners had moved their application on 27.01.2023 before the appellate authority seeking its indulgence for hearing as their counsel was not present when the arguments on behalf of the senior citizen were heard. The said application remained pending and was decided on 29.03.2023, i.e., much after the decision of the appeal on 01.02.2023. This circumstance alone reflects erroneous approach adopted by the appellate authority, because it ought to have first decided the application

filed by the petitioners, and further the reason given in the order dated 29.03.2023 that the application is being dismissed because the appeal filed by the senior citizen stands accepted, is not tenable. It is not a case of inordinate delay on behalf of the petitioners in approaching the appellate tribunal for hearing, therefore, the decision of the appellate tribunal passed on 01.02.2023 is also not sustainable.

Since this court has neither decided the writ petition on merits nor has expressed any opinion on the merits of the case while remanding the case before the appellate tribunal for deciding it afresh, therefore, no notice is being issued to the senior citizen (respondent No.3) as this order would not cause any prejudice to him.

Consequently, the impugned orders dated 01.02.2023 and 29.03.2023 are set-aside and the case is remitted back before the appellate tribunal to decide the appeal afresh after hearing both the parties.

The parties are directed to appear before the appellate tribunal on 30.05.2023.

Writ petition is disposed of.

May 04, 2023
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No