

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CM-1286-LPA-2022 in/and
LPA-569-2022
Date of Decision: 16.01.2023

Mrs. Jyoti

.....Appellant

Vs.

District Magistrate-cum-Appellate Authority and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Dr. Khushbir Kaur Bhullar, Advocate,
for the applicant-appellant.

Mr. Anil Sharma, Addl. P.P. with
Mr. Rohit Kaushik, Advocate, for respondents No. 1 to 3.

G.S.SANDHAWALIA, J. (ORAL)

CM-1286-LPA-2022

By this application, the applicant-appellant seeks condonation
of delay of 49 days in filing the appeal.

For the reasons mentioned in the application which is duly
supported by an affidavit of the applicant-appellant, the application is
allowed and the delay of 49 days in filing the appeal is hereby condoned.

LPA-569-2022

In the present appeal the consideration is made to the order of
the learned Single Judge dated 25.04.2022 passed in CWP No. 16067-2021,
whereby the writ petition was dismissed with liberty to the parties to seek
their appropriate civil remedy, which may be otherwise available under law.
The petition was dismissed while noticing the observations made in an
earlier interim order dated 20.08.2021, wherein it was observed that the writ

petitioner is required to move the Civil Court.

In the writ petition, counsel for the appellant had argued on the strength of Section 27 of the Maintenance & Welfare of Parents and Senior Citizen Act, 2007 (for short '2007 Act') that the Civil Court jurisdiction is barred as such. In view of the factual matter of the case we are of the opinion that the said provision will not come into play keeping in view the background as such.

The writ petition was filed by the appellant, who is the daughter-in-law of Sh. Sham Sunder (since deceased) who apparently had a dispute with his other son Pawan Kumar and his wife Rajni who have been arrayed as respondents No. 4 and 5. The writ petition was filed with a prayer as such to get compliance of the order dated 22.05.2014 (Annexure P-4) which had been passed in favour of the appellant's father-in-law under the provisions of the said Act and on the basis of the registered will dated 02.03.2012 (Annexure P-7). Instead of filing any civil suit on the strength of the registered will as such, apparently the writ petition as such was filed seeking to enforce the said order and to decide the representation and complaint filed within a time bound manner.

Respondents No. 4 and 5 had also filed CWP-11934-2014 seeking quashing of the said order, however, unfortunately during the pendency of the said writ petition, the senior citizen Sham Sunder had expired on 08.11.2014 before the order could be implemented and therefore, the writ petition was disposed of as having been rendered infructuous on 03.12.2015 (Annexure P-9).

In our considered opinion, the *locus standi*, if any, for

enforcement of the said order as such was to the senior citizen who unfortunately has expired. The appellant being the daughter-in-law on the strength of the said order which was *inter se* qua the father and the son and benefit was granted to senior citizen qua his son against whom he had an order. If the appellant has any right on the basis of an alleged registered will, the learned Single Judge granted her appropriate remedy which may be available under law. The appellant would of course necessarily have to prove the will also by examining the attesting witnesses and on the basis of the same, she has been rightly relegated before the Civil Court who would pass appropriate orders in the proceedings which have to be necessarily initiated by her.

In such circumstances, we are of the considered opinion that filing the writ petition was only an attempt to take a shortcut as such to get possession of the house in dispute bearing 3214/1, Sector 41-B, Chandigarh, which is in possession of the brother-in-law and sister-in-law.

Accordingly, we do not find any merit to interfere in the order passed by the learned Single Judge.

The appeal is consequently, dismissed with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

January 16, 2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No