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

CWP-15427-2018

Date of decision : 30.01.2023

Gurpreet

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. J.S.Lalli, Advocate for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. Parminder Singh, Advocate
for the respondent Nos.3 to 5.

MANOJ BAJAJ, J.

This writ petition has been preferred by petitioner under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari to challenge the order dated 16.05.2018 (Annexure P-7), whereby eviction order against her has been passed under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 upon an application moved by respondent Nos.3 and 4.

Learned counsel for the petitioner has argued that the private respondent Nos.3 to 5, who are parents-in-law and husband, respectively have been treating her with cruelty and this compelled the petitioner to adopt her remedy under Section 12 Protection of Women from Domestic Violence Act, 2005, wherein Judicial Magistrate First Class, Karnal vide order dated 05.11.2014 directed the parents-in-law to provide a room in their house for the purposes of her residence. He submits that subsequently, vide order dated

14.09.2016, petitioner's husband was directed to pay her a monthly maintenance of Rs.2,500/- from the date of order till the disposal of the main petition. In this regard, attention of the Court is invited to the Annexures P-2 and P-3.

Learned counsel has further argued that the impugned order dated 16.05.2018 passed by Appellate Authority, Karnal whereby the claim of the senior citizen respondent Nos.3 and 4 has been accepted by directing the petitioner to vacate the house is wrong and illegal as the order dated 05.11.2014 (Annexure P-2) has not at all been referred. He further submits that the claim by the senior citizen is at the behest of their son, who even did not put any contest, therefore, the impugned order is not sustainable and deserves to be set aside. He prays that the application filed by the senior citizen be dismissed.

The prayer is opposed by learned counsel for respondent Nos.3 and 4, who has argued that the order dated 05.11.2014, whereby the senior citizen were directed to provide one room to the petitioner, ceases to exist after passing of the order dated 14.09.2016 (Annexure P-3). He submits that the property in question is owned by the senior citizens, therefore, they are well within their rights to seek eviction of the petitioner and her husband, who were maltreating them. According to the learned counsel, the impugned order passed by appellate authority is based upon correct appreciation of the material on record, therefore, the intervention by this Court under Article 226 Constitution of India is not warranted. He prays for dismissal of the writ petition.

Upon hearing learned counsel for the parties and considering the material on record, it transpires that the petitioner and her husband are having a

matrimonial dispute and it was the petitioner, who first knocked at the doors of the Court by filing her case under Section 12 Protection of Women from Domestic Violence Act, 2005. The order dated 05.11.2014 makes it absolutely clear that the senior citizens were directed to provide one room to the petitioner, but the said order was never challenged by them.

During the course of hearing, it is not disputed by learned counsel appearing on behalf of senior citizens that the case under Section 12 Protection of Women from Domestic Violence Act, 2005 is still pending adjudication. The argument that the order dated 05.11.2014 stood merged in the subsequent order dated 14.09.2016, when the interim application was decided by the Judicial Magistrate First Class, Karnal thereby directing the husband to pay a monthly maintenance of Rs.2,500/-, is without any merit as the two orders are distinct and have been passed against different parties i.e. parents-in-law and husband of petitioner, respectively. A perusal of the order dated 05.11.2014 shows that the direction has been made operative till further orders and since this direction has never been recalled, it cannot be said that the order became inoperative after passing of the order dated 14.09.2016 (Annexure P-3).

Besides, a perusal of the impugned order dated 16.05.2018 passed by Appellate Authority shows that it has accepted the claim of senior citizens on the solitary ground that the property in question is owned by them, whereas it was imperative for it to consider the background, particularly the litigation initiated by the daughter-in-law against them. Though the appellate authority has noticed the pendency of the petitioner's complaint under Domestic Violence Act, 2005, but it has not considered the binding effect of those orders. Thus, this Court has no hesitation in holding that the impugned order is bad in

law and is not sustainable.

Consequently, the writ petition is allowed and the impugned order dated 16.05.2018 (Annexure P-7) is set aside and the application filed by respondent Nos.3 and 4 (senior citizen) stands dismissed.

(MANOJ BAJAJ)
JUDGE

30.01.2023
vanita

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