

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

(211)

CWP-18399-2023**Date of decision: - 08.12.2023****Bimla Devi****....Petitioner****Versus****State of Haryana and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Fateh Saini, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

Mr. Nikhil Sabharwal, Advocate (Legal Aid Counsel)
for respondent No.4.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 14.02.2023 (Annexure P-3) passed by the Maintenance Tribunal, Kaithal, in execution application filed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as 'Act of 2007').

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner is a 75 year old widow and had filed an application for maintenance and protection of life and property under Section 4 read with Section 23 of the Act of 2007 against respondent No.4, who is the son of the petitioner. It is further submitted that after

hearing both the parties and after considering the reply filed by both the parties, the Maintenance Tribunal allowed the said case, vide order dated 05.10.2018 (Annexure P-1), by directing respondent No.4 to provide shelter to the petitioner to live and to deposit Rs.1500/- per month in her bank account before the 5th of every month for her maintenance and upkeep. It is also submitted that the appeal filed by respondent No.4 against the said order was dismissed vide order dated 27.05.2022 and thereafter, the petitioner had filed an execution application and the Sub-Divisional Officer (N), Kaithal, instead of executing the orders which had attained finality, as no writ petition was filed against the said orders passed by the authorities, modified the said order and did not execute the same in accordance with law. It is stated that it is a matter of settled law that the executing Court cannot go beyond the orders passed by the authorities under the Act of 2007 and thus, the impugned order dated 14.02.2023 (Annexure P-3) deserves to be set aside on the said ground alone and the order passed by the authorities under the Act of 2007 which had attained finality deserves to be executed.

3. Learned counsel for respondent No.4, on the other hand, has opposed the present writ petition and has submitted that the Sub-Divisional Officer (N), Kaithal in execution proceedings had passed the order after taking into consideration the fact that respondent No.4 is a poor person and that he has three children to support.

4. This Court has heard learned counsel for the parties and has perused the paper-book.

5. It is not in dispute that the petitioner is a 75 year old widow

and is the mother of respondent No.4. The petitioner had filed an application under Section 4 read with Section 23 of the Act of 2007 for the maintenance and protection of life and property. The Maintenance Tribunal after considering the pleas raised by both the parties allowed the said application vide order dated 05.10.2018 (Annexure P-1) in the following terms: -

“After hearing the parties and perusing the records, the Tribunal has come to the conclusion that no land has been transferred from the applicant to the respondent. The applicant is receiving old age pension of Rs.1800/- from Haryana Government. The applicant is already living separately from her husband. Therefore, the respondent is directed to provide a shelter for the applicant to live and deposit Rs.1500/- in her bank account before the 5th of every month for her maintenance and upkeep, so that the applicant can maintain her and live properly. The applicant is directed to give the photocopy of her bank account to the respondent through to the Court within 15 days of the order. The record after completion be consigned to record room.

Today this order as pronounced in the open court on 05/10/2018.”

A perusal of the same would show that respondent No.4 herein was directed to provide shelter to the petitioner to live and to deposit Rs.1500/- as maintenance per month in her bank account before the 5th of every month.

6. The appeal filed by the respondent No.4 against the said order was dismissed on 27.05.2022 (Annexure P-2). The relevant portion of the said order is reproduced herein below: -

“After hearing the parties and perusing the documents available on the file of the lower court, the Appellate Tribunal found that the applicant is an old woman, who is not able to maintain herself on her own. Old age pension is not sufficient for the food, clothes and

medicines and house rent of the appellants. Thus, in view of the above facts, the orders passed by the Court below are correct and based on facts in which no modification is required. The appellant is the son of the respondent. Therefore, it becomes his moral duty to provide accommodation to the respondent and the expenses for her maintenance. The appeal of the appellant is dismissed henceforth, as there is no force in the application of the appellant and the arguments presented by the counsel for the appellant. The order was pronounced in open court. The order of the lower court and a copy of these orders be sent to the concerned police station incharge and circle revenue officer for further necessary action.”

A perusal of the above reproduced order would show that the appellate Tribunal after hearing the arguments of both the parties had come to the conclusion that the petitioner was an old lady and was not able to maintain herself and the old age pension that she was receiving was not sufficient to meet the expenses on food, clothes, medicines and house rent and that since respondent No.4 was the son of the petitioner, thus, it was his moral duty to provide accommodation to the petitioner and also the expenses for her maintenance. It is not in dispute that the said order had attained finality. The petitioner had filed an execution application to execute the said order, but strangely, the Sub-Divisional Officer (N), Kaithal, vide impugned order dated 14.02.2023 (Annexure P-3) had not taken steps to execute the said orders, but rather modified the said orders and had observed that no further action is required to be taken regarding the same. The plea of the petitioner to the effect that even arrears at the rate of Rs.1500/- per month have not been given since 2018 is prima facie proved from the impugned order dated 14.02.2023 (Annexure P-3), which only records that Rs.3,000/- for the maintenance

for the month of January and February, 2023 had been paid. The arrears of the amount of Rs.1500/- per month which was ordered to be paid to the petitioner by the respondent No.4 vide order dated 05.10.2018 (Annexure P-1) was required to be recovered from respondent No. 4 by adopting due procedure in accordance with law. It is a matter of settled law that the Executing Court cannot go beyond the decree/orders passed by the Court/authorities under the Act of 2007 and it is the duty of the Executing Court to adopt the due procedure in accordance with law to execute the said orders. The impugned order dated 14.02.2023 (Annexure P-3) is in violation of the said principle and is thus not sustainable.

7. Keeping in view the above-said facts and circumstances, the present petition is allowed and the impugned order dated 14.02.2023 (Annexure P-3) is set aside and the matter is remitted to the executing Court/Sub-Divisional Officer (N), Kaithal with a direction to execute the orders (Annexures P-1 and P-2) passed under the Act of 2007, which had attained finality, in accordance with law, as expeditiously as possible.

December 08, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes