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

**CWP-27826-2019 (O&M)
Date of Decision: 25.04.2023**

NEERU

.. Petitioner**Vs.**

PRESIDING OFFICER AND OTHERS

..Respondents**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. N.K. Vashist, Advocate for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. Ashwani Gaur, Advocate
for respondents No.2 to 4.

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Manoj Bajaj, J. (Oral)

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 21.08.2019 (Annexure P-2), 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 No.2.

Learned counsel for the petitioner submits that the respondent No.2 (senior citizen) brought the application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in order to help his son, namely, Rakesh (petitioner's husband) with whom her matrimonial litigation is pending in the court of ACJM, Gurugram. Learned counsel has drawn the attention of the Court to the order dated 13.08.2019 (Annexure P-1) to contend that in the proceedings initiated by the petitioner under the Protection of Women from Domestic Violence Act, 2005, the respondents

were restrained from dispossessing the petitioner from the matrimonial

house, but ignoring the said decision, the District Magistrate, Gurugram accepted the claim of Jai Bhagwan ordering petitioner's eviction from the house in question. Learned counsel has drawn the attention of the Court to the stand of her husband, and submitted that he conceded to the claim of his father and stated that he has no objection if, he and his wife are evicted from the house in dispute. According to the learned counsel, this clearly indicates that the proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 were filed by the father in connivance with his son in order to defeat the rights of the daughter-in-law (petitioner). He prays that the impugned order be set aside and the application filed by the senior citizen be dismissed.

The prayer is opposed by learned counsel for the senior citizen, who submitted that the application by respondent No.2 (senior citizen) was filed on 10.07.2019 and the order by the ACJM, Gurugram was passed subsequently, on 13.08.2019 in favour of the petitioner, therefore, it is evident that the case by the petitioner was filed as a counter to the claim by the senior citizen. Learned counsel further submits that the application was filed by senior citizen against his own son as well as the daughter-in-law and a common ground was set up against both of them, therefore, it cannot be said that the application was moved by senior citizen in connivance with his son. Learned counsel submits that as the son and the daughter-in-law had been harassing the senior citizens, therefore, on this cause of action, they rightly invoked the jurisdiction of the Maintenance Tribunal, and it has taken into consideration the facts and circumstances of the case while ordering eviction of the petitioner. Learned counsel submits that it is the wife, who in connivance with her husband has filed the petition under the

Protection of Women from Domestic Violence Act, 2005 to harass the senior citizens. He prays that the writ petition be dismissed.

After hearing the learned counsel for the parties and examining the respective pleadings, it comes out that the petitioner is having a matrimonial dispute with her husband and his parents, whereupon she filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

During the course of hearing, it is not disputed by learned counsel for the parties that the order by the ACJM, Gurugram restraining the respondents from dispossessing the petitioner from the property in question was passed before the impugned order dated 21.08.2019 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the claim by senior citizen was not even contested by the husband of petitioner. Concededly, as per the stand of the senior citizen, the petitioner along with her husband is residing separately on first floor and these attending circumstances have not at all been considered by the Tribunal while ordering eviction of the petitioner. Apparently, the parties availed their separate remedies under different statutes, therefore, the prior filing of petition by one of the parties would not be significant, as these two cases were filed nearly at the same time, and nothing is brought on record that petitioner stood served in the case by senior citizen before she filed her case. A perusal of the impugned order dated 21.08.2019 passed by the Tribunal shows that it has primarily relied upon Section 27 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to hold that it prohibits the jurisdiction of Civil Court and further observed that the order dated 13.08.2019 passed by the ACJM, Gurugram has no bearing to

these proceedings, but in the considered opinion of this Court, Section 27 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 carries a limited bar on jurisdiction of Civil Courts and relates only to a matter to which the provision of the Act applies, and further, it contemplates that no injunction shall be granted by Civil Court in respect of anything which is done or intended to be done by or under the Act. The expression contained in this section cannot at all be stretched to the remedies available to the petitioner (daughter-in-law) to protect her rights before the Magistrate under the Protection of Women from Domestic Violence Act, 2005. Apart from it, the procedure contained under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is summary in nature, therefore, it would not have an overriding effect upon the orders of protection passed by the Magistrate under the Protection of Women from Domestic Violence Act, 2005.

Thus, it becomes amply clear that the Tribunal has not examined the facts, circumstances and law on the subject carefully while accepting the claim of the senior citizens solely on the ground that the property belongs to the senior citizen and his son and daughter-in-law have no right to reside in the house. Since the order dated 13.08.2019 passed by ACJM, Gurugram in favour of petitioner is operative, therefore, this Court has no hesitation in holding that the impugned order dated 21.08.2019 is not sustainable.

Consequently, the writ petition is allowed and the impugned order dated 21.08.2019 (Annexure P-2) is set aside and the application filed by respondent No.2 (senior citizen) stands dismissed.