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

**CWP No.21593 of 2018 (O&M)
Date of Decision: 08.11.2023**

JASWINDER SINGH

.....Petitioner

Vs

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM: *HON'BLE MR. JUSTICE VIKAS BAHL*

Present: Mr. Jatinder Singh Gill, Advocate
for the petitioner.

Mr. Kunal Muthreja, Asstt. AG, Punjab.

Mr. A.S. Salar, Advocate
for LR's of respondent No.4.

Mr. Amandeep Singh Jawandha, Advocate
for respondent No.5.

VIKAS BAHL, J. (Oral)

CM No.16551-CWP of 2023

This is an application filed under Order 22 Rule 4 read with Section 151 CPC for impleading legal representative of respondent No.4- Kaka Singh (deceased).

For the reasons stated in the application which is duly supported by an affidavit, the present application is allowed and the legal representative of respondent No.4- Kaka Singh (deceased) as stated in para No.3 of the application is ordered to be brought on record subject to all just exceptions.

Amended memo of parties be taken on record.

CWP No.21593 of 2018 (O&M)

[1]. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 22.02.2017 (Annexure P-5) passed by respondent No.3 and also the order dated 03.07.2018 (Annexure P-8) passed by respondent No.2.

[2]. Learned counsel for the petitioner submitted that against the order dated 22.02.2017 (Annexure P-5), the petitioner had filed an appeal i.e. Case No.7/Maintenance Misc/ADC which was dismissed by the Additional District Magistrate, Patiala vide order dated 14.08.2018 on the ground that the appeal is only maintainable on behalf of the senior citizen/parents under Section 16(1) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act of 2007') and not by any other person.

[3]. Learned counsel for the petitioner further submitted that the said order is in the teeth of the judgment of the Hon'ble Division Bench of this Court in **Paramjit Kumar Saroya vs The Union of India and another** passed in **CWP No.7282 of 2010** decided on 28.05.2014 and reported as **2016(3) R.C.R. (Civil) 146**. It is further submitted that in the aforesaid judgment, it has been specifically observed that any affected party has a right to appeal under Section 16(1) of Act of 2007 and the petitioner, who is purchaser from respondent No.5 is also an aggrieved party and thus has a right to file an appeal.

[4]. Learned counsel for the petitioner further submitted that judgment of the Division Bench was passed before

passing of the impugned order dated 14.08.2018. It is prayed that the said order dated 14.08.2018 be set aside and the Appellate Tribunal be directed to re-decide the appeal of the petitioner under Section 16 of Act of 2007. It is also stated that the Co-ordinate Bench of this Court vide order dated 28.08.2018 has stayed the operation of the impugned order(s) dated 22.02.2017 and 14.08.2018 and till the time the said appeal is decided, the interim order be directed to continue.

[5]. Learned counsel appearing on behalf of LR of respondent No.4 submitted that grant of interim order should not be construed by the Appellate Tribunal as an expression on the merits of the case and the Appellate Tribunal be directed to decide the appeal after taking into consideration the points raised by both the parties in accordance with law.

[6]. Learned State counsel has no objection to the aforesaid course.

[7]. This Court has heard learned counsel for the parties and has perused the record.

[8]. The Division Bench of this Court in **Paramjit Kumar Saroya's** case (supra) has held as under-

“33. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to

the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

34. *We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.”*

[9]. Perusal of the above would show that the Hon'ble Division Bench after considering the provisions of Act of 2007 had observed that the right to appeal granted under Section 16(1) of Act of 2007 must be read to provide for the right of appeal to any of the affected parties. The petitioner being a subsequent purchaser would also come within the meaning of the term “affected parties”. It is a matter of settled law that a person, who purchases the property prior to the institution of the proceedings, then apart from other pleas available to the said person, all the pleas which are

available to the vendor are also available to the vendees. In the present case, the sale deed in favour of the petitioner is dated 07.09.2011 and the application by the senior citizen under Section 23 of the Act of 2007 was instituted on 21.09.2016 and thus seen from any angle, the petitioner would be an affected party being entitled to institute the appeal under Section 16 of the Act of 2007.

[10]. The order passed by the Appellate Tribunal dated 14.08.2018 (Annexure P-7) rejecting the appeal of the petitioner solely on the ground of maintainability is unsustainable and is in the teeth of the judgment of the Hon'ble Division Bench passed in **Paramjit Kumar Saroya's** case (supra), and, therefore, the same deserves to be set aside on the said ground.

[11]. The Co-ordinate Bench of this Court vide order dated 28.08.2018 while issuing notice of motion has stayed the operation of the impugned order(s) which included the order dated 22.02.2017 and the said interim order is continuing till date and thus keeping in view the aforesaid facts and circumstances of this case, this petition is partly allowed. The impugned order dated 14.08.2018 (Annexure P-7) passed by the Additional District Magistrate, Patiala is set aside and the Appellate Tribunal is directed to decide the appeal of the petitioner afresh in accordance with law after taking into consideration all the pleas raised by the petitioner as well as the respondents and other concerned parties, as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of this order.

[12]. The parties are directed to appear before the Appellate Tribunal

on 21.11.2023. The interim order dated 28.08.2018 passed by the Co-ordinate Bench of this Court staying the operation of the impugned order(s) would remain in operation till the time the appeal is finally decided.

[13]. The grant of said interim order and continuance of the same, shall not be construed to be an expression on the merits of the case and the Appellate Tribunal shall consider the case independently, in accordance with law, after hearing all the parties concerned.

November 08, 2023

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(VIKAS BAHL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No