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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th January, 2023.

+ **W.P.(C) 1026/2023**

RAJENDRA KUMAR MITTAL Petitioner

Through: Mr. Akshit Sachdeva, Advocate.

versus

ADDL DISTRICT MAGISTRATE (SOUTH-EAST)

AND ORS

..... Respondents

Through: Ms. Hetu Arora Seth, ASC/GNCTD
 and Mr. Siddarth Agarwal, Advocate
 for R-1. (M: 9045513840)

Mr. Deepak Mayur, Mr. Rajiv Jain,
 Ms. Kirti Kumari and Ms. Jyoti
 Sahay, Advocates for R-3. (M:
 7838616124)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CM APPL.4013/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 1026/2023 & CM APPL.4012/2023

3. The present petition has been filed by the Petitioner - Mr. Rajendra Kumar Mittal, who is father of the Respondent No.3 - Mr. Pradeep Kumar Mittal. The Petitioner had approached the Id. Additional District Magistrate (ADM) South East under Section 4 read with Section 23 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter 'the Act'*). In the said application, he was seeking action against his son, who according to him, had taken a sum of Rs.7.15 crores from him and had failed to pay any maintenance to him. It is his claim that Respondent No. 3 had also not

returned the money upon demand.

4. The said application was decided by the Id. ADM vide order dated 31st March, 2022. The operative portion of the order directs the Respondent No.3 to return the amount taken from his father and also pay monthly maintenance in the following terms.

“1) Non-applicant is directed to return the amount of Rs.7,15,00,000/- (Rupees seven crores fifteen lakhs only) to the applicant within two months from the date of receipt of this order;

2) Non-applicant and Rishi Kumar Mittal both are directed to pay Rs.20,000/- per month each, total Rs.40,000/- per month to the applicant from the date of filing of the present application to his life time on account of maintenance of applicant and his wife. The maintenance amount will be paid to applicant up to 10th date of each month and arrear will be paid by the said both sons within two months from the date of receipt of this order.

3) Non-applicant and Shri Rishi Kumar Mittal both are directed to pay actual medical expenses to the applicant incurred upon applicant and his wife equally within 15 days from the date of provide the vouchers/bills showing expenditure incurred by him.”

5. According to the Petitioner, the said order was not given effect to and the maintenance was also not given effect to by the Respondent No. 3. The Petitioner then approached the concerned ADM once again seeking enforcement of the order in accordance with Section 11 of the Act. In response to the same, on 21st September, 2022, the Id. ADM has merely written to the SHO PS CR Park for execution of the order. The language of the said communication reads:

“Sub: Enforcement of order dated 13.03.2022 (sic 31.03.2022) passed by the office of Padmakar Ram Tripathi, Ld. Additional District Magistrate (South-East), Tribunal of Maintenance of Parents and Senior Citizen, Govt. of NCT of Delhi.

Please find enclosed herewith a complaint received on 04.08.2022 from Rajendra Kumar Mittal addressed to Additional District Magistrate (South-East) on the above cited subject for execution of the enclosed order, under

intimation to this office.”

With the prior approval of ADM (SE)

Encl: As above

*Sd/-
PA to ADM (South-East)
To
SHO
C.R. Park
New Delhi – 110019”*

6. The Petitioner has thus approached this Court seeking setting aside of the communication dated 21st September, 2022 and for necessary directions for enforcement of the order passed by 31st March, 2023.

7. Ld. Counsel for the Petitioner submits that the letter to the SHO is not in compliance of the provisions of the Act. As per the Act, the Petitioner is entitled to approach the Tribunal under the Act, once again for ensuring the enforcement of the order. He also submits that even an appeal against the order passed by the Ld. ADM has been filed and the same is pending. In any event, the amounts, in terms of the maintenance, which has been directed, have to be paid.

8. Ld. counsel appearing for the Respondent No.3, who is the contesting Respondent, submits that the appeal is now pending before the Divisional

Commissioner and is listed on 15th February, 2023. He submits that the matter would be heard on the said date.

9. A perusal of Section 16 of the Act makes it clear that any order of maintenance would continue to be in operation until and unless the Appellate Tribunal issues a direction to the contrary. The said provision reads as under:

“16. Appeals.—(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.”

10. It is observed that the appeal before the Id. Divisional Commissioner may have been filed but there is no stay against the order dated 31st March, 2022 of the Id. ADM. Under such circumstances, the maintenance amount of Rs.20,000/- per month to both the mother and father each i.e., a total of Rs. 40,000/- would be liable to be paid by Respondent No.3.

11. The order was passed on 31st March, 2022, therefore, with effect from 1st April, 2022, the Respondent No.3 is duty bound to maintain his parents in terms of the order of the Id. ADM.

12. Ld. Counsel for the Respondent No.3 submits that his client has already written a letter stating that he is willing to pay the maintenance amount. Accordingly, it is directed that all the arrears with effect from 1st April, 2022 till 31st January, 2023 shall now be paid by the Respondent No.3 to the Petitioner by 5th February, 2023. The bank account details of the Petitioner are as under:

**“A/C No.50100327562153
Name - Rajendra Kumar Mittal
IFSC: HDFC0002535
Bank - HDFC Bank”**

13. Insofar as the direction for return of the amount of Rs.7.15 crores are concerned, since the amount is substantial in nature and the order was passed almost 10 months ago, it is directed that the Id. Divisional Commissioner shall take up the matter on 15th February, 2023. The Id.

Divisional Commissioner decide the same expeditiously and, in any case, decide the matter on or before 31st March, 2023.

14. Liberty is granted, to the Petitioner to move an application if there is any non-compliance of the order of this Court.

15. The writ petition, along with pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 27, 2023/dk/am

