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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 2nd February, 2023
+ **W.P.(C) 1334/2023 and CM APPL. 4981/2023**
SANJAY Petitioner
Through: Mr. J.A. Chaudhary & Mr. Ajeet
Kumar, Advocates. (M:9810039471)
versus
GOVT OF NCT OF DELHI & OTHERS Respondents
Through: Mr. Shadan Farasat, Advocate.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner has approached this Court challenging the impugned order passed by the District Magistrate (South) (*hereinafter, "DM, South"*) dated 27th December, 2022 as also the subsequent order of the SDM (Hauz Khas) dated 10th January, 2023 by which he was asked to vacate the premises bearing no. 5/627, 1st Floor, Dakshinpuri Extension, New Delhi-110062.
3. The Respondent No.5 – i.e., the mother of the Petitioner filed a complaint under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter as 'Senior Citizens Act'*) before the DM, South. The allegation in the complaint was that she has been subjected to ill treatment. The DM, South has, vide the impugned order passed an order of eviction in the following terms:

"5. Upon going through the main provisions for eviction of The Delhi Maintenance of Parents and Senior Citizens Rules, 2009, and after appreciation of

evidence adduced of parties herein, this court is of the view that:-

(1) Any person or family members i.e. son and daughter or legal heir can be evicted on two main grounds from the Senior Citizen's property:-

- (a) on account of his non-maintenance and*
- (b) ill-treatment.*

6. After considering all the factum of case, copy of complaint, verbal submission and appreciation of the overwhelming evidence and power vested in this court under provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules prescribed and framed there under, the petition filed by the complainant is hereby allowed and this court is inclined to pass the following orders:

a) That Respondent Sh. Sanjay, Smt. Hemlata, Ms. Sanjana & Ms. Anchal shall vacate the entire premises of property no. bearing 5/627, 1st Floor, Dakshinpuri Extn New Delhi-110002 within 30 days of the issue of the order.

b) That the Deputy Commissioner of Police, South District is directed to ensure enforcement/compliance of the directions mentioned above, as per provisions under The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, 3(3) (ii) and to also ensure that life and property of the petitioner is secured and no harassment is caused to her by the respondents.

c) That the SDM (Hauz Khas) is directed to ensure the compliance of the order”

4. Post the passing of the said order, on 10th January, 2023, an order directing compliance has also been issued by the SDM (Hauz Khas).

5. It is submitted by the Id. Counsel for the Respondents that an appellate remedy is provided against the order passed by the DM under

Section 16 of the Senior Citizens Act r/w Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017.

6. The submission of the Id Counsel for the Petitioner is that he has not approached the Divisional Commissioner as the appellate remedy is available only to the parents/ Senior Citizens.

7. This issue has been dealt with in ***W.P.(C) 2895/2021*** titled ***Rakhi Sharma v. The State & Ors.*** wherein, vide order dated 5th March, 2021 this Court held that an appeal against the order by the DM can be filed by the children and not just the senior citizens/ parents. The relevant portion of the said order reads as under:

“11. The question as to who can prefer the appeal has already been decided by this Court in the following three judgements:

- (i) Naveen Kumar v. GNCTD & Ors. [W.P.(C) 1337/2020, decided on 5th February, 2020];*
- (ii) Shri Amit Kumar v. Smt. Kiran Sharma & Anr. [W.P.(C) 106/2021, decided on 6 January, 2021];*
- (iii) Sh. Shumir Oliver & Anr. v. GNCTD & Ors. [W.P.(C) 2857/2021, decided on 3rd March, 2021]*

12. The aforementioned judgments clarify that any ‘affected citizen’ can prefer the appeal and not just a senior citizen or parent. The view taken by this Court is by following the judgement of the Id. Division Bench of the Punjab and Haryana High Court in Paramjit Kumar Saroya v. The Union of India & Anr., 2014 SCC OnLine P&H 10864. The relevant observations out below:

“An appeal is envisaged “against the order of the Tribunal”. This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent “aggrieved by an order of the Tribunal”. This seeks to give an impression on a plain reading as if

only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that t w he pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such o der to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior ci tizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or ... r relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has be en set out in Section 15 of the said Act. We may add at this stage that in order to have assistance to this Court in view of the complexity in the m atter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this incl udes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no d ebate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded. ... 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. 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.

13. Mr. Rajat Sang, ld. counsel has cited the judgment of the ld. Division Bench of the Madras High Court in K. Raju v. UOI & Anr. [W.P. No. 29988/2019, decided on 19th February, 2021] which takes a contrary view. Since this Court has already taken a view following the Punjab and Haryana High Court, appeals by any affected party who may be aggrieved by an order of the Tribunal, as constituted under the Act and the Rules, would be liable to be entertained before the Appellate Tribunal. Thus, the procedure in respect of maintenance cases would be to first approach the ADM/SDM concerned and thereafter, the Appellate Tribunal which is presided over by the Deputy Commissioner of the concerned district.”

In terms of the above judgement, the Petitioner would be an ‘*affected person*’ entitled to file an Appeal under Section 16 read with Rule 22 of the Act and Rules.

8. Under the Act, the period of limitation provided for filing the appeal is 60 days. Since the 60 days period is yet to lapse, the present petition is disposed of with the following directions:

- (i) The Petitioner is permitted to approach the Divisional Commissioner within a period of two weeks challenging the impugned order dated 27th December, 2022 passed by the DM(South). The Divisional Commissioner shall list the appeal along with the application for stay within a period of two weeks thereafter.
- (ii) If the appeal is filed within a period of two weeks i.e., by 16th February, 2023, the matter shall be taken up before 2nd March,

2023 on the stay application by the Petitioner. Until then, the eviction order passed by the DM (South) shall not be given effect to.

(iii) The eviction order shall be subject to orders which may be passed by the Divisional Commissioner in the stay application.

9. With these observations, the present petition, along with all pending applications, is disposed of.

10. This Court has not examined the merits of the matter as the writ petition is being disposed of to enable the Petitioner to avail of his alternate remedy in accordance with law.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 2, 2023
dj/kt

