

08.07.2024
Sl. No.5(DL)
srm

W.P.A. No. 14410 of 2023

Swapan Kumar Das

Versus

The State of West Bengal & Ors.

Mr. Gobinda Chandra Baidya

...for the Petitioner.

Mr. Debasish Das

...for the Respondent No.6.

The writ petition arises out of an order May 19, 2023 passed by the Sub-Divisional Officer, Egra Sub-Division, Purba Medinipur, being the authority under the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as the said Act). The tribunal directed as follows:

“This tribunal, therefore, in exercise of power conferred on it as per Section 9 of this Act orders that each and every legal heirs of the petitioner will bear the monthly maintenance fees to the petitioner in proportion to their financial capacity. Swapan Das, S/O- Lt. Rabindra Nath Das is directed to pay Rs.8,500/- (Eight thousand five hundred only) per month to the petitioner as maintenance fee and each of other three legal heirs of the petitioner will bear the monthly expense of Rs.500/- (Rupees five hundred only) to be paid by him/her every month to the petitioner as his/her share of maintenance to the petitioner and such amount will be given to the petitioner directly to the petitioner in a designated bank account chosen by the petitioner as per Rule 17 (*sic.*) of the Act.”

An order was passed under Section 9 of the said Act, directing the petitioner, as one of the brothers of the senior

citizen who approached the learned tribunal, to pay Rs.8,500/- per month as maintenance for the said sister, who suffers from hearing and visual impairment. The tribunal also directed the other three siblings to pay Rs.500/- per month.

This Court is of the view that the apportionment made by the tribunal ought to have been justified. The reasons why the petitioner was directed to pay Rs.8,500/- per month, but the other siblings were directed to pay only Rs.500/- per month have not been provided. There is neither any explanation nor any evidence which reflect the income of the siblings.

Although the learned Advocate for the senior citizen submits that as the petitioner is richer than the other siblings he is liable to pay more, I do not find from the records that the tribunal had considered this aspect at all or had based the decision on the quantum of the earnings of each of the siblings of the senior citizen. It is the petitioner's case that if all the siblings inherit the property of the senior citizen/sister in equal proportion, then the liability to pay maintenance would also be in equal proportion.

Under such circumstances, this Court is of the view that a justifiable case has been made out by the petitioner and the order dated May 19, 2023 is liable to be set aside for the reasons stated hereinabove.

The order dated May 19, 2023 is set aside.

The learned tribunal is directed to rehear the matter upon notice to all the siblings in order to adjudicate what should be the amount of maintenance to be paid by each of the siblings in order to maintain their sister, who suffers from hearing and visual impediment. Such decision shall be taken on evidence that may be produced by the petitioner as also by all other parties including the senior citizen/sister. In order to show his *bona fide*, the petitioner is directed to pay an ad hoc amount of Rs.5,000/-, within a week. Such amount shall be transmitted to the bank account of the senior citizen (Jharna Das) which shall be adjusted and will abide by the final decision of the learned tribunal.

The matter shall be disposed of by the learned Tribunal within two months from date of communication of this order.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)