



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

2 WRIT PETITION NO. 7239 OF 2024

SALIM NAJIR SAYYAD

VERSUS

SENIOR CITIZEN APPELLATE TRIBUNAL AND OTHERS

Mr.N.S. Jaju, Advocate for the petitioner.

Mr.K.B. Jadhavar, AGP for the respondent-State.

Mr.R.S. Kasar, Advocate for respondent Nos. 3 and 4.

CORAM : KISHORE C. SANT, J.

DATE : 02.09.2024

PC :-

01. Heard. The issue involved in the petition is in respect of maintainability of the appeal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, at the instance of children or respondents in the original proceeding.

02. The learned Appellate Authority i.e. the District Magistrate, Ahmednagar rejected the appeal holding that the appeal at the instance of the children or relative is not maintainable by considering wording of section 16 of the Act. The wording of section 16 of the Act reads as under :-

"16. Appeals

1. Any senior citizen or a parent, as the case may be, aggrieved by an order of a 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 Hied 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 panics 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 panics free of cost."

03. The learned Advocate for the petitioner submits that now the issue is no more *res-integra*. The Division Bench of this Court

in reference in Writ Petition No. 36 of 2023 has already answered the issue. It is held that the appeal is maintainable even at the instance of children or relatives. In view of this, this Court finds that the order deserves to be quashed and set aside by directing the Appellate Authority to consider the appeal on merits.

04. At this stage, learned Advocate for the respondents submits that the *bona fides* of the petitioner needs to be tested in this writ petition. The learned Sub-Divisional Officer, Ahmednagar, had passed order on 11.11.2022 and till today, no amount is deposited as per the directions. In view of the above discussions, this Court finds that balance needs to be maintained. The petitioner also needs to show the *bona fides*. Hence, following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) Impugned order dated 06.03.2024 passed by the learned District Magistrate, Ahmednagar is quashed and set aside.

- (iii) The appeal is remanded to the Appellate Authority with a direction to decide said appeal within six months from today.
- (iv) This order shall be subject to deposit of 50% amount of arrears, as directed by the Sub-Divisional Officer, Ahmednagar. The amount to be deposited before the Sub-Divisional Officer, Ahmednagar, within eight weeks from today. After deposit of the amount, said amount shall be invested in the fixed deposit of any nationalized bank.
- (v) The amount deposited shall be subject to outcome of the appeal before the learned District Magistrate, Ahmednagar.
- (vi) The learned District Magistrate to pass order in respect of deposited amount at the time of final disposal of the appeal.

[KISHORE C. SANT, J.]