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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7550 OF 2019
WITH
INTERIM APPLICATION NO. 1265 OF 2024
AND
INTERIM APPLICATION (ST) NO. 32164 OF 2023
IN
WRIT PETITION NO. 7550 OF 2019**

Shri Sachin Ramesh Pawar ... Applicant/Petitioner
Vs.

Smt. Sobha Powar and Others ... Respondents

Mr. Shivkumar R. Gupta for the Applicant/Petitioner.

Mr. S. S. Redekar for Respondent Nos. 2 and 3.

Mr. P. P. Pujari, AGP for Respondent Nos. 4 and 5.

CORAM : GAURI GODSE, J.

DATE : 6th FEBRUARY 2024

P.C.

Writ Petition No. 7550 of 2019

1. This Writ Petition is filed for challenging the order dated 20th February, 2019 passed by the Tribunal under the The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ("said Act") allowing the application of deceased-respondent no. 1.

2. By the said order the present petitioner was directed to hand over possession of the subject premises to the deceased respondent no. 1. By the said order the petitioner was also directed to pay monthly maintenance.

3. It is not in dispute that pursuant to the said order the possession was handed over to the deceased respondent no. 1 on 13th June 2019. The respondent no. 1 in whose favour the aforesaid order is passed has expired. Hence, the demise of respondent no. 1 has rendered the petition infructuous.

4. Learned counsel for the petitioner submitted that he has raised various objections in the petition objecting to the rights of respondent nos. 2 and 3 who are sisters of the petitioner. He submits that petitioner has contended that by playing fraud, respondent nos. 2 and 3 got a gift deed executed in their favour. He submits that prior to the filing of the application respondent no. 1 had already executed the gift deed in favour of respondent nos. 2 and 3. He therefore submits that fraud was played on the tribunal for obtaining an order.

5. Learned counsel for the petitioner relies upon the decision of this court passed on 18th April 2023 in Review Petition(L) no. 25342 of 2022 in WP/3730/2021. He submits that this court has entertained the petition with respect to similar submissions being made on the fraud committed on the tribunal. Perusal of the said decision indicates that the same was contested by the senior citizen. In view of the fact that in the present case senior citizen has expired and the petition is rendered infructuous due to demise of the senior citizen, the said decision will be of no assistance to the submissions made on behalf of the petitioner. Even in the said decision liberty was granted to the writ petitioner to adopt appropriate civil proceedings, if so advised.

6. The application by respondent no. 1 was filed under the provisions of the The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which is a summary proceeding. The Tribunal under the said Act, has no jurisdiction to decide title. Hence, disputed questions qua the title of the property, cannot be decided in the summary proceedings under the said Act. However, in the event the petitioner has any claim towards the right, title or interest in the subject properties, against respondent nos. 2 and 3, it will always be open to

the petitioner to agitate the same in appropriate proceedings before the appropriate forum.

7. It is therefore, clarified that disposal of the present petition as well as the applications will not affect the petitioner's right, if any, in respect of the property. The petitioner is at liberty to adopt appropriate proceedings as permissible in law for agitating his grievance. It is clarified that the rival contentions of the parties qua the title of the subject property are not examined by me. Hence, all the contentions of all the parties qua the title of the subject property are kept open.

8. Writ Petition is disposed of in above terms.

Interim Application No. 1265 of 2024

9. This application is filed for seeking restoration of possession of the premises which was subject matter of the application filed by respondent no. 1 under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By the order impugned in the Writ Petition the applicant/petitioner was directed to handover possession of the subject premises to respondent no. 1 i.e. his mother.

10. Learned counsel for the petitioner submits that pursuant to the

impugned order possession was handed over to respondent no. 1. He submits that subsequently she has expired on 23rd December 2020. He therefore submits that the possession should be restored to the petitioner.

11. On a query being made as to whether such application is maintainable under the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, learned counsel for the applicant/petitioner is unable to point out any such provision.

12. Application is devoid of any merits. Interim Application is disposed of for the reasons recorded above.

Interim Application (St) No. 32164 of 2023

13. This application is filed for condonation of delay and for amending the petition for deleting the name of respondent no. 1 on the ground that she has expired.

14. In the facts of the present case, once the senior citizen in whose favour the order is passed has expired, the main petition itself is rendered infructuous. Hence, there is no question to entertain this application.

15. Hence, Interim Application is disposed of for the reasons recorded above.

[GAURI GODSE, J.]