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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1041-2024

DATE OF DECISION: APRIL 26, 2024

SANTOKH SINGH

...APPELLANT

VERSUS

THE DISTRICT MAGISTRATE-CUM- ...RESPONDENTS
DEPUTY COMMISSIONER, HOSHIARPUR & ORS.

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MR. JUSTICE DEEPAK MANCHANDA.**

PRESENT: MR. SURINDER THAKUR, ADVOCATE FOR THE APPELLANT.

DEEPAK MANCHANDA, J.

1. Through this intra-Court appeal, the appellant has assailed the judgement dated 9.4.2024 vide which the learned Single Judge has allowed the writ petition filed by respondent No.3-Gurdev Kaur where a prayer was made for issuance of directions to the appellant for handing over vacant physical possession of the residential house in view of the final order dated 23.8.2018 (Annexure P-5) passed by respondent No.1, along with arrears of maintenance.

2. The facts emanating from the pleadings of the present appeal are that the appellant is the son of respondent No.3, who is a 90 years old widow and is owner of the house in dispute which has been ordered to be vacated through the impugned judgement, relying upon the order dated 23.8.2018, which was passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 by respondent No.1 in favour of the

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respondent No.3, where the possession of the residential house, which is illegally occupied by the appellant, has not been handed over as yet, and the learned Single Judge allowed the petition by directing respondent No.1 to get evicted the house in question from appellant within a period of three weeks from 9.4.2024. Further, respondent No.3 has also been directed to take help of the SSP concerned for taking possession of the house in question and to take action against any person who obstructs the same, by providing full help and assistance to the respondent No.3. Aggrieved against the impugned judgement, this intra court appeal has been preferred by the appellant.

3. A perusal of impugned judgement would show that the learned Single Judge while relying upon the order dated 23.8.2018 passed by the respondent No.1, directed for handing over possession of the house to respondent No.3, who is owner of the premises in which the appellant was residing and also noticed the fact that he did not comply with the earlier orders, as also misbehaved with the respondent No.3, who is a 90 year old widow and is mother of the appellant. It is also noticed by the learned Single Judge that in spite of specific orders, appellant did not pay any maintenance to respondent No.3 and has made specific observations in this regard while passing the impugned judgement, the relevant paras of which are reproduced here below-

“10. xxxxxxxxxxxx

A perusal of the above order would show that it was specifically recorded that respondent No.3 had not been paying



the maintenance to the petitioner in spite of specific orders. Liberty was granted to respondent No.3 to revive the writ petition on meeting the condition mentioned therein. Admittedly, no application for revival of the said case had been filed nor the said order had been challenged by the respondent No.3. Accordingly, the order dated 05.04.2022 attained finality and the order dated 23.08.2018 vide which the possession was to be delivered to the petitioner had also attained finality. A further perusal of the order dated 05.04.2020 would show that the argument raised on behalf of the respondent No.3 (petitioner therein) to the effect that the order dated 23.08.2018 directing respondent No.3 (petitioner therein) to vacate the house of the petitioner (respondent No.3 therein) was not in accordance with law, was noticed and it is after noticing the same that the petition was dismissed. Thus, it is not open to the respondent No.3 to again agitate the said issue and question the legality of the order dated 23.08.2018 which has attained finality, by virtue of the dismissal of the writ petition filed by respondent No.3 against the order dated 23.08.2018. Once, the said order had attained finality, it was incumbent upon the respondent No.3 to hand over the vacant possession to the petitioner and for the respondent authorities to get delivered the vacant possession of the house in question to the petitioner, more so, when the authorities had specifically given a finding (as is apparent from the order dated 23.08.2018 (Annexure P-5) and order dated 29.09.2016 (Annexure P-4)) that the petitioner was the owner of the premises in question.

11. *The conduct of respondent No.3 is most unfortunate. As has been stated herein-above, the petitioner is a 90 year old widow and had given birth to respondent No.3 and had*



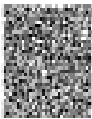
repeatedly moved applications/appeals before the authorities under the 2007 Act from the year 2015 highlighting the conduct of the respondent No.3. In the application filed in the year 2015 (Annexure P-1), it was averred by the petitioner that respondent No.3 had thrown out the petitioner from her residential house and that she was living in a small rented accommodation along with her daughter and the daughter's children, whereas, respondent No.3 was drawing a handsome salary of Rs.45,000/- per month and was not paying any maintenance to the petitioner. In spite of several orders dated 29.09.2016 (Annexure P-4), dated 23.08.2018 (Annexure P-5) and also dated 17.10.2022 (Annexure P-8), respondent No.3 did not pay even the maintenance of Rs.3,000/- per month for a period of more than 7 years. The argument raised by learned counsel for respondent No.3 to the effect that since, during the pendency of the writ petition, he had paid the arrears of maintenance, thus, the petitioner cannot seek eviction from the premises in question, is misconceived. Apart from the fact that the order directing the authorities to grant vacant possession of the house in question to the petitioner had attained finality up to this Court, the mere payment of arrears of maintenance, in pursuance of various orders, would not in any way infringe upon the enforcement of the orders passed in favour of the petitioner, which have been upheld up to this Court. Moreover, since after the passing of the order directing the vacant possession to be given to the petitioner, the possession of respondent No.3 became illegal and thus, respondent No.3 was in law, liable to pay mesne profit. It is the case of the petitioner that monthly rent of the house in question is Rs.10,000/- per month and thus, the amount due on account of mesne profit would equalize if not exceed the amount of maintenance paid.



Moreover, the maintenance was to be paid from the year 2015/2016, which even as per the argument of the learned counsel for respondent No.3 has been paid during the pendency of the present writ petition (2023), without payment of any interest and thus, the component of interest is also to be added to the amount due to the petitioner and admittedly no payment on account of interest has been made by respondent No.3. Further, it not disputed that respondent No.3 had been granted employment on compassionate basis after the death of husband of the petitioner and that the petitioner had given up her claim in favour of her son-respondent No.3 at the time of the said appointment and the respondent No.3 was drawing a handsome salary. Moreover, there is no statement made on behalf of the petitioner that in case the respondent No.3 pays the arrears of maintenance, which in any case a son is duty bound to pay, then, the petitioner would not claim vacant possession of the house in question.

12. Thus, keeping in view the above-said facts and circumstances, the present writ petition, being meritorious, is allowed and respondent No.1 is directed to get respondent No.3 evicted from the house in question and to get the vacant possession of the house in question handed over to the petitioner within a period of three weeks from today.

13. It would be open to the Deputy Commissioner, Hoshiarpur to take help of the Senior Superintendent of Police, Hoshiarpur for taking the possession of the house in question and to take action against any person who obstructs the same and in case, any such help is sought, then, the Senior



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Superintendent of Police, Hoshiarpur is directed to provide full help and assistance to the petitioner.”

4. We have perused the impugned judgement and are in agreement with the observations made by the learned Single Judge and have found no illegality in the same.

5. In light of the above, no interference is called for. Consequently, the present intra-Court appeal is dismissed.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

April 26, 2024
Gulati

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No