

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

(206)

CWP-29669-2022

Date of decision: - 09.04.2024

**Gurdev Kaur**

....Petitioner

**Versus****The District Magistrate-cum-Deputy Commissioner, Hoshiarpur and  
others**

.....Respondents

**CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Arun Takhi, Advocate,  
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Surinder Thakur, Advocate  
for respondent No.3.

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**VIKAS BAHL, J. (ORAL)**

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of mandamus directing the respondent No.2 to further direct the respondent No.3 to hand over the vacant physical possession of the residential house to the petitioner as per the final order dated 23.08.2018 (Annexure P-5) passed by respondent No.1 along with arrears of maintenance.

2. Present case depicts the misery of a 90 year old widow at the hands of her son (respondent No.3). The petitioner has been running from pillar to post since 2015 to get her rightful due and in spite of the order

dated 23.08.2018 (Annexure P-5) having been passed in favour of the petitioner and the writ petition filed by respondent No.3 challenging the said order having been dismissed by a Co-ordinate Bench of this Court, vide order dated 05.04.2022, yet the petitioner has not been handed over the vacant possession of the residential house which belongs to the petitioner and is illegally occupied by the respondent No.3.

3. Brief facts of the present case are that the petitioner, who is a 90 year old widow, had on 04.08.2015 filed a complaint/application against respondent No.3, who is her son, under the provisions of the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (hereinafter to be referred as '2007 Act') on the allegations that the petitioner, who is a senior citizen, was residing in the residential house in Gobind Nagar, D.C. Road, Hoshiarpur, but was ousted from the said house by respondent No.3 and the petitioner had no other place to reside and that respondent No.3 along with his wife used to abuse the petitioner and did not allow the petitioner to enter into the said house which was owned by her and the petitioner had to take shelter in a small rented house along with her widowed daughter and her grown up children. It was specifically averred in the said application that respondent No.3 was appointed in the Hoshiarpur Central Cooperative Bank Ltd. on compassionate grounds and was drawing a handsome salary of more than Rs.45,000/- per month, but had completely neglected the petitioner, who had given birth to him. It was requested that respondent No.3 be directed not to deprive the petitioner from her residence and also be directed to pay maintenance at the rate of Rs.15,000/- per month. The Sub-Divisional

Magistrate, Hoshiarpur, vide order dated 28.12.2015 (Annexure P-2) directed respondent No.3 to pay a meagre amount of Rs.1,000/- as expenses to the petitioner and also directed respondent No.3 not to stop his mother from coming to the house in question and not to maltreat her. The petitioner filed an appeal against the said order and the District Magistrate, Hoshiarpur, vide order dated 29.09.2016 (Annexure P-4) directed the respondent No.3 to pay Rs.3,000/- per month as maintenance to the petitioner, with a further observation that the Tehsildar, Hoshiarpur was appointed as Court Officer to establish possession of the petitioner in her residential house and to submit a report. In the said order, the District Magistrate, Hoshiarpur had come to the conclusion that the house in which respondent No.3 was residing was in the ownership of the petitioner and respondent No.3 was working as a Junior Assistant since 10.06.1991 and his income was Rs.44,233/- per month in 2018. When the said order was not complied with, the petitioner filed another application, in which, the Deputy Commissioner, Hoshiarpur, vide order dated 23.08.2018 (Annexure P-5) observed that respondent No.3 had misbehaved with the petitioner and had appointed Sub-Divisional Magistrate, Hoshiarpur as Court Officer to execute the order dated 29.09.2016 and deliver possession of the house in question to the petitioner and in case, respondent No.3 created any hindrance, then, police help be provided. In the said order, it was reiterated by the District Magistrate, Hoshiarpur that house in question was in the ownership of the petitioner.

4. Respondent No.3 challenged the order dated 23.08.2018

(Annexure P-5) along with the order dated 29.09.2016 (Annexure P-4) and order dated 28.12.2015 (Annexure P-2) by filing a petition bearing CWP-24877-2018, which was dismissed on 05.04.2022. In the said writ petition, initially an interim order dated 28.09.2018 was passed in favour of respondent No.3 staying the operation of the impugned order, but vide order dated 05.04.2022, a Co-ordinate Bench of this Court was pleased to dismiss the said writ petition after considering the fact that the respondent No.3 had not been making the payment to the petitioner in terms of the orders passed by the Maintenance Tribunal as well as Maintenance Appellate Tribunal. However, the interim order dated 28.09.2018 was ordered to remain in force for a period of 30 days with liberty to respondent No.3 to seek revival of the said writ petition after furnishing proof of electronic remittance of the due arrears of maintenance at the rate of Rs.3,000/- per month. A perusal of paras No.2 and 3 of the said order would show that respondent No.3 had raised an argument that the order dated 23.08.2018 (Annexure P-5) directing respondent No.3 to vacate the house of the petitioner was not in accordance with law and the Co-ordinate Bench of this Court after considering the said argument dismissed the writ petition filed by respondent No.3. It is not in dispute that respondent No.3 had not moved any application for revival of the above-said writ petition and the order dated 05.04.2022 had attained finality. Since respondent No.3 had neither vacated the premises nor he had paid any maintenance, thus, another application was moved by the petitioner and even in the said application, as is apparent from page 47 of the paper-book, respondent No.3 did not appear till the culmination of the

said proceedings. The said facts clearly show that from 2015 up to 2022 in spite of several orders, respondent No.3 had neither provided amenities to the petitioner nor he had vacated the premises, although even the writ petition filed by respondent No.3 was dismissed, and respondent No.3 continued to enjoy the property of the petitioner. Aggrieved against the said inaction of the respondent authorities, the petitioner has filed the present writ petition praying for directing respondent No.2 to direct respondent No.3 to hand over the vacant possession of the residential house to the petitioner.

5. Learned counsel for the petitioner has submitted that once the order dated 23.08.2018 (Annexure P-5) passed by the Deputy Commissioner, Hoshiarpur directing respondent No.3 to deliver possession and also directing respondent No.3 to make payment of arrears of maintenance had attained finality and even the writ petition bearing CWP-24877-2018 filed by respondent No.3 had been dismissed by a Co-ordinate Bench of this Court, vide order dated 05.04.2022, then, it was incumbent upon respondent No.3 to hand over vacant possession to the petitioner and for every day after 23.08.2018 or at any rate after 05.04.2022, respondent No.3 is liable to pay mesne profit for illegal occupation of the premises in question. It is submitted that no application for revival of the order dated 05.04.2022 passed by the Co-ordinate Bench of this Court had been filed till date and thus, respondent No.3 had no legs to oppose the present writ petition. It is further submitted that the rent which the residential house in question can fetch is Rs.10,000/- per month and that respondent No.3 had gotten appointed as Junior Assistant

in the Hoshiarpur Central Cooperative Bank Ltd. on compassionate grounds after the death of the husband of the petitioner, as the petitioner had given an affidavit in favour of respondent No.3, and respondent No.3 has chosen not to provide basic amenities to the petitioner for all these year and had thrown out the petitioner from the house in question.

6. Learned counsel appearing for respondent No.3 has opposed the present writ petition and has submitted that the order dated 23.08.2018 (Annexure P-5) is illegal, inasmuch as, while executing the order dated 29.09.2016 (Annexure P-4), it was not open to the Deputy Commissioner to have ordered the delivery of the possession of the house in question to the petitioner as the same was not ordered vide order dated 29.09.2016 (Annexure P-4).

It is further submitted that respondent No.3 had paid the arrears of maintenance during the pendency of the present writ petition and once the petitioner has accepted the maintenance, she cannot seek eviction from the premises.

7. Learned counsel for the petitioner, in rebuttal, has submitted that at the time of issuance of notice of motion, a Co-ordinate Bench of this Court had ordered that entire salary of respondent No.3 be ordered to be deposited in the account of the petitioner and thereafter, counsel appearing for respondent No.3 had got the said order vacated and at the time of vacation of the said order, a Co-ordinate Bench of this Court vide order dated 13.02.2023 had noticed that counsel for the petitioner was seeking eviction of respondent No.3. It is further submitted that the amount was due since the year 2015/2016 and has been paid only after the

petitioner had filed the present petition in the year 2023, without any interest and at any rate, since respondent No.3 is in illegal occupation of the premises in question, the said amount paid would be far less than the mesne profit, which respondent No.3 is liable to pay to the petitioner for the illegal occupation of the house in question. It is further submitted that no statement had been made on behalf of the petitioner that the petitioner would not claim possession of the house in question in case the arrears of maintenance are paid by the respondent No.3.

8. This Court has heard learned counsel for the parties and has perused the record and finds that the present writ petition is meritorious and thus, deserves to be allowed for the following reasons.

9. It is not in dispute that the Deputy Commissioner, Hoshiarpur vide order dated 23.08.2018 (Annexure P-5) directed that the possession of the house be delivered to the petitioner and the report regarding the same be submitted and in case, any hindrance was made in compliance to the said order, then, police help be provided. In the said order dated 23.08.2018 (Annexure P-5), it was specifically observed that the petitioner was the owner of the premises in which respondent No.3 was residing and also the fact that respondent No.3 had not complied with the earlier orders and had misbehaved with the petitioner, who is a 90 year old widow and is mother of the respondent No.3.

10. It is also not in dispute that respondent No.3 had filed CWP-24877-2018 challenging the said order dated 23.08.2018 (Annexure P-5) in addition to the earlier orders dated 28.12.2015 (Annexure P-2) and 29.09.2016 (Annexure P-4). Initially, an interim stay was passed in favour

of the petitioner vide order dated 28.09.2018, but the said writ petition was dismissed by a Coordinate Bench of this Court, vide order dated 05.04.2022 (Annexure P-6), the relevant portion of which is as under: -

*“.....Respondent No.3 filed another application for execution of the order dated 29.9.2016 passed by the Maintenance Appellate Tribunal after two years which was allowed by the Deputy Commissioner, Hoshiarpur on 23.8.2018 directing the petitioner to vacate the house of respondent No.3.*

*3. Learned counsel for the petitioner has submitted that the Deputy Commissioner, Hoshiarpur has committed an error in law in passing the impugned order. In this regard, he has referred to Section 11 of the Act which deals with the ‘enforcement of order of maintenance’. Learned counsel for the petitioner has submitted that the order of maintenance would have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”) and is to be executed in the manner prescribed for the execution of such order by that Code. He has thus referred to Chapter IX of the Cr.P.C which deals with the order for maintenance of wives, children and parents. It is submitted that in none of the provisions of this Chapter, power has been given to the executing authority to pass an order of eviction.*

*3. On the other hand, learned counsel for respondents No.3 opposes the prayer of the petitioner.*

*4. I have heard learned counsel for the parties and perused the record.*

*5. Admittedly, petitioner is not paying maintenance to his mother-respondent No.3 in terms of the orders passed by the Maintenance Tribunal as well as Maintenance Appellate Tribunal.*

*6. In the premise, petition is dismissed. However, interim order dated 28.09.2018 passed in the writ petition shall remain in force for a period of 30 days with liberty to the petitioner to seek revival of the instant writ proceedings provided he furnishes proof of electronic remittance in the account of his mother-respondent No.3 at the rate of Rs.3,000/- per month w.e.f. the date when the petition was first filed before the Maintenance Tribunal/Sub-Divisional Magistrate, Hoshiarpur or a demand draft is prepared and appended*

*with the application seeking revival of the proceedings.”*

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

April 09, 2024  
*naresh.k*

( VIKAS BAHL )  
JUDGE

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|----------------------------|-----|
| Whether reasoned/speaking? | Yes |
| Whether reportable?        | Yes |