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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8633/2024 & CM APPLs. 35351-35352/2024**

SONI

.....Petitioner

Through: **Mr. Kanhaiya Kumar, Advocate.**

versus

NARESH KUMAR RASTOGI & ANR.

.....Respondents

Through: **Mr. Sushil Kumar, Advocate with R-1
and son of R-1 & 2 in person.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

03.07.2024

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1. The present petition impugns judgment dated 25th September, 2023 passed by the Appellant Authority of Divisional Commissioner under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The aforementioned order is a common order passed in cross-appeals emerging from common order dated 09th March, 2021 passed by the District Magistrate (East), which were filed by both parties and clubbed together.

2. The District Magistrate had rejected the eviction petition filed by the senior citizens, viz. Sh. Naresh Kumar Rastogi and Smt. Munni Rastogi, to evict their daughter-in-law, Smt. Soni, along with her children from the following properties: (i) Shop bearing no. B-14, Ground Floor, Gali No. 10, Shashi Garden, Mayur Vihar, Phase-I, East Delhi-91 admeasuring 10 Square Yards; and (ii) House bearing No. B-12/2, Ground Floor, Gali No. 6, Shashi Garden, Mayur Vihar, Phase-I, East Delhi-91. However, while declining the



eviction petition, the District Magistrate directed Smt. Soni to pay INR 5,000/- as maintenance to Sh. Naresh Kumar Rastogi against possession of the shop, i.e., B-14, Ground Floor, Gali No. 10, Shashi Garden, Mayur Vihar, Phase-I, East Delhi-91.

3. Both parties assailed the District Magistrate's order. However, the Appellate Authority upheld the order of the District Magistrate and dismissed both appeals. The operative portion of the said order reads as under:

“7. From the facts and circumstances of the case, it is clearly evident that there is no ill-treatment or harassment to Senior Citizens at the hands of the daughter-in-law Smt. Soni and the eviction application of the Senior citizens are the outcome of their malafide intentions to throw the widow daughter-in-law and her school going children by using the provisions of the Senior Citizen Act, 2007 and Rules framed thereunder. It is also an admitted fact that Sh. Naresh Kumar Rastogi and Smt. Munni Rastogi are residing separately with their other children and are financially good. The District Magistrate rightly observed that there is no ill-treatment or harassment to the Senior Citizens. Infact there are complaints against them for harassing Smt. Soni in collusion with their other children. It is also relevant to note that the Senior Citizens have not come with clean hands. The Senior Citizens' eviction application was initially rejected on 09.03.2021 but they did not file appeal within limitation period of 60 days and thereafter with malafide intention in order to make cause of action again and to bring within the limitation period, they filed Review Application which was dismissed vide order dated 05.10.2021 on the ground that there is no jurisdiction to review the order. Sh. Naresh Kumar Rastogi and Smt. Munni Rastogi thereafter challenged the same before this appellate authority on 07.12.2021. It is actually duty of Sh. Naresh Kumar Rastogi and Smt. Munni Rastogi to atleast help Smt. Soni financially after the death of her husband so that she can able to bring-up ought-up her children. Accordingly, this appellate authority does not find any infirmity in the impugned order. Hence both the appeals are hereby dismissed. Both the parties are directed to live peacefully in their respective portions/property. Copy of this order be provided to both the parties. Record of the Proceedings before DM (East) be also sent back to DM (East) with the copy of this order.”

4. Although the present petition purports to assail the Appellate



Authority's order dated 25th September, 2023, however, the challenge is in fact to the order of the District Magistrate insofar as it directs payment of maintenance amount of INR 5,000/- by the Petitioner, Smt. Soni to the senior citizens.

5. The Court has perused the record as well as the orders of the District Magistrate and Appellate Authority. In the opinion of the Court, the order of the District Magistrate, as upheld by the Appellate Authority, is well-balanced. Despite noticing the fact that the senior citizens are the owners of the shop property, which is in possession of Petitioner, no eviction order has been granted. However, at the same time, to balance the equities, a direction has been issued for payment of INR 5,000/- towards the possession of the shop, wherefrom the Petitioner is earning her livelihood. Counsel for Petitioner asserts that she does possess the financial capacity to make this monthly payment. However, it is pointed out that the Petitioner's eldest daughter is presently earning and contributing to the family income. The shop in question would also be generating certain income to the Petitioner.

6. In view of the above, in the opinion of the Court, the impugned orders are well balanced and require no interference by this Court under Article 226 of the Constitution of India.

7. Dismissed, along with pending applications.

SANJEEV NARULA, J

JULY 3, 2024

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