

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13119 OF 2024

Sou. Jayshri Suryakant Bagade

...Petitioner

V/s.

Smt. Suman Rajaram Pore and Anr.

...Respondents

Mr. Akshay Kulkarni *with Mr. A.A. Ghadge for the Petitioner.*

Mr. Anand S. Patil *for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 January 2025.

P.C. :

1. **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2. Petition challenges order dated 20 August 2024 passed by the Appellate Authority under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Senior Citizens Act**) rejecting the Appeal preferred by the Petitioner and confirming the order dated 27 May 2024 passed by the Maintenance Tribunal, Karvir Division, Kolhapur, under the provisions of Section 23(1) of the Senior Citizens Act.

Under purported exercise of jurisdiction under Section 23(1) of the Senior Citizens Act, the Maintenance Tribunal has proceeded to cancel the Gift Deed executed by Respondent No.1 - senior citizen in respect of the property at City Survey No. 2282/C at Village-Jaisingpur, Taluka Shirol, District Kolhapur.

3. I have heard Mr. Kulkarni, the learned counsel appearing for the Petitioner and Mr. Patil, the learned counsel appearing for Respondents and considered the submissions canvassed by them.

4. It must be observed at the outset that filing of Appeal by the Petitioner before the Appellate Authority is contrary to the provisions of Section 16 of the Senior Citizens Act, as Section 16 creates right only in favour of a senior citizen or parent to file an Appeal before the Appellate Tribunal. In that view of the matter, the Petitioner could not have filed an Appeal before the Appellate Authority challenging the order of the Maintenance Tribunal dated 27 May 2024. Accordingly, the present Petition is entertained directly against the order dated 27 May 2024 passed by the Maintenance Tribunal.

5. The impugned order dated 27 May 2024 passed by the Maintenance Tribunal would indicate that the Tribunal has proceeded to cancel the Gift Deed by exercise of jurisdiction under Sub Section 1 of Section 23 of the Senior Citizens Act. Section 23 provides thus:-

23. Transfer of property to be void in certain circumstances.-

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub- sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

6. Thus, for the purpose of passing of order for cancellation of an instrument executed by a senior citizen in favour of a beneficiary, the Maintenance Tribunal must record a finding that the Gift Deed was executed subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor coupled with the further finding to the effect that the transferee has refused and failed to provide such amenities and physical needs to the Senior Citizens.

7. In the present case, beyond reproducing Section 23(1) of the Senior Citizens Act, the Maintenance Tribunal has failed to conduct an enquiry nor has recorded any findings to the effect that the Gift Deed was executed subject to the condition that the

Petitioner was to provide basic amenities and basic physical needs to Respondent No.1-senior citizen. The Maintenance Tribunal has further failed to conduct enquiry or to record a finding as to whether there is any refusal or failure on the part of the Petitioner to provide any basic amenities or basic physical needs to the Senior Citizen. The order passed by the Maintenance Tribunal suffers from gross non-application of mind and is in teeth of provisions of Section 23(1) of the Act. The order dated 27 May 2024 is therefore, liable to be set aside. In ordinary course after setting aside order dated 27 May 2024 this Court would have been justified in remanding the proceedings before the Maintenance Tribunal for fresh decision after conduct of enquiry on the above two aspects.

8. Perusal of the Application preferred by Respondent No.1 would indicate that there is no averment in the entire Application that the Gift Deed was executed subject to the condition of Petitioner providing basic amenities and basic physical needs to Respondent No.1. Furthermore, there is no averment in the Application about failure or refusal on the part of the Petitioner to provide basic amenities or basic physical needs to Respondent No.1. Therefore, even after remand, it would be difficult for the Maintenance Tribunal to conduct enquiry into the said two aspects.

9. At this juncture, the learned counsel appearing for Respondent No.1 would submit that an opportunity be granted to

Respondent No.1-senior citizen to file a fresh application under the provisions of Section 23(1) of the Senior Citizens Act. Considering the fact that Respondent No.1 is aged 87 years and is desirous of exercising a remedy under Section 23(1) of the Senior Citizens Act by raising appropriate pleadings in her Application, in my view an opportunity needs to be granted to her to file a fresh Application for raising necessary pleadings under Section 23(1) of the Senior Citizens Act.

10. I accordingly proceed to pass the following order:-

- (i) Orders dated 20 August 2024 passed by the Appellate Tribunal and 27 May 2024 passed by the Maintenance Tribunal are set aside.
- (ii) Respondent No.1 would be at liberty to file fresh Application before the Maintenance Tribunal under the provisions of Section 23(1) of the Senior Citizens Act.

11. With the above observations Writ Petition is allowed and disposed of. All contentions of the parties on merits are expressly kept open.

12. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]