

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11534 OF 2024

1. Kavita Ramesh Kathare
2. Kishan Ramesh Kathare

...Petitioners

V/s.

1. Appellate Authority & Additional
Collector, Mumbai Suburban
District
2. Sonabai Krishnasa Kathare
3. Sub-Divisional Officer & Designate
Officer.

...Respondents

WITH
INTERIM APPLICATION NO.15676 OF 2024
IN
WRIT PETITION NO.11534 OF 2024

Sonabai Krishnasa Kathare

...Applicant

In the matter between

1. Kavita Ramesh Kathare
2. Kishan Ramesh Kathare

...Petitioners

V/s.

1. Appellate Authority & Additional
Collecto, Mumbai Suburban
District
2. Sonabai Krishnasa Kathare

...Respondents

3. Sub-Divisional Officer & Designate
Officer.

**WITH
WRIT PETITION NO.13759 OF 2024**

Sonabai Krishnasa Kathare

...Petitioner

V/s.

1. Kavita Ramesh Kathare

2. Kishan Ramesh Kathare

3. President, Maintenance & Welfare
of Parents & Senior Citizen
Tribunal & Sub Divisional Officer
Mumbai Western Suburb.

4. Appellate Tribunal & Additional
District Collector, Mumbai
Suburban District.

...Respondents

Mr. Aditya Lele *for the Petitioner in WP/11534/2024 and for
Respondent Nos.1 and 2 in WP/13759/2024 & IA/15676/2024.*

Mr. Ashok B. Tajane *with Ms. Kavita P. Shinde for the Petitioner
in WP/13759/2024 & Applicant in IA/15676/2024 and for
Respondent No.2 in WP/11534/2024.*

Mrs. V.R. Raje, AGP *with Mr. R.S. Pawar, AGP for Respondent -
State.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 7 February 2025.

Judgment pronounced on : 17 February 2025.

Judgment:

1. These are cross-Petitions filed by mother-in-law and daughter-in-law challenging the order dated 29 July 2024 passed by the Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Act of 2007**), thereby dismissing the Appeal preferred by the daughter-in-law and confirming the order dated 25 April 2024 passed by the Maintenance Tribunal. By order dated 25 April 2024, the Maintenance Tribunal has partly allowed the Application preferred by the mother-in-law and has directed the daughter-in-law and her son to handover possession of the Shop No.5 to the mother-in-law. However, prayer of the mother-in-law for handing over possession of Flat No.202 has not been granted by the Maintenance Tribunal. Both the cross Appeals filed by the mother-in-law and daughter-in-law are dismissed by the Appellate Tribunal by orders dated 29 July 2024, which are subject matter of challenge in these Petitions.

2. Petitioner No.1 in Writ Petition No.11534 of 2024 Smt. Kavita Kathare (**Smt. Kavita**) is the second wife of late Ramesh Kathare and Petitioner No.2-Shri Kishan Ramesh Kathare is their son. Petitioner in Writ Petition No.13759 of 2024 Smt. Sonabai Krishnasa Kathare (**Smt. Sonabai**) is the mother of late Ramesh Kathare.

3. Late Krishnasa Kathare (Ramesh's father and Sonabai's husband) owned several properties. In addition to Ramesh, Krishnasa Kathare has two daughters- Smt. Renuka Rajouli and Smt. Bharti Meharwade. Late Krishnasa Kathare passed away on 5 February 1999 leaving behind several properties in Mumbai as well as in Hubli (Karnataka). He owned Flat No.202 in Meghna Co-op. Housing Society Ltd., M.V. Road, Andheri (East), Mumbai- 400 069 admeasuring 862.70 sq.ft (**Flat No.202**). He also owned Shop No.5 in Vertex Vikas Society, M.V. Road, Andheri (East), Mumbai- 400 069 (**Shop No.5**). Additionally, late Krishnasa owned several other properties. So far as the present Petitioners are concerned, Flat No.202 and Shop No.5 are subject matter of contest between mother-in-law and daughter-in-law.

4. Marriage between Kavita and Ramesh Kathare was solemnised on 15 April 2001. According to Smt. Kavita, Ramesh Kathare used to carry on business in the name and style of 'Parisun Men's wear' in Shop No.5 for several years. Ramesh Kathare passed away on 24 August 2021. Ramesh's mother -Smt. Sonabai filed Application before the Maintenance Tribunal on 5 April 2023 seeking possession of Shop No.5 and Flat No.202 from Smt. Kavita and her son Kishan Kathare. Smt. Sonabai also prayed for payment of monthly maintenance of Rs.50,000/-. In her Application, Smt. Sonabai contended that she is the exclusive owner in respect of Shop No.5 on the strength of the Will executed by her husband. She relied upon transferred share certificate in respect of Shop No.5 in her name. So far as Flat

No.202 is concerned, Smt. Sonabai contended that the same was in joint ownership of her husband and her son-Ramesh Kathare. Smt. Sonabai made reference to various police complaints filed by her against Smt. Kavita and sought possession of both the properties. The Application was resisted by Smt. Kavita by filing affidavit-in-reply questioning existence of the Will and claiming that she is also owner of Shop No.5 as well as Flat No.202. After hearing the rival parties, Maintenance Tribunal proceeded to pass order dated 25 April 2024 directing Smt. Kavita and Kishan to vacate possession of Shop No.5 and to handover its possession to Smt. Sonabai. However, prayer of Smt. Sonabai for grant of possession of Flat No.202 as well as monthly maintenance of Rs.50,000/- was however not granted. Rival parties filed cross Appeals before the Appellate Authority. The Appeal No.30 of 2024 filed by Smt. Sonabai was *qua* rejection of prayer for possession of Flat No.202 and non-grant of monthly maintenance of Rs.50,000/-. Appeal No.34 of 2024 filed by Smt. Kavita and Kishan was for direction to Maintenance Tribunal for handing over possession of Shop No.5. Both the Appeals have been dismissed by the Appellate Tribunal by orders dated 29 July 2024, which are subject matter of challenge in the present Petitions.

5. On 19 August 2024, this Court directed Smt. Kavita to deposit monthly sum of Rs.35,000/- in respect of Shop No.5 during pendency of the Petitions. Accordingly, Smt. Kavita has deposited sum of Rs.35,000/- per month in this Court. Smt. Sonabai has filed Interim Application No.15676 of 2024 for

enhancement of the said amount of Rs.35,000/- to Rs.1,25,000/-. Instead of deciding the said Application, both the learned counsel agreed that the main Petitions could be taken up for final hearing. Accordingly, submissions of the learned counsel appearing for the rival parties are heard on the merits in both the Petitions.

6. Mr. Lele, the learned counsel appearing for Smt. Kavita and Kishan would submit that Smt. Sonabai has misused the jurisdiction of Maintenance Tribunal for securing possession of property from her daughter-in-law. That otherwise there is no whisper about any mental torture or harassment by Smt. Kavita to the mother-in-law in the entire complaint. That Smt. Kavita always resided separately with her husband and son from her mother-in-law and at no point of time, the mother-in-law occupied either Flat No.202 or Shop No.5. That the case therefore, does not involve ousting of the mother-in-law from either the flat or the shop. That the mother-in-law always resided in a separate flat in Shivam Society, Mumbai, owned by father-in-law. That by inducting a licensee in the said flat in Shivam Society, mother-in-law actually resides with her daughter. That the mother-in-law otherwise cannot invoke jurisdiction of the Maintenance Tribunal under the Act of 2007 against daughter-in-law, who does not have any legal obligation to pay maintenance to the mother-in-law. On the contrary, the two daughters of Smt. Sonabai are under legal obligation under the Act of 2007 to maintain her and instead of filing of proceedings against her two daughters, mother-in-law has misused the

jurisdiction of the Maintenance Tribunal for merely recovering possession of the flat and the shop. That the jurisdiction of Maintenance Tribunal cannot be invoked for securing possession of properties in absence of any allegation of failure to maintain the senior citizen. That in the orders passed by the Maintenance Tribunal and the Appellate Tribunal, there is no finding about any harassment meted by the daughter-in-law. That therefore the direction for handing over possession of shop is clearly without jurisdiction. That the shop is the only source of livelihood for Smt. Kavita and Kishan.

7. Mr. Lele would further submit that the alleged Will of father-in-law is brought into existence for the first time after 25 years of his death for the purpose of claiming title in Shop No.5. That the Will is otherwise not probated and has no existence in the eyes of law. He would rely upon judgments of Madhya Pradesh High Court delivered by Division Bench in ***Vinay Kumar Saraswar V/s. State of M.P. through Collector Balaghat and Others***¹ and Single Judge in ***Vinay Kumar Saraswar V/s. State of M.P. through Collector Balaghat and Others***² in support of his contention that proceedings under the Act of 2007 cannot be filed against daughter-in-law, who is not covered by expression 'children' or 'relative' and that no right can be claimed on the basis of non-probated Will. He would also rely upon judgment of the Supreme Court in ***Ravinder Nath Agarwal V/s. Yogender Nath Agarwal and Ors.***³ in support of

¹ 2024 SCC Online MP 8409

² Writ Petition No.2293 of 2021, decided on 2/11/2022

³ (2021) 15 SCC 282

his contention that no rights can be created on the basis of unprobated Will. Mr. Lele would pray for setting aside order passed by the Maintenance Tribunal and the Appellate Tribunal.

8. Mr. Tajane, the learned counsel appearing for Smt. Sonabai would submit that the Maintenance Tribunal has erred in non-granting prayer for possession of Flat No.202 as well as Smt. Sonabai's prayer for award of monthly maintenance of Rs.50,000/-. He would invite my attention to various police complaints filed by Smt. Sonabai to demonstrate harassment meted out to her by Smt. Kavita. That Smt. Sonabai's husband executed Will dated 16 December 1998 bequeathing Shop No.5 in favour of his wife and accordingly share certificate in respect of the said Shop is already transferred in her name. That therefore Smt. Sonabai is exclusive owner in respect of Shop No.5 and in absence of any semblance of title to the said shop, Smt. Kavita and Kishan cannot be permitted to occupy the same. So far as the flat No.202 is concerned, she would submit that Smt. Sonabai is 50% owner in respect of the said flat and cannot be prevented from entering the same. That since Smt. Sonabai is the owner of Shop No.5 and Flat No.202, she cannot be denied access to the same. That the jurisdiction of the Maintenance Tribunal has rightly been invoked to ensure that Smt. Sonabai is no longer harassed at the hands of her daughter-in-law, who otherwise fits into the definition of the term 'relative' under the Act of 2007. That Smt. Kavita is residing at family owned property and cannot be allowed to take convenient stand that she is not answerable to the Competent Authority under the provisions of

Act of 2007. He would accordingly pray for setting aside the orders passed by the Appellate Tribunal and would request for handing over possession of Flat No.202 as a whole in addition to payment of monthly compensation.

9. Rival contentions of the parties now fall for my consideration.

10. This is a fight between mother-in-law and daughter-in-law *qua* family-owned properties. It appears that Smt. Sonabai's husband- Krishnasa owned several properties as under:

- (i) Shop No.30 admeasuring 120 Sq.ft., Indraprastha Shopping Centre, S.V. Road, , Borivali (West), Mumbai.
- (ii) Flat No.6 Shivam Society, Hindu Friends Co-operative Society, Natwar Nagar, Road No.4 Jogeshwari (East), Mumbai- 40060.
- (iii) Shop No.5 Vertex Vikas Society, M.V. Road, Andheri (East), Mumbai -400 069,
- (iv) 20% share in Shop No.82 Indraprasth Shopping Centre, S.V. Road, Borivali, Mumbai. (*remaining 80% share owned by son-Ramesh Krishnasa Kathare.*)
- (v) House admeasuring 100' x 50' sq.ft. at Village – Ganjendragad, Taluka -Ron, District-DharwadHubli, State of Karnataka.

11. Late Krishnasa allegedly executed Will dated 16 December 1998 under which he bequeathed Shop No.5 in the

name of his wife -Smt. Sonabai, Flat No.6 in Shivam society in favour of elder daughter- Mrs. Renuka Rajouli, Shop No.30- Indraprastha Shopping Center in favour of elder daughter - Renuka Rajoli, 20% share in Shop No.82 in Indraprastha Shopping Centre in favour of his son Ramesh Kathare and House at Dharwad to the two daughters- Smt. Renuka Rajouli and Smt. Bharti Meharwade in equal shares. Since 80% share in Shop No.82, Indraprastha Shopping Center was already owned by Ramesh Kathare, Smt. Sonabai does not dispute that on account of bequeating of balance 20% share by father-Krishnasa, Ramesh became 100% owner in respect of the said Shop No.82. Thus, if the alleged Will dated 16 December 1998 is construed to be valid, Ramesh was given only Shop No.82 whereas Smt. Sonabai was given Shop No.5, elder daughter was given flat in Shivam Society and Shop No.30 in Indraprastha Shopping Center, in addition to house property in Karnataka in equal proportion. Additionally, Flat No.202 was apparently purchased in the joint names of Ramesh and Smt. Sonabai.

12. According to Smt. Kavita and Kishan, two sisters and their husbands used to harass Ramesh for money and property, on account of which he went into depression and committed suicide on 24 August 2021. It is Smt. Kavita's case that she used to reside alongwith her husband- Ramesh and son-Kishan in Flat No.202 whereas Smt. Sonabai and Krishnasa always resided in Shivam Society Flat No.6. According to Smt. Kavita, she had never resided alongwith her mother-in-law and the residence of the two were always separate. According to Smt. Kavita, her

husband-Ramesh used to operate tailoring and fabric retail shop in the name and style of 'Parisun Men's wear' in Shop No.5. After death of Ramesh, Smt. Kavita and Kishan have continued residing in Flat No.202 and also possessed Shop No.5. According to Smt. Kavita, the income generated through said Shop No.5 is the only source of livelihood for her. She claims that Smt. Sonabai earlier used to reside in Shivam Society, Flat No.6 and later inducted a licensee therein and has shifted her residence with her elder daughter- Renuka Rajouli few years back.

13. The above position would indicate that this is a classic case of fight over properties between the mother-in-law and daughter-in-law. Except Shop No.5 and Flat No.202, there appears to be not much dispute about other properties so far as the proceedings under the Act of 2007 are concerned. Shop No.5, as of today, stands in the name of Smt. Sonabai in the Society's records and the share certificate has been transferred in her name. Smt. Sonabai also relies upon the Will executed by Krishnasa to claim exclusive ownership in respect of Shop No.5. On the other hand, Smt. Kavita and Kishan dispute the authenticity of the Will by submitting that the same is brought into existence only for denying their rights in the property. It is contended that the Will is otherwise not probated and therefore cannot be acted upon.

14. Having set out the broad position of various family-owned properties and rival claims set out by mother-in-law and daughter-in-law, it would now be necessary to examine the

pleadings in Application preferred by Smt. Sonabai before the Maintenance Tribunal. It appears that before filing Application before the Maintenance Tribunal, Smt. Sonabai lodged several complaints with the police alleging torture and harassment at the hands of Smt. Kavita. However, the main thrust of Smt. Sonabai was essentially in respect of her share in the properties. In all the complaints filed by Smt. Sonabai to police, her main demand was for return of properties. When she approached the Maintenance Tribunal, her complaint was mainly in the nature of a plaint filed for recovery of possession of property. Her complaint begins with description of Shop No.5 and Flat No.202 and further averments were aimed at demonstrating title of the said properties. Thus, the true intent of Smt. Sonabai in moving the machinery under the Act of 2007 was clearly to secure possession of Shop No.5 and Flat No.202 from Smt. Kavita and Kishan.

15. Coming to the provisions of the Act of 2007, the same is essentially aimed at casting an obligation on children to maintain their aged parents and to ensure their maintenance. Section 2(a) of the Act of 2007 defines the term 'children' as under:-

2(a) "Children" includes son, daughter, grandson and grand-daughter but does not include a minor;

16. Thus, the Legislature has not included daughter-in-law within the definition of the term 'children'. The term

‘relative’ has been defined under Section 2(g) of the Act of 2007 as under:-

2(g) "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

17. The term ‘relative’ thus become relevant only in respect of childless senior citizen and refers to person, who is in possession or would inherit the property of senior citizen.

18. Single Judge of the Madhya Pradesh High Court has dealt with the position making daughter-in-law liable to maintain senior citizens and has held in paragraphs 11 and 12 in ***Vinay Kumar Saraswar*** (supra) as under:

11. Section 4 of the Act, 2007, entitles a senior citizen to claim maintenance and for that he/she has to move an application under Section 5 of the Act, 2007 before the competent authority. Section 4 of the Act, 2007 reads as under:-

"4. Maintenance of parents and senior citizens.-

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 in case of-

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property."

Perusal of Section 4, makes it clear that a senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him shall be entitled to make an application against one or more of his children not being minor or if a senior citizen is childless, then he can claim maintenance against such of his relative referred to in Clause (g) of Section 2 of the Act, 2007. **Here in the present case, admittedly, the daughter of the petitioner is alive, therefore, he cannot be considered to be a childless person and, as such, maintenance if any, is required to be claimed that should have been claimed by the petitioner against his daughter.**

12. In this case, though no monetary claim towards maintenance was raised by the petitioner against respondent No.3, but sought his eviction from the house in question who admittedly was not his child. From the language used in Section 4, it is clear that maintenance from a relative can be claimed in view of the definition provided in Clause (g) of Section 2, but that definition comes into operation only when a senior citizen is childless. The definition of relative as defined in Clause (g) of Section 2 reads as under:-

"2(g) "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death."

In view of the above definition, respondent No.3 cannot be considered to be a relative of the petitioner as he is not a childless senior citizen, but having a daughter who is aged about 44 years and residing at Nagpur. The daughter comes under the definition of children as has been defined in Clause (a) of Section 2 which reads as under:-

"2(a) "children" includes son, daughter, grandson and grand-daughter but does not include a minor."

In view of the aforesaid, I am of the opinion that the petitioner being a senior citizen cannot claim any sort of maintenance against respondent No.3 and as such, the application filed by the petitioner before the competent authority seeking maintenance from respondent No.3 was not maintainable and had rightly been rejected by the authority. Although, the authority while rejecting the application had not consider this aspect of the matter, but dismissed the same saying that the dispute is of civil nature and as such, it could only be decided by the Civil Court.

19. The judgment of the learned Single Judge has been upheld by the Division Bench of Madhya Pradesh High Court in ***Vinay Kumar Saraswar*** (supra). The Division Bench has gone into the issue as to whether any right can be claimed before the Maintenance Tribunal on the basis of a Will, which is not probated. The Division Bench held in paragraph 3 and 4 as under:

3. It is argued that the writ petitioner is in possession of all the relevant documents with respect to ownership of the house in question. The writ court has failed to consider the aforesaid aspect of the matter and only on the ground that there are several disputed facts including the disputed title over the house in question and the writ petitioner is seeking eviction of respondent no.3 from the property in question but until and unless the dispute with respect to the title has been settled by the competent court, the writ court could not have interfered in the matter, the petition has been dismissed even, the application filed under Section 22(2) of the Act of 2007 has been rejected on the same ground.

4. It is observed by the writ court that the writ petitioner is claiming his right over the property in question by virtue of a will but the same is being disputed by respondent No.3. Until and unless the will is proved before the competent authority, the title over the property could not have been ascertained. The writ court took note of the aforesaid aspect of the matter and dismissed the writ petition observing that the writ petitioner is at liberty to approach the civil court having competent jurisdiction to try the title suit.

20. However, in ***Priya Sameer Holkar Vs. Dy. Collector***⁴ I have held as under:

16. Thus a daughter-in-law is not included in definition of the term 'children'. Under sub-section 4 of Section 4, a relative of senior citizens having sufficient means is under obligation to maintain the senior citizen only if such relative is in possession of property of senior citizen or he would inherit the property of senior citizen. Therefore, though a daughter-in-law is not included in definition of the term 'children', but she would still

⁴ 2024 SCC Online Bom 717

be obliged to maintain a senior citizen under Section 4 (4), if it is proved that the daughter-in-law is in possession of property of senior citizens. Jurisdiction against Petitioner, who is otherwise not covered by definition of term 'children', is sought to be exercised by the Tribunal by treating her as relative. The term relative is defined under section 2 (g) of the Senior Citizens Act as under:

"2 (g). "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

17. Thus, to rope in a daughter-in-law, who is not covered under definition of the term 'children', it must be proved that the daughter-in-law is in possession of or would inherit property of senior citizen after his/her death. It is therefore necessary that a finding is recorded that the senior citizen owns a property. The term 'his property' in section 2(g) would obviously mean the property owned by the senior citizen and not a property in which senior citizen merely claims share, which is yet to be established. The Maintenance Tribunal has recorded a finding that Petitioner held/holds property of the senior citizens. Though list of several properties is incorporated in the order of Maintenance Tribunal, no inquiry is instituted as to whether senior citizens actually own those properties in their individual capacities. The finding of Petitioner holding senior citizen's properties is then utilised for issuance 2 directives viz. (i) to pay Maintenance of Rs. 10,000/- to senior citizens and (ii) to return the properties to senior citizens. I proceed to examine correctness of both these directions.

21. True it is that the daughter in law holding on to senior citizen's property would ordinarily fall in the definition of the term 'relative' only if the senior citizen is childless. In the present case, Smt. Sonabai is not childless and has two daughters living.

22. As observed above, the entire thrust of Smt. Sonabai is to somehow secure possession of properties from her daughter-in-law- Smt. Kavita. The real contest is not over maintenance or well-being of the senior citizen, but jurisdiction of the Tribunal is invoked essentially to ensure ouster of daughter-in-law from

properties. In my view provisions of the Act of 2007 cannot be invoked even by a senior citizen mainly for the purpose of securing possession of properties, when there is no serious issue about maintenance and well-being of the senior citizen. This is more particularly true where proceedings are filed against the daughter-in-law, who is not even covered by definition of the term '*children*' under the Act.

23. In the present case, Smt. Sonabai believes that she is an exclusive owner of Shop No. 5 and that Smt. Kavita is unlawfully occupying the same and is profiteering therefrom. Smt. Kavita, on the other hand, denies title of Smt. Sonabai in respect of Shop No.5 and challenges the genuineness of late Krishnasa's Will. In my view, the relief for possession of Shop No.5 based on title must be claimed from a Civil Court and not from Maintenance Tribunal by invoking its summary jurisdiction. The Maintenance Tribunal is not equipped to decide complex issue of title. Parties to the present proceedings appear to be fairly well placed in the society. The real contest between them is their claim towards title and possession of properties left behind by late Krishnasa and late Ramesh Kathare. This complex contest cannot be resolved before the Maintenance Tribunal. Summary proceedings before the Maintenance Tribunal are aimed at providing quicker and swift remedy to the senior citizen to secure their maintenance and well-being as well as to get back the properties gifted in favour of the children, who refuse to look after them. Such summary jurisdiction cannot be invoked to decide complex issues of title. In my view therefore the

Maintenance Tribunal could not have passed any order with regard to possession of any of the properties. The Tribunal on the contrary ought to have concentrated only on well-being of the senior citizen- Smt. Sonabai.

24. Coming to the needs of senior citizen-Smt. Sonabai, she has two daughters. However, she has not chosen to file any proceedings against her two daughters for her maintenance. She admittedly owns and possesses flat No.6 in Shivam Society and out of her own volition, has shifted to her daughter-Smt. Renuka Rajouli's house. Thus, this is not a case where senior citizen - Smt. Sonabai is without a shelter. Therefore, though she may have 50% share in Flat No.202, it would not be in the interest of either of the parties to force Smt. Sonabai and Smt. Kavita to live together in the same house. Since Smt. Sonabai owns and possesses a separate residence for herself it would not be prudent to direct entry of Smt. Sonabai in Flat No.202. Since Smt. Kavita and Kishan would own 50% share in Flat No.202 after Ramesh's death, their eviction from the said flat cannot be sought. At the same time daughter-in-law -Smt. Kavita is in possession of Shop No.5 and Shop No.82 in Indraprastha Shopping Centre. So far as Shop No.5 is concerned, the same as of now stands in the name of Smt. Sonabai in Society's records. Thus, as of now there is room to believe that Smt. Kavita is holding property of her mother-in-law. Therefore, Kavita's obligation to maintain her mother-in-law is not completely wiped out as she would then fit into the definition of the term 'relative' since she holds senior citizen's property. I am not entering into the debate as to

whether Smt. Kavita would strictly fall in definition of the term 'relative' as Smt. Sonabai has two daughters living. In the unique facts and circumstances of the case, the daughter-in-law must be made to atleast share the income generated through Shop No. 5, which stands in the name of Smt. Sonabai.

25. According to Smt. Sonabai, Smt. Kavita is earning handsome income from Shop Nos. 5 and 82. This Court has already directed Smt. Kavita to deposit an amount of Rs.35,000/- per month towards possession of Shop No.5. Smt. Sonabai, on the other hand has filed Interim Application No.15676 of 2024 contending that Shop No.5 is worth Rs.8 crores and Flat No.202 is worth Rs.2 crores. Without going into the valuation figures sought to be suggested in her Application, in my view ends of justice would meet if Smt. Kavita is directed to provide for maintenance of Smt. Sonabai so that she can look after her own needs in her old age. Smt. Kavita cannot be permitted to enjoy the rental returns of Shop No.5 to complete exclusion of Smt. Sonabai, when the same stands in the name of Smt. Sonabai at least in the Society records. Therefore, till Smt. Sonabai initiates necessary proceedings in the Civil Court for claiming title and possession of Shop No.5 and 50% share in Flat No.202, Smt. Kavita and Kishan must be made liable to pay monthly maintenance amount to Smt. Sonabai. This arrangement is made to ensure welfare of Smt. Sonabai as she is now being driven to lengthy civil litigation to claim title and possession of the properties, which she believes to be in her ownership. Therefore, this exceptional arrangement is made making the

daughter-in-law to provide for maintenance of the senior citizen in the unique facts and circumstances of the present case.

26. Coming to the quantum of amount which can be directed to be shared by Smt. Kavita with her mother-in-law, this Court has fixed interim amount of Rs. 35,000 per month which Smt. Kavita is depositing in the Court. Smt. Sonabai has applied for enhancement of the amount. The exact rental return of Shop No. 5 is not available on record. As of now Smt. Kavita is receiving the rental returns of Shop Nos. 5 and 82, whereas Smt. Sonabai is receiving rental returns of Flat in Shivan Society. Considering the facts and circumstances of the case, ends of justice would meet if the amount is fixed at Rs. 50,000/- payable from the month of March 2025. This would ofcourse be subject to the decree that would be passed by the civil court in proceedings filed by either of the parties claiming title. It is clarified that this order shall not be construed as determination of title of rival parties to the properties in question. All rights and contentions in that regard are left open.

27. I accordingly proceed to pass the following order:

- (i) Order dated 25 April 2024 passed by the Maintenance Tribunal and order dated 29 July 2024 passed by the Appellate Tribunal are set aside.
- (ii) Smt. Kavita Ramesh Kathare and Shri Kishan Ramesh Kathare shall pay to Smt. Sonabai amount of Rs.50,000/-

per month on or before 10th day of each month from March-2025 by depositing the said amount in the following account:

Sonabai Krishnasa Kathare & Meharwade Bharati Sanjay
NKGSB Co-operative Bank Ltd.
A/c No.006100100024450
IFS Code-NKGS0000006
Shree Niketan, Hindu Friends Society Road
Jogeshwari (East) Mumbai 400 060.

(iii) The above arrangement of payment of monthly amount of Rs.50,000/- would be subject to the order that would be passed by the Civil Court in proceedings as and when initiated by the rival parties.

(iv) Smt. Sonabai Krishnasa Kathare shall be entitled to withdraw the entire amount deposited in this Court together with accrued interest.

28. With the above directions, both the Petitions and Interim Application stand disposed of without any orders as to costs.

[SANDEEP V. MARNE, J.]