



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2198/2023

Moreswar Namdeo Wanjari and Ors. .Vs. The Collector and Appellate
Tribunal, Nagpur and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. P. Pande, Advocate for petitioner.
Mrs. M. Naik, A.G.P. for respondent Nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 9, 2025

Heard.

2. The question is, whether the children have right to file appeal under Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the, 'Act of 2007'). The Appellate Court i.e. Collector, Nagpur held that right to file appeal is given only to the parents and senior citizens and not to any other party.

3. Learned counsel for the petitioner has invited my attention to the judgment passed by Allahabad High Court in **Smt. Roopam alias Jyoti Sharma and anr. Vs. District Magistrate Lucknow and Ors.; [AIR 2022 Allahabad 204]**. Finding given by the Allahabad High Court can be said to be an answer to the question posed here. The High Court, after going through the provisions of the Act of 2007 and relevant judgments, held thus:

"36. In view of the aforesaid discussions, there seems to be an accidental omission while enactment of the statute namely Act, 2007, where under Section 16(1), the right to appeal has only been given to the parents and the senior citizens

not to the children, relative or other person. In any legislature of the world, there can be no such discussion or intent to exclude a person, who is aggrieved under the same Act, to file an appeal or to extend any remedy therein. So far as the rule of casus omissus is concerned, it is also a vice-versa as if there is a clear necessity of any provision and that has been omitted, then that is out of purview of the doctrine of casus omissus.

37. *Objective of any statute is always to provide more effective provisions so that there could remain no ambiguity. The provisions for the maintenance are for welfare of the parents and the senior citizen and was promulgated for better care of them but, there is another side of the story. Because the maintenance has to be given by some person or institute or a juristic person and if such a maintenance is been granted, some person must be affected and thus, the non mentioning of the words in Section 16(1) is not a casus omissus, but it seems an accidental omission.*

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40. *Further, it is also important that there is no provision in the Act denying the right of appeal to the other parties. From perusal of the other provisions of the Act and various sub sections discussed aforesaid indicates that the right to appeal to other parties has accidentally been omitted. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the statutes.*

41. *The identical issue was also dealt with by the Punjab and Haryana High Court in case of Paramjeet Kumar Saroya (supra) as well as in case of Balamurugan (supra) by the Madras High Court and it has been held that if the right to appeal is*

not been accorded to the children, relatives or any other person then the purpose of the Act, 2007 would be frustrated and rather this would be a denial of right to appeal to the person aggrieved.

42. Thus, this Court is also in agreement with the aforesaid orders and find that the right to appeal to any affected parties is available so far as the purpose of the Act, 2007 is concerned.”

4. Thus, the Court, after having examined the relevant provisions and after going through the views of the other High Courts, held that right to file appeal is available to the affected parties, which, to my mind, should include sons as well. In fact, this Court in the case of **Riddhi and anr. .Vs. Pratibha and Ors. [2024 SCC OnLine Bom 1690]**, held that the daughter-in-law will fall within the definition of the term “relative” and will be entitled to prefer appeal in terms of Section 16 of the Act of 2007.

5. Having said so, order dated 17.11.2019 passed by respondent No.1-Collector is not tenable. The writ petition is accordingly allowed. Impugned order dated 17.11.2019, passed by respondent No.1 – Collector, Nagpur in Revenue Appeal No. 353/2022 is quashed and set aside. The appeal is remitted back to the Collector, Nagpur to decide it afresh, in accordance with law.

No order as to costs.

(Anil L. Pansare, J.)