



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

**CM-11490-CWP-2024 in/and
CWP-12053 of 2019
Date of Decision : 06-03-2025**

REENA PAHWA

.....Petitioner

VERSUS

**ADDITIONAL DEPUTY COMMISSIONER-CUM -ADDITIONAL
DISTRICT MAGISTRATE LUDHIANA AND OTHERS**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Ishan Gupta, Advocate
for the respondent No.2.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-11490-CWP-2024

1. In the present petition, the grievance being raised by the petitioner-daughter-in-law is against the ex-parte order dated 01.06.2018 (Annexure P-5) passed by the Tribunal, on behest of respondent No.2-senior citizen, who had filed the claim petition and had approached the Tribunal for the vacation of the petitioner from the premises of property on the ground that he is the owner of the said property.

2. The Tribunal passed an ex-parte order granting the said benefit to the senior citizen by way of the impugned order dated 01.06.2018, copy of which has been appended as Annexure P-5. The ex-parte order has been passed by the Tribunal on the ground that no one appeared on behalf of the petitioner before the Tribunal despite service, and thus, by agreeing to the

averments made by the respondent No.2-senior citizen, the impugned order was passed by the Tribunal directing the petitioner and her husband to vacate the premises within a period of one month.

3. Aggrieved by the said decision of the Tribunal, the petitioner has approached this Court. The petition was initially adjourned to find out as to whether “eviction” is inherent as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or not.

4. Today, an application has been filed by respondent No.2-senior citizen for listing the case keeping in view of the Hon’ble Supreme Court of India in Civil Appeal No.10927 of 2024 titled “***Urmila Dixit Vs. Sunil Charan Dixit and ors.***” dated 02.01.2025.

5. In view of above, the said application has been allowed and the main case i.e. CWP-12053 of 2019 has been taken up for consideration.

CWP-12053 of 2019

1. The ground which has been taken by the petitioner-daughter-in-law is that since there is a matrimonial dispute persisting between the petitioner and her husband and the jurisdiction under Section 2007 Act has been invoked only to oust the petitioner-daughter-in-law from the premises in question.

2. Though, none has appeared on behalf of the petitioner, learned counsel for the respondent-Senior citizen has been heard.

3. It is a conceded fact that there is a proceeding initiated at the hands of the petitioner-daughter-in-law under the Domestic Violence Act, 2005 against the respondents.

4. At the outset, learned counsel for the respondent No.2-Senior citizen was asked as to whether, the Senior Citizen has any other property in his name than the property in question from where the eviction of the petitioner is being sought, the learned counsel for the respondent No.2-Senior citizen has very fairly conceded that the Senior Citizen and his wife are living in their own property at another place, which is in the name of the wife of respondent No.2-Senior Citizen.

5. The totality of the circumstances are to be taken into account for deciding the issue whether, the eviction can be sought by the respondent No.2-Senior Citizen of their daughter-in-law in the facts and circumstances of the present case.

6. Firstly, there is a matrimonial dispute between the petitioner and her husband who is the son of the Senior Citizens.

7. Second, there is a proceeding under the Domestic Violence Act, which has been initiated by the petitioner-daughter-in-law against the respondent-Senior Citizens and her husband.

8. Third, the premises in question, from where the eviction is being sought, the respondents-Senior citizen are not residing in the said premises but are residing in another property owned by them separately.

9. The totality of the circumstances shows that the present application has only been filed for the eviction of the petitioner-daughter-in-law from the premises. It is not a case that the respondent No.2-Senior Citizen does not have any other place to live which is owned by them and that they are living on a rented premises as compared to the petitioner-daughter-in-law who is using the premises to her convenience.

10. Once, the respondent-Senior citizens have their own premises in which they are living, this becomes purely a case of eviction which does not fall under the provisions of 2007 Act at all.

11. Further, as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.3822 of 2020 titled "***Smt. S. Vanitha Vs.The Deputy Commissioner, Bengaluru Urban District and ors.***", decided on 15.12.2020, it has been held that, where the daughter-in-law is sought to be evicted, the balances have to be created as to whether, the proceedings which have been initiated by the Senior Citizens is bona fide or that they have only been initiated to evict the daughter-in-law, who is suffering from the matrimonial dispute. The facts of the present case are squarely covered by the judgment in ***Smt. Vanitha's case (supra)***.

12. Moreover, the petitioner-daughter-in-law is also not covered under the definition of "***Children***", as is mentioned in Section 2(a) of the 2007 Act, she could not have been directed to be evicted from her matrimonial house. The Tribunal has failed to appreciate all the facts and circumstances before the passing of the impugned order which are very material hence, the order passed by the Tribunal is perverse to the actual facts as well as the settled principle of law settled by the Hon'ble Supreme Court of India in ***Smt. Vanitha's case (supra)***.

13. Though, it has been pleaded that the complaint under Domestic Violence Act, 2005 was filed by petitioner-daughter-in-law after the filing of claim petition by respondent-Senior citizen under the 2007 Act but the same will not change the colour as, a marital dispute existed between the parties

which is to be seen and noticed and not the date when the same has been invoked.

14. Once, the marital dispute has occurred, even though the actual action with regard to the Domestic Violence has been taken after the passing of the impugned order, this Court has to be satisfy itself as to whether the marital dispute existed or not, which in the present case actually exists so as to grant relief to the respondent-Senior Citizens under the 2007 Act especially qua eviction of petitioner from the property, when senior-citizen are living separately in a another property owned by them under these circumstances respondent-senior citizen can avail other remedies to seek relief and not under 2007 Act which under such summary proceedings.

15. Keeping in view the above, the order passed by the Tribunal is set aside.

16. The petitioner-daughter-in-law is allowed to retain the accommodation from where her eviction was sought.

17. Pending application, if any, also stands disposed of.

06-03-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO