



CWP-22898-2024

:1:

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-22898-2024 (O&M)
Date of decision : 13.02.2025

KULWANT SINGH

..... Petitioner

VERSUS

ADDITIONAL DISTRICT MAGISTRATE-CUM-APPELLATE
TRIBUNAL, AMRITSAR AND ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Prateek Sodhi, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Sandeep Singh Majithia, Advocate and
Mr. Rahul Parmar, Advocate
for respondent No.3.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that by the impugned order dated 01.08.2024 (Annexure P-8), the Appellate Authority has set aside the order dated 12.03.2024 (Annexure P-6) passed by the Tribunal constituted under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act'), and has remanded the case back to the Tribunal for fresh adjudication.

2. Learned counsel for the petitioner submits that the concept of

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remanding the case by the Appellate Authority back to the Tribunal to pass a fresh order on the dotted lines is not permissible. Learned counsel submits that keeping in view the observations of the the Appellate Authority, the Tribunal will have no other option but to pass the same order as is the view of the Appellate Authority which is not permissible hence, the Appellate Authority should have passed appropriate order which it deemed fit rather than remanding the case back.

3. Learned counsel for the respondents submits that he has no objection in case the impugned order is set aside and the case is remanded back to the Appellate Authority for passing fresh order. Learned counsel for the respondents submits that once the Appellate Authority is of the view that the order passed by the Tribunal is not correct, it is within the jurisdiction of the authority concerned to direct the Tribunal to pass a fresh order.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. Once, an appeal is preferred against an order, the Appellate Authority is required to consider all the aspects and decide about the validity of the said order. In case the order is valid, the same should be upheld and in case, the order is not valid, the said order should be set aside by giving due reasons for the conclusion to be arrived at. In the present case, after making certain adverse observations against the order passed by the Tribunal dated 12.03.2024, the direction has been given to the Tribunal to pass a fresh order which means that the Appellate Authority wants the Tribunal to pass a

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specific order keeping in view the observation of the Appellate Authority, which is not permissible.

6. Further, the said issue is no longer res integra. The Coordinate Bench of this Court while passing order in ***CWP No.25148 of 2018 titled as Surindera Devi vs. State of Punjab and others, decided on 14.07.2022*** has held that the Appellate Authority has no power to remand the case back. The relevant paragraph Nos. 6 & 7 of the said judgment are as under:-

“6. In this background, the meaning and intent of Section 16 of the Act assumes even more significance inasmuch as a bare reading of the same would reveal that while the appellate authority has been specifically conferred the power to examine the appeal and the records and either call for same before it from the Tribunal and thereafter either to allow it or reject it. The words ‘remand’ are missing in Section 16 of the Act, unlike the case under Order 41 Rules 23 and 25 of CPC where the appellate Court is specifically conferred the power of remand. In that context, for better appreciation the said Rules are reproduced herein below: “Order 41 Rule 23 of CPC Remand of case by Appellate Court : Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.” XXXXXXXX 25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from – Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate court essential to the right decision of the suit upon the merits, the Appellate court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; And such Court shall

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proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

7. In the totality of circumstances and as an upshot of the above discussion, I am of the view that the appellate Tribunal is not conferred with the power of remand under Section 16 of the statute and upon entertaining the appeal must either reject or accept the same, wholly or partly as the case may be. Therefore, the impugned appellate order herein is not sustainable and is accordingly set-aside. The matter is remanded back to the appellate Tribunal for fresh consideration and adjudication. The parties are at liberty to move appropriate application before the appellate Tribunal.”

7. Once the authority has been given to the Tribunal which is independent to decide the issue, the Tribunal cannot be directed to toe to the line of the Appellate Authority. The Appellate Authority should have decided the appeal on merits to decide the *lis* between the parties either way by giving due reasons for the conclusion arrived at.

8. Hence, the order passed by the Appellate Authority remanding the case back is beyond its jurisdiction and cannot be sustained in view of the settled principle of law noticed hereinbefore. Keeping in view the above, the order dated 01.08.2024 (Annexure P-8) passed by the Appellate Authority is set aside on this ground alone. The Appellate Authority is directed to pass a fresh order on the appeal preferred by the respondent. As the parties are litigating and the senior citizen is more than 90 years of age, let the Appellate Authority pass appropriate order within a period of two months of the receipt of the copy of this order. The parties are directed to appear before the Appellate Authority on 19.03.2025.

9. Present petition is allowed in above terms.



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10. Pending applications, if any, also stand disposed of accordingly.

(HARSIMRAN SINGH SETHI)
JUDGE

13.02.2025
Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No