
(2025) 03 BOM CK 0267

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition No. 7332 Of 2022

Chokhendra S/O Devidas Patil And Another

APPELLANT

Vs

Sub Divisional Magistrate, Maintenance Of Sr. Citizen
Tribunal, Chandrapur And Another

RESPONDENT

Date of Decision : 17-03-2025

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 16,
16(1), 16(1)(i)(a), 17, 23

Citation : (2025) 03 BOM CK 0267

Hon'ble Judges : M. S. Jawalkar, J

Bench : Single Bench

Advocate : M.V. Rai, B.M. Lonare, Yash Kullarwar

Final Decision : Allowed

Judgement

M. S. Jawalkar, J.

1. Rule. Rule made returnable forthwith. Heard learned Counsel for petitioner and learned Counsel for respondents.

2. Being aggrieved by the order dated 15/09/2022 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 passed by respondent No.1 i.e. Sub-Divisional Magistrate, Maintenance of Senior Citizen Tribunal, Chandrapur in Case No. 06/Misc./J.N.K.V.P/2022 in Case No. 18/2022, petitioners are directed to vacate three rooms of residence situated at the first floor of the house and also to vacate a shop which is in front of the house within the period of 1 month from the date of issuance of the order and handover the possession of the above stated rooms and shop and rejected the claim of maintenance.

3. Petitioner Nos.1 and 2 are husband and wife respectively and their marriage was solemnized on 24/07/2017. Petitioner No. 2 is of different caste. Respondent No. 2 is father of petitioner No. 1, who had opposed the marriage of the

petitioners, whereas, the mother of the petitioner No. 1 had supported their marriage and also gave reception on 10/09/2017. The respondent No. 2 did not allow the petitioners to come back to residential house and during the Pandemic (COVID-19). The respondent No. 2 suffered from the paralytic attack then petitioners were called back and that time, the petitioners had performed their duties. But after recovery of respondent No. 2, he is started harassing the petitioner on account that petitioner No.2 is of different caste and told petitioner No.1 to leave his wife.

4. The respondent No.2 is having grudge against the petitioner No.2 as she has married with petitioner No.1 and the said marriage is not accepted by the respondent No.2, being petitioner No.2 is of different caste. It is a matter of record that respondent No.2 was ill and at the relevant time, both petitioners served the respondent No.2 by residing in the same house. However, after recovering from his illness, respondent No.2 started abusing petitioner No.2 and also used to instigate his wife so as to drive her out of the house. Both the respondents abused petitioner No.2 in filthy language. On such quarrel, the respondent No.2 filed First Information Report dated 05/06/2022. Present respondent No.2 filed application before S.D.M. and Presiding Officer Senior Citizen Maintenance Tribunal, Chandrapur. The Presiding Officer Senior Citizen Maintenance Tribunal, S.D.M., Chandrapur, passed its order on 15/09/2022 and directed the petitioners herein to vacate three rooms of first floor and shop. Application of maintenance was rejected. Then petitioners herein preferred an appeal as per Section 16 of the Act and they were about to file the same before the learned District Magistrate, Chandrapur. However, concerned Officer who accept the filing of the appeal denied to entertain the appeal stating that only parents and senior citizens can file an appeal under Section 16 of the Act, 2007.

5. Learned Counsel for petitioner relied upon following citations :

i) Ankush Punjabrao Jamodkar Vs. The Appellate Authority and others, in Writ Petition No. 4869/2024

ii) Dinesh Bhanudas Chandanshive Vs. State of Maharashtra and others, 2024 SCC OnLine Bom 336

iii) Jagdish Pitamber Pawar Vs. Pitamber Pundalik Pawar and others, in Writ Petition No. 36/2023

iv) Urmila Dixit Vs. Sunil Sharan Dixit, 2025 SCC OnLine SC 2

v) Namdeo S/o Babuji Bangde and another Vs. State of Maharashtra and others, in Writ Petition No. 2035/2020

6. Learned Counsel for respondent No.1 contended that the Writ Petition filed by the petitioners themselves is ambiguous as on one hand the petitioners are trying to project that an oral transfer of the said portion of three rooms of property had been made to them. On the other hand, they are alleging that the said case does not fall under the purview of Section 23 of the Senior Citizens Act

2007. Under both the circumstances, petitioners cannot be allowed to stay in the above mentioned premises as no basic amenities and basic physical needs are being provided by the petitioners to respondent No.2, which are the requirements of Section 23 of the Act of 2007. It is further contended that the learned Lower Authority has rightly taken into consideration the facts and circumstances of the case and passed an appropriate order, which needs to be confirm.

7. Learned Counsel for the respondent No. 2 supported the order passed by the Lower Authority and contended that the shop and house premises are the part of the same property and if the petitioners are occupying the said property then the respondent No. 2 and wife will always be at risk and will not be able to live the life with dignity. Hence, prayed for the dismissal of the present petition.

8. Learned Counsel for respondents relied on following citation:

i) Urmila Dixit Vs. Sunil Sharan Dixit and others, 2025 LawSuit(SC) 16

9. I have heard both the parties at length, perused impugned order and citations relied on by the respective parties. The learned Counsel for petitioners relied on an order in Writ Petition No. 4869 of 2024, Ankush Punjabrao Jamodkar (supra), this Court while giving reference of judgment in the Writ Petition No.36 of 2023. (Jagdish Pitamber Pawar vs. Pitamber Pundlik Pawar and others), passed by Aurangabad Bench dated 29/11/2023, relied on Paramjit Kumar Saroya Vs. Union of India, AIR, 2014, P and H 121, wherein it is held as under:

"24. We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

"32. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating

what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. 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 Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

33. We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties."

10. Thus, in my considered opinion, plain reading of Section 16 reveals that right to prefer an appeal has been restricted to a citizen or parent. However, the provisions of the said Act do not seek to merely restrict the claims to maintenance, but even complex issues in respect of rights in the property would be involved, having potential of even affecting the rights of third party. By taking aid of the principle of casus omissus and resorting to the purposive interpretation, this Court held as above. This Court (Aurangabad Bench), also considered the amendment bill to Section 16 by which Section 16(1)(i)(a) proposed to be amended, inserting the words "or any of the children or relatives" after the words "senior citizens or a parent". Remedy of appeal thus not only available to senior citizens and parents, but also to the children and relatives.

11. In view of this position, there is no need to refer citations, which are relied on the merits of the case. Thus, without going into the merit, it would be appropriate to grant liberty to the petitioners to file an appeal before the Collector, District Magistrate Chandrapur, Hence, I proceed to pass the following order:

ORDER

i) The Writ Petition is allowed.

ii) The petitioner is granted liberty to file appeal before the Collector challenging the order dated 15/09/2022, passed by respondent No.1 i.e. Sub-Divisional Magistrate and Presiding Officer, Senior Citizen Maintenance Tribunal, Chandrapur, in Case No.06/Misc./J.N.K.V.P./2022 in eqjc. Case No.18/2022.

iii) If any such appeal is filed, the Collector is hereby directed to register the same and grant opportunity to the petitioners herein to contest their appeal.

iv) While issuing notice, this Court has granted stay to the part of interim order relating to shop and premises that shall be continued for another three weeks.

v) The petitioners to file appeal before the Collector by 07/04/2025.

The Writ Petition stands disposed of in the above terms.

No order as to the costs.