

(2024) 03 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 980, 985 Of 2023

Nisha Nitin

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-03-2024

Acts Referred:

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 9, 9(1), 9(2)

Citation : (2024) 03 BOM CK 0036

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Wajid Shaikh, Ronit Jadhav, Ronit Jadhav, A.P. Vanarse, Manish Upadhye, Uma Palsuledesai, Dr. Uday Prakash Warunjikar, Jenish Jain

Final Decision : Partly Allowed

Judgement

Sandeep V. Marne, J

1) Rule. Rule is made returnable forthwith. With the consent of the parties, Writ Petitions are taken up for final hearing and disposal.

2) By these petitions, Petitioners have challenged the Order dated 12 October 2022 passed by the Maintenance Tribunal constituted under the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the Senior Citizens Act). The Maintenance Tribunal has directed two sons-Nikhil and Sanjeev to pay Rs.10,000/- each and daughter-Nisha to pay Rs.6,000/- towards maintenance to the Senior Citizens. The present petitions are filed only by one of the sons-Nikhil (WP No. 985/2023) and daughter-Nisha (WP No. 980/2023). The other son-Sanjeev has not challenged the order of the Maintenance Tribunal.

3) Respondent No.3-Nitin Krishana Koppikar is Petitioners' father and Respondent No.4-Nirmala Nitin Koppikar is their mother. The parents have three children-Nikhil, Sanjeev and Nisha. The age of the senior citizens is about 73 and 74 years respectively and they claim that they do not have any source of income to

maintain themselves. Several allegations were made by the parents against two Petitioners-Nikhil and Nisha about cause of harassment and torture, filing of cases under the Domestic Violence Act, lodging of police complaints etc. The senior citizens alleged that Petitioners have repeatedly fought with their parents, abused and asked them to vacate the house. With these broad complaints, the senior citizens filed application before the Maintenance Tribunal.

4) In the proceedings before the Maintenance Tribunal, the other son-Sanjeev Koppikar appeared and filed reply expressing his concern about the parents. He pleaded that he is making efforts to maintain the senior citizens, but the Petitioners herein do not look after the parents though they are earning well.

5) Petitioners appeared before the Maintenance Tribunal and filed their reply levelling various allegations against the parents. Both alleged that the father has disposed of various properties succeeded through their grandmother and has pocketed the money out of the sale proceedings. Reliance was placed on the Consent Terms filed in Suit No. 829 of 1990. Petitioner-Nisha also alleged that she is helping the family to repay several loans availed by father and the other brother-Sanjeev.

6) After considering the rival contentions raised by the parties, the Maintenance Tribunal has proceeded to pass Order dated 12 October 2022 directing both sons-Nikhil and Sanjeev to pay amount of Rs.10,000/- each and daughter-Nisha to pay amount of Rs.6,000/- to the senior citizens towards maintenance and medical expenses. Son-Nikhil and daughter-Nisha are aggrieved by the Order of the Maintenance Tribunal and have filed the present petitions.

7) I have heard Mr. Shaikh, the learned counsel appearing for the Petitioner-Nisha in Writ Petition No. 980 of 2023. He would submit that the order passed by the Maintenance Tribunal is totally unsustainable. That the father has substantial sources of income. That he has sold several family properties and has pocketed the sale proceeds. That he has not given any accounts of the sale proceeds received by him by selling family properties. That the father has monthly income of Rs.25,000/- to Rs.30,000/- towards interest on sale proceeds received through sale of family properties. That Nisha has already spent huge amounts on repaying the loans availed in the name of Sanjeev Koppikar by the parents. That Sanjeev has stopped paying the EMIs and that she is made liable to pay the same. That parents and Sanjeev are on one side. Mr. Shaikh would submit that the senior citizens have sufficient funds in their accounts from sale of ancestral properties through which they have received Rs.82,00,000/- in the year 2009, mortgage loan of Rs.50,00,000/- in the year 2016, as well as funds transfers through Petitioners' personal accounts, credit card loans in the year 2015-

16. This is how an amount of Rs.1,50,00,000/- is lying with Respondent Nos.3 and 4 since the year 2009. He would urge before me to direct Respondent Nos. 3 and 4 to produce their bank statements. That the other brother, Sanjay Koppikar has cheated the Petitioners in connivance with the parents by availing the loan of

Rs.50,00,000/- by unauthorisedly mortgaging the property in which Petitioners have shares. That under the Consent Terms filed in Suit No.829 of 1990 it was expressly agreed that Respondent Nos.3 and 4, as natural guardians, would look after their daughter which they have failed. That Petitioner-Nisha faces threats to her life on account of pressures asserted by the parents to finance their needs and was required to file complaint under the Protection of Women from Domestic Violence Act, 2005 to protect their residence. However, the parents ensured her ouster from her residence.

8) Lastly and without prejudice, Mr. Shaikh would submit that under Section 9 of the Senior Citizens Act, maintenance cannot be awarded in excess of Rs.10,000/- and that therefore the Order passed by the Tribunal is clearly unsustainable. He would also rely upon the Order of this Court in Writ Petition (Lodg.) No. 25744 of 2022 on 20 October 2022, which, according to Mr. Shaikh, lays down a law that under no circumstances, the Maintenance Tribunal can award maintenance in excess of Rs.10,000/- under Section 9(2) of the Act.

9) Mr. Jadhav appearing for Petitioner-Nikhil in Writ Petition No. 985 of 2023 would submit that the parents filed proceedings before the Maintenance Tribunal by suppressing the facts. He would accuse the parents of violating the Consent Terms filed in Suit No. 829 of 1990 under which the parents were supposed to invest Rs. 2,94,000/- in the names of three children in equal amounts, which they have failed to invest. That the grandmother gifted the house in the names of three grandchildren knowing the bad habits of her son. That the parents first sought cancellation of gift deed by filing proceedings through grandmother, which were rejected. That the father has not contributed anything towards upbringing of the children and all care and expenses were always provided by the grandmother.

10) Per-contra, Dr. Warunjikar would appear on behalf of Respondent Nos.3 and 4, through legal aid, to oppose the petitions. He would submit that Petitioners are earning handsome income and this Court need not interfere in the Order passed by the Maintenance Tribunal which directs them to pay meager amounts of Rs.10,000/- and Rs.6,000/-, which they can easily bear. That the Petitioners are already residing separately from their parents and that therefore it is their duty to provide for maintenance of the parents. He would pray that considering the broad objective behind enacting the Senior Citizens Act, this Court need not interfere in the order of the Maintenance Tribunal. He would submit that intention of the legislature is not to restrict the total amount of maintenance at Rs. 10,000/-. That each child can be directed to pay maintenance of Rs. 10,000/-. That capping the maintenance amount at Rs. 10,000/- in respect of all children would defeat the objective behind enacting the Senior Citizens Act. He would pray for dismissal of the Petition.

11) I have also heard Mr. Vanarase, Mr. Upadhye and Ms. Palsuledesai the learned AGP appearing for Respondent Nos.1 and 2 in both the petitions.

12) Rival contentions of the parties now fall for my consideration.

13) Petitioners have questioned the liability to pay maintenance of Rs.10,000/- (Nikhil) and Rs.6,000/- (Nisha) to their parents. Series of allegations are raised by the duo against their father, who, according to Petitioners, have always neglected the children due to his bad habits. He is accused of monetizing several family properties, in which the children have shares and pocketing the sale proceeds to himself. Though Petitioners have claimed that the father has large sums in the bank accounts, no proof in support of that contention is produced.

14) The Petitioners have relied upon the factum of sale of family properties by Respondent Nos.3 and 4 and submit that the sale proceeds are already lying with the Senior Citizens through which they can easily maintain themselves. Three sources of funds are relied upon in written submissions filed on behalf of the Petitioners (i) Rs.82,00,000/- from sale of ancestral properties in February 2009, (ii) mortgage loan of Rs.50,00,000/- availed in 2016, (iii) Rs.5,00,000/- transferred by Petitioner-Nisha from time to time. This is how a total sum of Rs.1.50 crores is alleged to be available with Respondent Nos. 3 and 4. I am therefore unable to accept the said contention. The sale of property allegedly happened in the year 2009. The loan is availed in the name of other son-Sanjeev and the same cannot be treated as savings of the Senior Citizens. No proof of payment of Rs. 50,000/- to parents by Nisha is produced. Therefore, it cannot be concluded that any large sum is available with the Senior Citizens, from which they can maintain themselves.

15) During the course of hearing of the petition, I have made an enquiry with Mr. Shaikh about the income of the duo. In response, Mr. Shaikh has confirmed, after taking instructions from Ms. Nisha, who was personally present before the Court, that she is working in a BPO and earning salary of Rs.1,00,000/- per month. She also confirmed that Nikhil is also employed in BPO and earns salary of Rs.95,000/-. Nisha is already married and stays separately alongwith her husband, who is working as a freelancer in car trading business. Considering the incomes earned by Mrs. Nisha and Mr. Nikhil, it is difficult to hold that they are unable to bear the liability of paying Rs.6,000/- (Nisha) and Rs.10,000/- (Nikhil) to their parents. On that count, therefore I am not inclined to interfere in the Order passed by the Maintenance Tribunal.

16) However, Mr. Shaikh has also relied upon the provisions of Section 9 of the Senior Citizens Act in support of his contention that the maximum maintenance allowance that can be ordered by the Tribunal cannot exceed Rs.10,000/-. He would therefore submit that the Order of the Tribunal granting maintenance allowance at Rs.26,000/- to the senior citizens is in the teeth of the provisions of Section 9 of the Act. On the other hand, Dr. Warunjikar has contended that considering the broad object behind enacting the Senior Citizens Act, the provisions of Section 9 cannot be given a restrictive meaning for inferring that the total amount payable to the Senior Citizens towards maintenance can only be Rs.10,000/-. He would submit that the use of the word 'children' and 'relatives'

would make it clear that the cap of Rs.10,000/- would be applicable qua each child or each relative. Section 9 of the Senior Citizens Act reads thus :

9. Order for maintenance.—(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

(emphasis and underlining supplied)

17) Thus, under sub-section (1) of Section 9, the Maintenance Tribunal is vested with the jurisdiction to direct the 'children' or relatives, who neglect or refuse to maintain 'a senior citizen', to pay monthly allowance as directed by the Tribunal. Sub-section (2) of Section 9 imposes a cap on the maximum amount of payment of such maintenance allowance at Rs.10,000/- per month. In my view, sub-section (1) of Section 9 uses the word "a senior citizen". Thus, the Order that can be passed by the Maintenance Tribunal would be qua 'a senior citizen'. Thus, the Maintenance Tribunal is empowered to pass separate order qua each of the senior citizens in respect of the 'children' or 'relatives'. Each of the senior citizen can independently file proceedings for payment of maintenance under Section 9 against same children or relatives. Therefore, the maximum cap of Rs.10,000/- under sub-section (2) of Section 9 would apply to each of the senior citizen and not qua all senior citizens in the family. Similarly, the same cannot apply to each child or relative. This is because under Section 9, an Order directing maintenance is to be made in respect of 'a senior citizen'. A particular senior citizen may have single or multiple children or relatives. If the intention of the Act was to apply cap of Rs.10,000/-qua each child or relative, the same would result in incongruous situation, where one senior citizen having one child will get maximum maintenance of Rs.10,000/- whereas another senior citizen having multiple children would be in a position to draw higher amount of maintenance. The intention of the Act is not to create disparity amongst senior citizens, but to create a uniformity amongst them, by ensuring that each senior citizen can receive maximum maintenance allowance not exceeding Rs.10,000/.

18) Though reliance is placed by Petitioners on the judgment of this Court in Hemant G. Mehta (supra), it is difficult to hold that the said judgment lays down any law with regard to the maximum capping on the amount of maintenance under Section 9(2) of the Act. The Division Bench of this Court has merely made an observation in para-23 of the Judgment as under :

23. In the present case, the maintenance amount granted by the Tribunal was Rs.25,000/- per month, which is not in accordance with sub-Section(2) of

Section 9. Therefore, based on those described above, we find it difficult to approve the impugned order directing the petitioners to pay monthly maintenance of Rs.25,000/- to the respondent-mother. Thus, the impugned order stands modified so that the petitioners, instead of Rs.25,000/-, shall pay the respondent-mother a monthly maintenance amount of Rs.10,000/-.

Therefore, the judgment of Division Bench of this Court in Hemant G. Mehta does not provide any assistance in interpreting the provisions of Section 9(2) of the Senior Citizens Act.

19) I therefore hold that under sub-section (2) of Section 9, the Maintenance Tribunal can order children or relatives to pay maximum maintenance allowance of Rs.10,000/- qua each senior citizen. In the present case, there are two senior citizens and therefore the maximum amount that can be ordered by the Maintenance Tribunal could not have exceeded Rs.20,000/-. To this limited extent, the Order of the Tribunal directing payment of maintenance allowance of Rs.26,000/- by all three children to two senior citizens is clearly unsustainable and is liable to be modified.

20) The next issue is about apportionment of the maximum amount of maintenance allowance grantable under Section 9(2) amongst the three children. The Tribunal has directed both sons to pay maintenance allowance of Rs.10,000/- each and the daughter to pay the maintenance allowance of Rs.6,000/-. The other son-Sanjeev has not challenged the order of the Maintenance Tribunal and is apparently ready to pay Rs. 10,000/- to the parents. Therefore, the balance amount of Rs. 10,000/- can be divided into Rs. 6000/- for Petitioner-Nikhil and Rs. 4000/- for Petitioner-Nisha. Both are not residing in the family house, though they apparently own a share therein. They need to spend on rent. Senior Citizens have a house to reside. Considering these factors, directing Petitioners to pay Rs. 6000/- by Nikhil and Rs. 4000/- by Nisha would meet the ends of justice.

21) I accordingly proceed to pass the following Order:

(i) The Order dated 12 October 2022 passed by the Maintenance Tribunal is upheld, except with the modification that Respondents No.3 and 4 shall be entitled to monthly maintenance amount of Rs.10,000/-each i.e. total amount of Rs. 20,000/-.

(ii) Petitioner in Writ Petition No. 985 of 2023 (Nikhil Koppikar) shall pay amount of Rs. 6000/- and Petitioner in Writ Petition No. 980 of 2023 (Nisha Koppikar) shall pay amount of Rs. 4000/- to Respondent Nos. 3 and 4. Tribunal's direction to the other son-Sanjeev Koppikar to pay amount of Rs. 10,000/- to Respondent Nos. 3 and 4 is not disturbed.

(iii) The reduced amount of maintenance shall be paid by Petitioners to Respondent Nos.3 and 4 from the month of September 2021 as directed by the Tribunal, within 8 weeks from today, during which time no coercive steps shall be taken against them for recovery of the amount.

22) With the above directions, the Writ Petitions are partly allowed. Rule is made partly absolute. There shall be no order as to costs.