

(2024) 06 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 7683 Of 2023

Riddhi D/o Prasanna Dawle And Another APPELLANT
Vs
Pratibha Wd/o Prabhakar Dawle And Others RESPONDENT

Date of Decision : 12-06-2024

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 2(g), 7, 16, 16(1)

Citation : (2024) 06 BOM CK 0015

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : N. B. Kalwaghe, R. D. Dharmadhikari, A. M. Jaltare, M. H. Deshmukh

Final Decision : Disposed Of

Judgement

Anil L. Pansare, J

1. Heard Mr. N. B. Kalwaghe, learned Counsel for the Petitioners, Mr. R. D. Dharmadhikari, learned Counsel for the Respondent No.1, Mr. A. M. Jaltare, learned Counsel for the Respondent No.2, Ms. M. H. Deshmukh, learned AGP for the Respondent No.3.

2. The question that falls for consideration is, whether the daughter-in-law can file appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007') against the order passed by the Tribunal constituted in terms of Section 7 of the Act of 2007.

3. The Petitioner No.1 is daughter of Petitioner No.2 and Respondent No.2. The Petitioner No.2 is daughter-in-law of Respondent No.1. In other words, Petitioner No.1 is grand-daughter of Respondent No.1. She will be hereinafter referred to as 'grand-daughter', Petitioner No.2 as 'daughter-in-law', Respondent No.1 as 'mother' and Respondent No.2 as 'son'.

4. The Tribunal has, by the impugned order directed sonand daughter-in-law to

pay maintenance at Rs.10,000/- per month to the mother. The Tribunal has further directed daughter-in-law and the son to vacate the disputed premises.

5. There is no dispute that son has taken responsibility of payment of maintenance. The grievance of daughter-in-law is that the Tribunal has committed error in directing her to vacate the premises.

6. The Respondents have raised objection as regards maintainability of the Petition. According to the Respondents, the Act of 2007 provides for appeal under Section 16 against the order passed by the Tribunal.

7. The learned Counsel for the Petitioners, however, submits by referring to Section 16 of the Act of 2007 that the daughter-in-law, in the life-time of her husband, cannot file appeal because she is not covered in the definition of "relative". Section 2(g) of the Act of 2007 defines "relative" to mean any legal heir of the childless senior citizen, who is not a minor and is in possession of or would inherit his property after his death.

8. The learned Counsel for Respondent No.2 has invited my attention to the Judgment passed by Punjab and Haryana High Court in the case of Paramjit Kumar Saroya V/s The Union of India and Anr. AIR 2014 Punjab and Haryana 121, wherein while dealing with scope of Section 16, the Division Bench of Punjab and Haryana High Court has noted in paragraph 12 as under :

"12. The second anomaly which is one of the legal questions to be examined in the present case arises from Section 16 as it is the appeal provision. It, however, specifically incorporates an appeal by "any senior citizen or a parent". Was the intention to shut out an appeal by the other aggrieved party? If it is so, could there be a situation where there are two parties both aggrieved from the same order, one preferring an appeal and other taking recourse to the supervisory jurisdiction of the High Court. The proviso to sub-section (1) of Section 16 of the said Act mandates that on appeal the children or relative has to pay the amount as determined by the Tribunal during the pendency of the appeal. This would naturally refer to a situation where appeal is by the children or the relative as there can be no question of an appeal filed by the senior citizen or parent qua stoppage of the amount. This also seems to lend credence possibly to an intent not being correctly reflected in the exact wordings. We are observing this here only for purposes of pointing out the requirement of fine tuning and will deal with the aspect of construction of this provision later on."

The Division Bench thereafter has considered the law of interpretation and held thus :

"31. 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 (AIR 1979 SC 289) (*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.

32. 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."

9. As could be seen, the Division Bench has held that right to appeal is available to the affected parties.

10. The Division Bench of this Court in Writ Petition No. 36 of 2023 (Jagdish Pitamber Pawar V/s Pitamber Pundalik Pawar & Ors.) was required to answer following question :

"Whether an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is maintainable only at the instance of any senior citizen or a parent or it is maintainable at the instance of any aggrieved person ?"

The Division Bench has referred to Paramjit Kumar Saroya's case and had shown agreement with view taken by Punjab and Haryana High Court, in following terms :

"Once it is noticed that there was no debate in the Parliament while passing the bill touching this very aspect qua Section 16(1) and when it is noticed that though there was a discussion in the Parliament on the other provisions of the

Act but which did not reflect anything in respect of Section 16, we are in respectful agreement with the observations (supra) in the matter of Paramjit Kumar Saroya. There is nothing to demonstrate that the provision of Section 16 was drafted designedly to provide the right of appeal only to a senior citizen or a parent, it is a clear case of casus omissus which can be supplanted by resorting to purposive interpretation, to avoid the anomalous situation. We, therefore, respectfully agree with the reasoning in the matter of Paramjit Kumar Saroya (supra)."

The Division Bench has then considered the expression "senior citizen or a parent or any of the children or relatives" used in sub-section (1) of Section 16 and answered the question in following terms :

"To conclude, we answer the point to the effect that an appeal under Section 16 of the Act would be maintainable even at the instance of any of the children or relatives."

11. Thus, the Division Bench has held that Appeal under Section 16 of the Act of 2007 would be maintainable even at the instance of any of the children or relatives.

12. The question that now requires answer is whether the term "relative" as defined under the Act of 2007 would include persons like daughter-in-law. In Paramjit Kumar Saroya's case, Punjab and Haryana High Court has held that right of appeal is available to any affected parties. This principle has been accepted by the Division Bench of this Court. In that sense, the affected party or aggrieved party means the party which suffers an adverse order or which is dissatisfied by the order.

13. In my view, if the law laid down in Paramjit Kumar Saroya and Jagdish's case is to be understood and applied, the anomaly as reflects in Section 16 could only be addressed by applying principles of purposive interpretation and casus omissus. Therefore, the term "relative" will have to be considered in inclusive sense, and thus to include in its ambit the daughter-in-law. In other words, 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.

14. The view, as expressed above has led the learned Counsel for the Petitioners to show willingness to approach the appropriate forum and accordingly he seeks permission to withdraw the Petition with liberty to approach the appellate authority. Permission granted.

15. Writ Petition is disposed of, as withdrawn with liberty as prayed for.

16. Interim relief granted on 8/11/2023 shall continue till 26th June, 2024.

17. Since the Writ Petition is disposed of, pending Civil Application No. 72/2024 stands disposed of.