

(2022) 08 CHH CK 0026
In the Chhattisgarh High Court
Case No : Writ Appeal No. 188 Of 2022

Rita Roy

APPELLANT

Vs

Maintenance Tribunal And Sub Divisional Officer (Revenue)

RESPONDENT

Date of Decision : 18-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 2(a),
2(g), 15, 16, 16(1), 16(5), 17, 23

Citation : (2022) 08 CHH CK 0026

Hon'ble Judges : Arup Kumar Goswami , CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Shalvik Tiwari, Meena Shastri, T.K. Jha

Final Decision : Disposed Of

Judgement

Arup Kumar Goswami, CJ

1. This writ appeal is directed against an order dated 23.03.2022 passed by the learned Single Judge in WP(C) No. 753 of 2022, dismissing the writ petition and relegating the appellant to avail the remedy of appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'Senior Citizens Act, 2007').

2. The writ petition was filed praying for quashing an order dated 27. 11.2021 passed by the Maintenance Tribunal and Sub Divisional Officer (Revenue) Durg, for short, Tribunal, whereby, direction was issued for eviction of the petitioner from the house of the respondent No. 2. Prayer was also made to issue a direction to unseal / unlock the room of the petitioner and allow her to continue to stay at House No. 1528, Street No. 34, Vivekananda Colony, Shanti Nagar, P.S. /Vaishali Nagar, Bhilai (for short, 'the premises').

3. The petitioner is the daughter-in-law of respondent No. 2 and wife of respondent No.3.

4. The respondent No. 2 had filed an application under Section 23 of the Senior Citizens Act, 2007 with a prayer, either to direct the petitioner and the respondent No. 3 to take care of him or to evict the petitioner and respondent No. 3 from the premises.

5. It is stated in the application under Section 23 of the Senior Citizens Act, 2007, that he has four children, namely, Devashish Rai, Goutam Kumar Rai, Sagarika Bose and Madhulika Das and that he is residing in the premises since 1975. The premises has total of six rooms and it was agreed by the family members that two rooms would be utilized by respondent No. 2 and remaining four rooms would be let out. It was further agreed between the family members that respondent No. 3 would take care of the respondent No. 2 in his old age and in return of the same, respondent No. 3 would have right over the premises. It was also agreed upon that if there was failure or deficiency in taking care of the respondent No. 2 in his old age, then the premises would be divided equally among the respondent No. 3 and two daughters as the elder son had already taken his share in the family property three / four years back and a gift deed was executed in his favour. It is averred that after marriage of respondent No. 3 with the petitioner in the year 2012, the respondent No. 3 stopped taking care of the respondent No. 2 and the petitioner was also creating nuisance and not taking care of respondent No. 2 by giving proper food and medicines.

6. On the basis of the application under Section 23 of the Senior Citizens Act, 2007, Case No. 202103100400156 A-74/2020-21 was registered on 06.03.2021.

7. The Tribunal passed an ex-parte order of eviction against the petitioner on 27.11.2021. Subsequently, a warrant was issued on 27.12.2021, directing the petitioner to vacate the premises on or before 31.12.2021, failing which it was indicated that on 05.01.2022, she would be forcefully evicted from the premises with police force and assistance of Bhilai Municipal Corporation.

8. The petitioner could not make any alternative arrangement within the time specified and she was forcefully evicted on 05.01.2022 by the Additional Tehsildar, Bhilai Nagar, respondent No. 4, and the room in which she was staying was locked / sealed along with her belongings.

9. It is pleaded in the writ petition that notice of the application of the respondent No. 2 was not received by her and the same was received by the respondent No. 3, who, it transpires, filed reply making various allegations against the petitioner. It is also stated that there is a conspiracy between her husband i.e. respondent No. 3 and his elder brother Devashish Rai, to oust her from the premises. The petitioner had lost her parents long back and it is stated that she along with her minor son somehow could take refuge in the house of her sister at Charoda.

10. The respondent No. 3, in the reply filed, stated that the petitioner had appeared before the Tribunal on 10.08.2021 and 05.10.2021.

11. An interim order was passed on 14.02.2022 by the learned Single Judge directing the respondents No. 2 & 3 to permit the petitioner to stay along with them till the next date fixed, which was 21.03.2022. Direction was also issued for appearance of the petitioner as well as respondent No.3 on that date to explore the possibility of amicable settlement by way of mediation. Direction was also issued to place the matter before the High Court Mediation cell and for appointment of a trained Mediator to enable the parties to come to a settlement.

12. It appears that the matter was not listed on 21.03.2022 and the same was listed on 23.03.2022, on which date, the impugned order came to be passed by the learned Single Judge. In the order of learned Single Judge, there is no indication that the parties had appeared on that date.

13. A perusal of the records of the writ petition goes to show that an I.A. being I.A. No. 06 of 2022 was filed by the respondent No. 2 on 09.03.2022 stating therein that on the basis of an order dated 02.03.2022 issued by the respondent No.1 which was issued on the strength of the order dated 14.02.2022 passed by this court, the door of the house of respondent No.2 was broken.

14. Though not mentioned clearly by the respondent No. 2 in the said application, the learned counsel for the parties submit that the petitioner had come back to occupy the room after she was evicted on 05.01.2022.

15. It is to be noticed that an interim order dated 13.04.2022 was passed in this appeal providing that the petitioner shall not be evicted till 18.04.2022. The said order had been extended from time to time.

16. A perusal of the order of the learned Single Judge goes to show that a submission was advanced by the learned counsel for the petitioner that the petitioner did not have remedy of appeal under Section 16(1) of the Senior Citizens Act, 2007 and thus, the petitioner had no alternative but to file a writ petition.

17. It is, however, to be noted that in the writ petition, there is no statement with regard to availability or otherwise of alternative efficacious remedy.

18. The learned Single Judge relied on the decision of the High Court of Punjab and Haryana in the case of Paramjit Kumar Saroya v. Union of India, reported in LAWS (P&H) 2014 5 89, which was followed by a Division Bench of Allahabad High Court in the case of Akhilesh Kumar and Another v. State of U.P and Others (Writ Civil No. 11295/2019) decided on 23.04.2019, a Single Bench decision of Delhi High Court in the case of Rakhi Sharma v. State, reported in LAWS(DLH) 2021 3 256, and held that an appeal, at the instance of any of the parties to the proceedings, is maintainable under Section 16 of Senior Citizens Act, 2007. Though not stated as much, it appears that the learned Single Judge did not concur with the decision of a learned Single Judge of the Gujarat High Court in the case of Rajesh Kumar Bansraj Ganghi v. State of Gujarat reported in AIR 2016 Guj 129 and a decision of a Single Bench of Calcutta High Court in the case

of Anand Kumar Agarwal and Another v. Ashok Kumar Agarwal, reported in (2019) 1 RCR (Civil) 507, wherein exercise of writ jurisdiction in a matter of present nature was held to be appropriate as Section 16 of the Senior Citizens Act, 2007 did not admit of filing of any appeal by any other party save and except by those mentioned in the appeal provision.

19. Mr. Shalvik Tiwari, learned counsel for the petitioner places reliance on a Division Bench judgment of Calcutta High Court in the case of Mamata Sarki and Another v. State of West Bengal and Others, reported (2020) 3 CivCC 65 to contend that no appeal lies at the instance of any person other than by a Senior Citizen or a Parent and as such the order of the learned Single Judge is liable to be interfered with. In the aforesaid judgment, the Calcutta High Court had taken note of the decision in the case of Paramjit Kumar Saroya (supra) and had respectfully disagreed with the view taken therein.

20. Mr. Tiwari has submitted that even if this Court holds that under Section 16 of the Senior Citizens Act, 2007, an appeal can be filed by the appellant, then also, in the attending facts and circumstances of the case, the learned Single judge was not justified in relegating the appellant to avail remedy of appeal as the order passed by the learned Tribunal was without jurisdiction inasmuch as the Hon'ble Supreme Court in Smt. S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others, reported in AIR 2021 SC 177, had held that the order of eviction could not have been passed against the appellant, who is daughter-in-law of the respondent No. 2 and was a member of shared household within the meaning of Protection of Women from the Domestic Violence Act, 2005 (for short, PWDV Act, 2005). In this connection, it is contended that though the aforesaid case was taken note of by the learned Single Judge, the appellant was needlessly relegated to pursue the remedy of appeal.

21. Mr. T.K. Jha, learned counsel, appearing for respondents No. 2 and 3 submits that no interference is called for with regard to the order of the learned Single Judge and prays for dismissal of the appeal.

22. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

23. At the outset, it will be relevant to take note of Section 16(1) of the Senior Citizens Act, 2007, which is re-produced as follows:

"16. Appeals.- (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parents the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was

prevented by sufficient cause from preferring the appeal in time.”

24. It was observed in *Mamata Sarki* (supra) at paragraph 9 as follows:

“9. On a bare reading of Section 16 it appears to us that the right of appeal has been conferred only on the Senior Citizen or Parents, as the case may be, who is aggrieved by an order of the Maintenance Tribunal. The wording of the said Section is absolutely clear. There does not seem to be any scope for confusion. The Legislature in its wisdom has restricted the right of appeal under section 16 to the Senior Citizen or Parent. There could be good reason for the same. The Act is a piece of legislation meant to enhance the welfare of Parents and Senior Citizens. The said Act imposes an obligation on the children or relatives (as defined in Sections 2(a) and (g) of the Act) to maintain the Parent or Senior Citizen, as the case may be. Hence, possibly the Legislature thought it fit to limit the right of appeal under Section 16 to the Parents and Senior Citizens.”

25. While recording disagreement with the view taken in *Paramjit Kumar Saroya* (supra), the Calcutta High Court opined that when the words of the statute are unambiguous, crystal clear and admitting of only one interpretation, the principles of purposive interpretation or *casus omissus* ought not to be invoked and the words must be given their plain and natural meaning. It was held that when the wording of a statute or a particular section are absolutely clear, there is no scope for applying any canon of interpretation.

26. The decisions in *Rajesh Kumar Bansraj Gandhi* (supra) and *Anand Kumar Agrawal* (supra) were also noticed in *Mamata Sarki* (supra) and at paragraph 16, it was observed as follows:

“16. Our attention has been drawn to the decision of a learned Single Judge of the Gujarat High Court in the case of *Rajesh Kumar Bansaraj Gandhi vs. State of Gujarat* : AIR 2016 Guj 129 as also to a decision of a learned Single Judge of our court in C.O. No. 3416 of 2018: (Reported in (2019) 1 Hindu LR 623 (Cal) (*Anand Kumar Agarwal and Another v. Ashok Kumar Agarwal*)). In both the said cases, the learned Judges have taken the view that in view of the unequivocal wording of Section 16 of the said Act, it must be held that the right of appeal thereunder is not available to the children and relatives and, therefore, a writ petition is maintainable against an order of Maintenance Tribunal at the instances of the children or relatives, as the case may be. We are inclined to agree with the reasoning and conclusion reached in the said two decisions to the extent that the said decisions hold that right of appeal under Section 16 of the said Act is conferred only on the Parents and Senior Citizens and not on the children and relatives.”

27. The other decisions relied on by the learned Single Judge follow the decision of High Court of Punjab and Haryana in *Paramjit Kumar Saroya* (supra).

28. Punjab and Haryana High Court, in the case of *Paramjit Kumar Saroya* (supra), at paragraphs 18 & 19, observed as follows:

"18 An appeal is envisaged "against the order of the Tribunal". This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent "aggrieved by an order of the Tribunal". This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act.

19. The petitioners assailed the provisions of sub section (1) of Section 16 of the said Act on the ground that there cannot be a right to appeal only to one of the affected parties, as anomalous situation would be created against the same order with which both the parties may be aggrieved i.e. where a greater or lesser claim is made in relation to any property or maintenance, as one party being the senior citizen or parent would prefer an appeal before the Appellate Tribunal, while the party which is liable to give maintenance would have to take recourse to the supervisory jurisdiction of the High Court. Thus, two parallel proceedings in the different forums qua the same order would arise. The submission, thus, is that these provisions should be struck down as ultra-vires, the intent of the other provisions of the said Act or the constitutional scheme. In the alternative the provision should be read down to make it consistent with the other provisions and, thus, confer a right of appeal even to the other affected party. "

29. On perusal of the Parliament Debates on the Bill for enactment of Senior Citizens Act, 2007, it was observed by the Division Bench of High Court of Punjab and Haryana as follows:

"20.....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. It has been submitted by learned Amicus Curiae that the subject matter of a right of appeal is not merely confined to the issue of maintenance upto the amount of ` 10,000/-, but of seriously affecting the rights of parties even qua immovable properties as set out in Section 23 of the said Act. Thus, transfers of immovable properties can be declared void. This power is vested not only qua family members or children of senior citizens, but qua "every person". Not only that, as stated aforesaid, the provisions of Sections 15 and 16(1) have

to be read harmoniously. Section 15 nowhere mentions that the appeal against the order of the Tribunal be confined to a senior citizen or parent. Similar is the proposition qua the first proviso to sub section (1) of Section 16 which would only have been in case of an appeal by the party liable to be maintained. The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to sub section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to sub section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other party.

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23. While cautioning the Courts that the primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself, it was observed that statutes should be construed not as theorems of Euclid and that words are required to be construed with some imagination of the purposes which lie behind them. A casus omissus cannot be supplied by the Court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself. The objective is to put a construction on a particular provision so that it makes consistent enactment of the whole statute. A literal construction should not be adopted if it leads to a manifestly absurd or anomalous result which could not have been intended by the Legislature. It cannot be "an intention to produce an un-reasonable result". It is this very result, in our opinion, which would flow if we adopt an interpretation restricting right of appeal to only one of the parties under Section 16(1) of the said Act. We would in fact have to strike down the provision and there is no reason to do so keeping in mind the intent of the Act if a casus omissus can save the provision.

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27. What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in. 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 rule 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.

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.”

30. We are in respectful agreement with the view taken by the High Court of Punjab and Haryana in *Paramjit Kumar Saroya* (supra) and unable to subscribe the view taken by the Calcutta High Court in the case of *Mamata Sarki* (supra).

31. Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Similarly, PWDV Act, 2005 was enacted to provide for and recognize the rights of women to secure housing and to recognize the right of a women to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Both Senior Citizens Act, 2007 and PWDV Act, 2005 are intended to deal with salutary aspects of public welfare and interests.

32. The PWDV Act, 2005 is a special legislation enacted for the purpose of correcting gender discrimination which arises in the form of societal and economic inequities in a largely patriarchal society.

33. In the above backdrop, the Hon'ble Supreme Court in Smt. S. Vanitha (supra) had observed that allowing the Senior Citizens Act, 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act, 2005 would defeat the object and purpose which the Parliament sought to achieve in enacting Senior Citizens Act, 2007, which intend to ensure that they are not left destitute, or at the mercy of their children or relatives, and therefore, both the sets of legislations have to be harmoniously construed and hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act, 2007.

34. Since because of the wordings as appearing in Section 16 of the Senior Citizens Act, 2007, the writ petition was filed, and since we have held that Section 16 of the Senior Citizens Act, 2007 provides right to appeal to any of the affected parties, we are not inclined to examine the case on merits and we leave the appellant at liberty to pursue remedy of appeal under Section 16(1) of the Senior Citizens Act, 2007, if so advised. We, however, provide that in the event of appellant herein preferring an appeal within a period of 45 days from today, the learned Appellate Tribunal will dispose off the appeal on merits treating the same to have been filed within the period of limitation.

35. In the attending facts and circumstances, in the interest of justice, we direct that for a period of 45 days from today, the appellant herein shall not be evicted from the premises.

36. The writ appeal, accordingly, stands disposed of.