

(2013) 11 DEL CK 0140

In the Delhi High Court

Case No : Writ Petition (C) 6684 of 2010 and CMs No. 13219 of 2010, 4765 of 2012

Sanjay Walia

APPELLANT

Vs

Sneha Walia and Another

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 9

Citation : (2013) 204 DLT 618

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Manjit Singh Ahluwalia, for the Appellant; Rajiv K. Garg, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.

CM No. 15746/2013 (of petitioner for waiver of cost imposed on 06.08.2013)

1. Considering the adjournments taken by the petitioner on various dates, as noted in the last order, there is no ground for waiver of the cost. However, the cost is reduced to Rs. 10,000/-.

The application stands disposed of.

W.P.(C) 6684/2010

Respondent No. 1 is the mother of the petitioner. She filed a petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") for grant of maintenance. There is a dispute between the petitioner and respondent No. 1 with respect to ownership of second floor of house No. C-24, Panchsheel Enclave. The Tribunal, considering the aforesaid dispute, directed that till finalization of the ownership of the title by the Court, the second floor property and its rental income shall be enjoyed by

respondent No. 1 and accordingly directed the petitioner before this Court to give peaceful possession of the second floor to respondent No. 1, so that she could enjoy rental income from the said floor. The area SHO was directed to execute the order and report its compliance to the Tribunal. It was further directed that since respondent No. 1 shall enjoy the rental income, no order for her maintenance was being made. Being aggrieved from the aforesaid order, the petitioner is before this Court.

Initially, since the petitioner had also challenged the vires of Section 9 of the Act, the petition was heard by a Division Bench. The Court, vide an interim order dated 30.09.2010, stayed the order passed by the Tribunal, subject to the petitioner paying a sum of Rs. 25,000/- per month to respondent No. 1 by way of a bank draft. Vide subsequent order dated 02.11.2011, the Court, noticing that the second floor was lying locked and vacant, allowed respondent No. 1 to let out the same so that rental income could start accruing from the said floor. It was further directed that respondent No. 1 shall retain 50% of the rental income in a separate bank account and shall be entitled to expend the remaining 50% of the rental income. However, the aforesaid floor has not been let out and it continues to be in possession of respondent No. 1, pursuant to the Court handing over the key of the second floor to her. It would be pertinent to note here that the keys of the second floor were deposited by the petitioner in the Registry pursuant to an interim order of the Court. Vide subsequent order dated 07.02.2012, the Division Bench permitted respondent No. 1 to carry out necessary rectification/repair, in order to make the aforesaid portion habitable so that it could let out to a tenant. It was further directed that bills of the expenditure incurred shall be furnished to the Court and the question of reimbursement of the expenditure shall be considered along with the writ petition.

2. Section 9 of the Act reads as under:-

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.

3. It would thus be seen that the power and jurisdiction of the Tribunal is restricted to grant of maintenance at the rate not exceeding Rs. 10,000/- per month. It is, therefore, quite evident from a bare perusal of the above-referred Section that no power has been bestowed by the Legislature on the Tribunal to

direct handing over the possession of a property to the applicant before it. Despite there being no such power conferred upon it, the Tribunal directed the petitioner before this Court to hand over the possession of the second floor to respondent No. 1. Though the case of respondent No. 1 is that the aforesaid floor belongs to her husband, who had bequeathed him and it was in her possession after the death of her husband, even if that be true, the appropriate remedy for respondent No. 1 would be to approach a competent Civil Court in this regard and the Tribunal had absolutely no jurisdiction to handover possession of an immovable property of the respondent before him to the applicant before him. It would be pertinent to note here that case of the petitioner is that the aforesaid second floor was bequeathed by his father to him and was in his possession. This disputed questions with respect to title and possession of an immovable property can be gone into by a Civil Court and not by a Tribunal, constituted under the provisions of the Act.

4. For the reasons stated hereinabove, the impugned order dated 27.09.2010 passed by the Tribunal cannot be maintained and is accordingly set aside. The learned counsel for the petitioner, on instructions from the petitioner, who is present in the Court, states that the petitioner is ready to pay Rs. 10,000/- per month as compensation to respondent No. 1 from the date she had filed application for grant of maintenance before the Tribunal and he shall continue to pay compensation at the same rate during the life time of respondent No. 1, subject to further orders, if any, by a Competent Court of law.

5. The learned counsel for respondent No. 1 states that she had incurred expenditure to the extent of about Rs. 2 lakhs on repairs carried out in terms of the permission granted by this Court vide order dated 07.02.2012. Respondent No. 1 is directed to file vouchers/bills showing the expenditure incurred by her on repair of the second floor of Property No. C-24, Panchsheel Enclave, along with a supporting affidavit, within one week from today. On filing of such an affidavit, the petitioner will also pay the expenditure incurred by respondent No. 1 on repair of the second floor of Property No. C-24, Panchsheel Enclave to respondent No. 1 along with arrears of maintenance calculated at the rate of Rs. 10,000/- per month with effect from the date of filing of the petition before the Tribunal. The payment shall be made within two weeks from today. On such payment being made to respondent No. 1, she shall forthwith handover the keys of the second floor to the petitioner who shall then be entitled to occupy the said floor. In future also, the petitioner shall continue to pay maintenance to the respondent No. 1 at the rate of Rs. 10,000/- per month, subject to further order, if any, of a competent Court.

It is made clear that this order does not come in the way of the parties, establishing their respective title to the second floor of Property No. C-24, Panchsheel Enclave, before a competent Court of law. The amount, if any, paid by the petitioner to respondent No. 1, pursuant to the interim order of the Court dated 30.09.2010 shall be adjusted, while complying with this order.

The writ petition stands disposed of. All the pending applications also stand disposed of.

Dasti.