

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

D.B.: Hon'ble Shri Subodh Abhyankar
Hon'ble Shri Satyendra Kumar Singh, JJ.

ON THE 26TH OF JULY, 2022

Writ Appeal No.377/2021

Between: -

Sunil Kondla S/o Shri Mohanlal Kondla,
Age- __ years, Occupation- Service,
R/o- 103-A, Swasthya Nagar, Sukhliya,
Indore, District Indore (MP)

Smt. Poonam W/o Sunil Kondla,
Age- __ years, Occupation- Household Work,
R/o- 103-A, Swasthya Nagar, Sukhliya,
Indore, District Indore (MP)

.....APPLICANTS

(By Ms. Rekha Shrivastava, Advocate)

AND

Competent Authority & Sub Divisional Officer,
Malharganj Area, Indore, District Indore (MP)

Smt. Premabai Kondla W/o Shri Mohanlal Kondla,
Age- __ years, Occupation- Household Work,
R/o- 105/3, Ambedkar Nagar,
Indore, District Indore (MP)

Mohanlal Kondla S/o _____,
Age- __ years, Occupation- Household Work,
R/o- 105/3, Ambedkar Nagar,
Indore, District Indore (MP)

[By Mr. Bhuvan Deshmukh, counsel for the respondent No.1 / State
(None for the respondents no.2 and 3 despite service of notice.)]

.....RESPONDENTS

.....
Reserved on: - 24.06.2022
Delivered on: - 26.07.2022
.....

This WRIT APPEAL coming on for orders this day, the court
passed the following:

ORDER**Per Subodh Abhyankar, J.**

This appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyalayaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 has been preferred by the appellants (writ petitioners in Writ Petition No.19043/2020) against the order passed by the Writ Court in Writ Petition No.19043/2020 on 04.02.2021 (Annexure P/1) whereby the petitioners' petition filed under Article 226 of the Constitution of India was dismissed.

2. The aforesaid writ petition was filed by the petitioners being aggrieved of the order dated 30.09.2020, passed by the Competent Authority/Sub Divisional Officer, Malharganj, Indore in favour of respondents No.2 and 3 under the provisions of Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (herein after referred to as 'the Act of 2007').

3. The facts of the case giving rise to the present appeal are that the appellants No.1 and 2 (herein the petitioners) are the son and daughter-in-law of respondents No.2 and 3, who are the parents of petitioner No.1. The petitioners No.1 and 2 are residing separately from their parents who have also other siblings including one unmarried son, who is residing with the respondents and three married daughters. Apparently, the relationship between the petitioners and their parents is not cordial. Hence, as the respondents No.2 and 3 were finding it difficult to maintain

themselves, an application under Section 14 of the Act of 2009 was filed by them before the Competent Authority/Sub Divisional Officer, Mahlarganj, Indore, District Indore (MP). A notice of the aforesaid application was also served on the petitioners.

4. The case of the petitioners is that the Competent Authority has passed the impugned order on 30.09.2020, without following due procedure of law and in violation of the principles of natural justice, without referring the parties to the Conciliation as provided u/s.6 (6) of the Act of 2009. It is also submitted that the appellant no.1's other three sisters and a brother are also liable to pay the maintenance in equal 1/5th proportion, and otherwise also, the amount of maintenance of Rs.8,000/- (rupees eight thousand) is also on higher side, considering the fact that the petitioner No.1 is already repaying a bank loan of Rs.31,000/- (rupees thirty one thousand), apart from the School Fee of their children, which consumes most of his income, as he is earning an amount of Rs.40,000/- (forty thousand) per month only.

5. Counsel appearing for the respondent No.1 / State of Madhya Pradesh has opposed the prayer and it is submitted that no illegality has been committed by the Competent Authority in passing the impugned order. Respondents no.2 and 3 who were the complainant before the Competent Authority, have remained absent despite service of notice on them.

6. Heard. On perusal of the record it is found that the learned Judge of the Writ Court has dismissed the petition *in limine* holding

that the sum of Rs.4,000/- (rupees four thousand) per month to each of the parents of the petitioners cannot be said to be an excessive amount and it is a statutory as well as the moral duty of the petitioners to maintain respondents No.2 and 3. The Writ Court has also observed that the petitioners were also trying to bargain with their parents in respect of their immovable property, that if they (parents) also give them their share in the property, they (petitioners) would maintain them, but such bargaining cannot be allowed with the parents. It is also held that the procedure under the Act is summary in nature and there was no requirement to allow the petitioners to cross-examine respondents No.2 and 3.

7. Heard. On perused of the record and the provisions of the Act of 2007 and the Rules made thereunder, we are afraid we are unable to concur with the findings recorded by the writ court for the reasons assigned herein below. Before we embark upon the facts, it is necessary to refer to the relevant provisions of the Act of 2007, which read as under: -

“S.4. Maintenance of parents and senior citizens.—

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 in case of—

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal

life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx(not relevant).

5. Application for maintenance.—(1) An application for maintenance under Section 4, may be made—

- (a) by a senior citizen or a parent, as the case may be; or
- (b) if he is incapable, by any other person or organisation authorised by him; or
- (c) the Tribunal may take cognizance suo motu.

Explanation.—For the purposes of this section “organisation” means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub-section (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4)

xxxxxxxxxxxxxxxxxxxxxxxx.

(5) An application for maintenance under sub-section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application

for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) xxxxxxxxxxxxxxxxxxxx.

(8)

xxxxxxxxxxxxxxxxxxxxxxxx.

6. Jurisdiction and procedure.—(1) The proceedings under Section 5 may be taken against any children or relative in any district—

(a) where he resides or last resided; or

(b) where children or relative resides.

(2) On receipt of the application under Section 5, the Tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed.

(3) For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973 (2 of 1974).

(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases:

Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Tribunal, the Tribunal may proceed to head and determine the case ex parte.

(5) xxxxxxxxxxxxxxxxxxxx.

(6) The Tribunal before hearing an application under Section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been

arrived at, the Tribunal shall pass an order to that effect.

Explanation.—For the purposes of this sub-section “Conciliation Officer” means any person or representative of an organisation referred to in *Explanation* to sub-section (1) of Section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of Section 18 or any other person nominated by the Tribunal for this purpose.

8. Summary procedure in case of inquiry.—(1) In holding any inquiry under Section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

(emphasis supplied)

8. Similarly, in exercise of the powers conferred by sub-section (1) of section 32 of the Act of 2007, the State Government has framed the *M.P. Maintenance and Welfare of Parents and Senior Citizen Rules, 2009* (herein after referred to as the Rules of 2009), the relevant rules read as under:-

“9. Procedure for impleading children or relatives. -

(1) An application by the opposite party under the proviso to sub-section (5) of section 5 to implead any other child or relative of the applicant shall be filed on the first date of hearing as specified in the notice issued under sub-rule (2) of Rule 6.

Provided that no such application shall be entertained after such first hearing unless the opposite party shows sufficient cause for filing it at a later stage.

(2) On receipt of an application under sub-rule (1) the Tribunal shall if it is *prima facie* satisfied after hearing the parties about the reasonableness of such application issues notice to such other child or relative to show cause why they should not be impleaded as a party and shall after giving them an opportunity of being heard pass an order regarding their impleadment or otherwise.

(3) In case the tribunal passes an order of impleadment under sub-rule (2) it shall cause a notice to be issued to such impleadment party in Form "C" in accordance with Rule 6.

10. Reference to Conciliation Officer. - (1) In case on the date fixed in the issued under rule 6 the opposite party appears and shows cause against the maintenance claim the Tribunal shall seek the opinion of both the parties as to whether they would like the matter to be referred to Conciliation Officer and if they express their willingness in this behalf the Tribunal shall ask them whether they would like the matter to be referred to a person included in the panel prepared under rule 3, or to any other person acceptable to both parties.

(2) If both the parties agree on any person whether included in the panel under rule 3 or otherwise the Tribunal shall appoint such person as the Conciliation Officer in the case and shall refer the matter to him through a letter in Form "E" requesting the Conciliation Officer to try and work out a settlement acceptable to both parties within a period not exceeding one month from the date of receipt of the reference.

(3) The reference in Form "E" shall be accompanied with copies of the application and replies of the opposite party thereto.

11. Proceedings by Conciliation Officer. - (1) Upon receipt of a reference under rule 10 the Conciliation Officer shall hold meeting with the two parties as necessary and shall try to work out a settlement acceptable to both the parties within a period of one month from the date of receipt of the reference.

(2) If the conciliation officer succeeds in working out a settlement acceptable to both the parties he shall draw up a memorandum of settlement in Form "F" get it signed by both parties and forward it with a report in Form "G" along with all record of the case received from the Tribunal back to the Tribunal within a month from the receipt of the reference.

(3) If the Conciliation Officer is unable to arrive at as settlement within one month of receipt of a reference under rule 10 he shall return the papers received from the Tribunal along with a report in Form "H" showing efforts made to bring about a settlement and the point of difference between the two parties which could not be reconciled.

12. Action by the Tribunal in case settlement before a Conciliation Officer. - (1) In case the Tribunal receives a report from the Conciliation Officer under sub-rule (2) of Rule 11, along with memorandum of settlement it shall give notice to both parties to appear before it on a date to be specified in the notice and confirm the settlement.

(2) In case on the date specified in the notice as above the parties appear before the Tribunal and confirm the settlement arrived at before the Conciliation Officer the Tribunal shall pass a final order as agreed in such settlement."

(emphasis supplied)

9. A perusal of the aforesaid provisions reveal that Section 4 of the Act provides for maintenance of the parents and senior citizens, and Section 4 (i) provides that parent or grandparent can maintain such an application against one or more of his children not being a minor. Section 4 (ii) provides for the obligation of the *children or relative*, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. Section 4 (iii) provides that the obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

10. Section 5 refers to an application for maintenance and it provides that such an application can be filed by a senior citizen or a parent. Section 5 (3) provides for an enquiry to be held by the concerned officer for determining the amount of maintenance, after giving due notice of the application to the children or relative of the senior citizen. Section 5 (5) provides that an application for maintenance under Sub Section (1) may be filed against one or more persons *provided* that such children or relative may *implead the other person liable to maintain parent in the application for maintenance*.

11. Section 6 provides for jurisdiction and procedure. Section 6 (4) provides that all *evidence* to such procedure shall be taken in the presence of children or relative against whom an order for payment

of maintenance is proposed to be made and shall be recorded in the manner prescribed for summon cases. Section 6 (6) provides that the Tribunal before hearing an application under Section 5 may refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect. Section 8 provides for summary procedure in case of an enquiry. Section 8 (1) provides that in holding any enquiry under Section 5, the Tribunal may *subject to any rules that may be prescribed by the State Government in this behalf follow such summary procedure, as it deems fit.* Section 8 (2) provides that *the Tribunal shall have all the powers of the Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling discovery and production of documents and material objects and for such other purpose as may be prescribed.*

12. So far as the Rules of 2009 as prescribed by the State Government are concerned, Rule 9 of the same also provides for procedure for impleading children or relatives. Rule 9 (1) provides that an application by an opposite party under the proviso to Sub Section (5) of Section 5 to implead any other child or relatives of the applicant shall be filed on the first date of hearing, as specified in the notice issued under Sub Section (2) of Rule 6 provided that no such application shall be entertained after such first hearing, unless the opposite party shows sufficient cause for filing it at a

later stage. Sub Rule (2) of Rule 9 provides that on receipt of an application under Rule 1, the Tribunal shall if it is *prima facie* satisfied, after hearing the parties about the reasonableness of such application, issues notice to such other child or relative to show cause why they should not be implicated as a party and after giving them an opportunity of hearing being heard, pass an order regarding their impleadment or otherwise. Rule 10 provides for reference to Conciliation Officer in this Rule detail procedure has also been given regarding how a reference be made to a Conciliation Officer. Rule 11 provides for proceedings by Conciliation Officer. Rule 12 provides for action by the Tribunal in case settlement before a Conciliation Officer.

13. So far as the impugned order dated 04.02.2021 is concerned, the operative para of the same reads as under:-

“It is clear from the entire order-sheets, the statements were recorded in presence of the petitioners and statement of the petitioners were also recorded but the petitioners did not raise any objection, thereafter they sought time to file a reply. The proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2009 are summary proceedings and not like a regular civil suit. The competent authority is only required to see whether the parents / senior citizens have sufficient means to maintain themselves or not before passing final the order. Therefore, on this technical objection taken by the petitioners is not tenable.”

14. In the light of the aforesaid order, if we see the copy of proceedings dated 18.09.2020, 29.09.2020 and 30.09.2020, the same read, as under: -

“18/9/20

प्रकरण पेश।

—आवेदकगण प्रेमाबाई, मोहनलाल उप।

—अनावेदकगण सुनील व पुनम उपस्थित।

—उभयपक्षों के कथन अंकित किये गये।

—अनावेदक को आवेदन पत्र की छायाप्रति जवाब हेतु उपलब्ध कराई गई।

—अनावेदकगण आगामी तिथि पर मूल आवेदन पत्र जवाब अनिवार्य रूप से प्रस्तुत करें, अन्तिम अवसर प्रदाय किया जाता है।

29/9/20

अनुविभागीय अधिकारी,
(राजस्व) मल्हारगंज,
इंदौर

29/9/20

प्रकरण पेश

—उभयपक्ष उपस्थित।

—अनावेदक के द्वारा मूल आवेदन का जवाब प्रस्तुत किया गया।

—उभयपक्षों को समक्ष में सुना गया।

—प्रकरण आदेश हेतु नियत।

सी एफ

30/9/20

अनुविभागीय अधिकारी,
(राजस्व)मल्हारगंज,
इंदौर

30/9/20

प्रकरण पेश।

—प्रकरण में आदेश पृथक से पारित किया जाकर प्रकरण में संलग्न किया गया।

—प्रकरण में शेष कोई कार्यवाही नहीं होने से समाप्त होकर दाखिल रेकार्ड हो तथा आर.सी.एम.एस. से कम किया जावे।

अनुविभागीय अधिकारी,
(राजस्व) मल्हारगंज,
इंदौर । ”

15. It is apparent that after the notices were issued to the appellants, they were furnished a copy of the complaint only on 18.09.2020 on which date, the statements of the parties were also recorded and the matter was kept for filing reply. Thereafter, on 29.09.2020, the reply was also filed and after hearing the parties, it was kept for final order for 30.09.2020 i.e. a day after and on

30.09.2020, the final order has been passed.

16. This procedure adopted by the Sub Divisional Officer clearly fails to satisfy the due procedure of law. It is rather surprising that even before the reply was filed by the appellants, the statements of all the parties were recorded and soon after the reply was filed, the final decision has been passed on the next day, without even considering the fact that the appellants had clearly pleaded that their other sisters and brother are also liable to pay the amount. Although no specific application was filed in this behalf by them, but it was incumbent upon the Sub Divisional Officer to ask the appellants to file a separate application and then to issue notice to the other sisters and brother as provided under S.5 (5) of the Act of 2007 and Rule 9 of the Rules of 2007.

17. If the facts of the case, the findings recorded as aforesaid are tested on the touchstone of the aforesaid provisions of the Act and the Rules made thereunder, this Court finds that the findings so recorded by the Writ Court do not satisfy the test of the provisions of the Act of 2009 as also the rules made thereunder by the State of M.P., the Rules of 2009 and thus cannot be sustained.

18. This Court finds that the application under Section 5 of the Act was filed by the respondents No.2 and 3 on 22.07.2020, and after service of notice the appellants herein marked their appearance only on 04.09.2020 (that was the first day of their appearance). However, as the Presiding Officer was busy in administrative work, the case was adjourned. After 04.09.2020, again the matter was

kept on 18.09.2020, on which date, the statements of the parties were recorded by the Presiding Officer but it is also reflected in this order sheet that the copy of the application filed by the respondents No.2 and 3 under Section 5 of the Act was furnished for the first time to the appellants herein on 18.09.2020 only and they were given last opportunity to file the reply. The matter was kept on 29.09.2020, on which date, the reply was filed by the appellants, and then the matter straight away kept for final orders on 30.09.2020, on which date the final order was passed.

19. It is found that in the reply dated 29.09.2020, the appellants herein had taken a specific plea that the appellant No.1 also has three sisters and one brother, all of whom are also liable to pay maintenance in five equal parts and the appellants are ready to pay their 1/5th part along with his siblings, whatever amount the Tribunal decides. These pleadings in the their reply, in the considered opinion of this Court, falls under Sub Section (5) of Section 5 of the Act, the proviso to which provides that such children or relative may implead the other person liable to maintain parent in the application for maintenance, by following the procedure as provided under Rule 9 of the Rules of 2007. In such circumstances, the Tribunal ought to have issued notice to the daughters and the son of the claimants (respondents No.2 and 3 herein) and before adopting the summary procedure as provided under the Act, the Tribunal was also obliged to refer the parties to conciliation, after seeking the opinion of both the parties as to

whether they would like the matter to be referred to the Conciliation Officer as provided u/s.6 (6) of the Act of 2007 and Rule 10 of the Rules of 2007.

20. It is not the case here that any of the parties to the *lis* declined to refer the matter to the Conciliation Officer, hence in such circumstances, it cannot be presumed that they did not intend and refer the dispute to the Conciliation Officer. Since the extensive procedure has been prescribed by the State Government under the Rules of 2009 as to how a Conciliation Officer is to be appointed and how he / she shall proceed to conciliate, this Court is of the opinion that it was incumbent upon the Tribunal to refer the parties to the Conciliation Officer, after taking their consent. In case if they had refuse for conciliation, then the Tribunal was free to proceed in the matter by adopting the summery procedure.

21. So far as the summery procedure is concerned, again Section 8 provides that the Tribunal may proceed subject to any rules that may be prescribed by the State Government in this behalf. Sub Section (2) of Section 8 provides that the Tribunal shall have all the powers of the Civil Court for the purpose of taking evidence on oath and even forcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purpose as may be prescribed and the Tribunal shall be deemed to be the Civil Court for all purposes and Section 6 (4) of the Act provides that all evidence to such proceedings shall be taken in the presence of children or relative

against whom an order for payment of maintenance is proposed to be made and it shall be recorded in the matter prescribed for summons cases.

22. Thus, the impugned order cannot be sustained on the ground that it was not only incumbent upon the Tribunal to refer the parties for conciliation before proceeding further; but also on the ground that the Competent Officer/Tribunal ought to have issued notice to the other children of the claimant; the Tribunal ought to have allowed the appellants to lead evidence in the matter and thus the findings recorded by the Writ Court that there was no need to record evidence does not find force in the light of the aforesaid provisions of law.

23. Although this Court is of the considered opinion that while following the summery procedure, the parties cannot be allowed to cross-examine the witness at their luxury and at their leisure as is usually done in a full-fledged trial, but what the Tribunal can do in such circumstances is to ask the parties to submit their questionnaire in writing and furnish the same to the witnesses so that they can reply to those questions, and if such method is adopted, the Tribunal can control the unnecessary and extensive cross-examination of the parties.

24. This Court also finds that the appellants should not have filed the writ petition in the first place itself, as the Act clearly provides for an appeal under Section 16 of the Act of 2007 and the counsel for the petitioners (appellants herein) also failed to inform the Court

that there is an alternative remedy available to them.

25. Be that as it may, in view of the aforesaid discussion, the order passed by the Writ Court in Writ Petition No.19043/2020 on 04.02.2021 (Annexure P/1) is hereby set aside; and the matter is remanded back to the Tribunal to proceed in accordance with law, as has been discussed herein above.

26. The appeal stands **allowed and disposed of**, in the above terms.

All the other pending interlocutory applications, if any, shall stand disposed of.

(Subodh Abhyankar)
Judge

(Satyendra Kumar Singh)
Judge