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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 2857/2021 & CM APPLs.8615-16/2021**

SH. SHUMIR OLIVER & ANR. ..... Petitioners

Through: Mr. Aman Chawla & Mr. Karan Dua, Advocates

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Ms. Saumya Tandon, Advocate for Respondents No.1 & 2

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 03.03.2021

1. This hearing has been done through video conferencing.

2. The present petition has been filed challenging the impugned order dated 22nd December, 2020 passed by the Presiding Officer/ADM (South) by which the Petitioners have been directed to pay Rs.5,000/- each to their mother as monthly maintenance.

3. The submission of ld. Counsel for the Petitioners is that their mother already has sufficient income on her own and hence, the award of the said maintenance is not in terms of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

4. The impugned order would be an appealable order in terms of the orders passed by this Court on 6th January, 2021 in ***W.P.(C) 106/2021*** titled ***Shri Amit Kumar v. Smt. Kiran Sharma & Anr***. The relevant portion of the said order reads:

> *"xxx*
> *5. Heard counsels for the parties. Section 16 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter, "Act") provides for an appellate remedy against an order of the tribunal. However, as per the*

text of the provision, any senior citizen or parent must prefer such an appeal within sixty days. The said provision reads as under:

"***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 parent 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.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a dully authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost."

*6. Interpreting this provision, the Punjab & Haryana High Court in **Paramjit Kumar Saroya (supra)** has held that the remedy to appeal can be availed of by any affected party, which would include the children of senior citizens. The relevant portion of the judgment reads as under:*

> *"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.*
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> *…*
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> *We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the*

Parliamentary debates when the Bill for enactment of the said Act was introduced. 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.

…

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 (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.*
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> *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."*

> *7. Relying upon the said judgment, recently, in* ***Naveen Kumar (supra)****, a ld. Single Judge of this Court has noted the said judgment and permitted the Petitioner therein to avail of the remedy to appeal. This Court concurs with the interpretation given to Section 16 of the Act by the Punjab & Haryana High Court. The Appellate Tribunal, having been constituted under the Act, anyone aggrieved by an order passed by the Tribunal should be allowed to approach the Appellate Tribunal. Accordingly, the Petitioner is permitted to approach the Appellate Tribunal constituted under the Act to raise any challenge against the impugned order dated 18th August, 2020."*

5. Accordingly, the present petition is dismissed, with liberty to the Petitioners to avail their remedies in accordance with law by filing an appeal under the Act. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

MARCH 3, 2021/*Rahul/C*