



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 13182 OF 2022 (GM-RES)

BETWEEN:

1. SRI. GOPAL,
S/O LATE YELLAIAH,
AGED ABOUT 50 YEARS,
2. SRI. MAHESH,
S/O LATE YELLAIAH,
AGED ABOUT 40 YEARS,

....
...

...PETITIONERS

(BY SRI. K R LINGARAJU.,ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER,
MYSURU DISTRICT, MYSURU-570 005.
2. THE ASSISTANT COMMISSIONER,
MYSURU DISTRICT, MYSURU-570 005.
3. SMT. VENKATAMMA,

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....

...REPOONDENTS

(BY SMT. RASHMI PATEL., AGA FOR R1 & R2;
SRI. K S KARTHIK KIRAN., ADVOCATE FOR
SRI. KAPIL DIXIT.,ADVOCATE FOR R3)





THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED IN SCN NO.14/2019 DTD.25.5.2022 BY THE R-1 AND ORDER PASSED IN CASE NO.MYSAC MAG./SRCA/01/2019 (E-60893) DTD.22.5.2019 BY THE R-2 ANNEXURE-A AND B.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners being the sons of 3rd Respondent - mother aged & ailing lady are knocking at the doors of Writ Court for assailing the order dated 25.05.2022 passed by the 1st Respondent-Deputy Commissioner and the order dated 22.05.2019 passed by the 2nd Respondent -Assistant Commissioner respectively at Annexures-A & B. The Assistant Commissioner has directed the Petitioners to pay to their mother a monthly sum of Rs.5,000/- each. However, the Deputy Commissioner has enhanced it to Rs.10,000/-.

2. Learned counsel for the Petitioners vehemently argues that: Petitioners being the appellants could not have been made worse off in their own appeal; they do not have sufficient means to pay the amount and they are



ready & willing to look after their mother and therefore, she should be asked to join their home, leaving the place of her daughters; the mother has claimed maintenance only at the instigation of her daughters and thus the claim lacks *bona fide*. Learned counsel hastily adds that, all these aspects despite urgency having not been adverted to, the impugned orders suffer from legal infirmities and therefore, are liable to be voided.

3. Learned HCGP appearing for the official Respondent Nos. 1 & 2 and the learned advocate appearing for the mother of Petitioners vehemently oppose the Petition making submission in justification of the impugned orders and the reasons on which they have been structured. Learned HCGP contends that the impugned orders are the products of exercise of discretion by the officials under a socio-welfare legislation namely Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and therefore the Writ Court exercising a limited supervisory jurisdiction constitutionally vested under



Article 227 should abhor to undertake a deeper examination in matters like this vide *SADHANA LODH vs. NATIONAL INSURANCE CO., LTD.*, (2003)3 SCC 524.

4. Having heard the learned counsel for the Petitioners and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

(i) The first submission of the Petitioners that appellants cannot be worse off in their own appeal and therefore the Appellate order is liable to be voided, is bit difficult to countenance. Such a general proposition obtaining in the realm of law of appeals is not invocable in cases arising from socio-welfare legislations like 2007 Act, which is enacted by the Parliament for protecting the interest of senior citizens who are in a hapless position, as rightly contended by learned HCGP. Such a traditional norm that owes its origin to the jurisprudence of Colonial Era cannot be readily invoked to defeat the intent of the statute. It hardly needs to be stated that in effectuating the Parliamentary intent, the authorities are also stakeholders



along with the parties to the *lis*. Had it not been so, perhaps, other factors would have figured for consideration.

(ii) The second submission of learned counsel for the Petitioners that his clients do not have any means to pay the amount directed in terms of impugned orders, is too farfetched an argument and therefore, does not merit countenance. Law, religion & custom mandate sons to look after their parents, and more particularly aged mother. Smrutikaaraas say: '*rakshanti sthavire putra ...*' nearly meaning that it is the duty of son to look after his mother who is in the evening of her life. In an ancient scripture of India entitled "*Taittiriya Upaniṣad*", it is said that when a student on graduation is leaving the Gurukula (school/college), the guru/teacher gives him the parting message as under:

*"May you be one for whom his mother is a Deva.
May you be one for whom his father is a Deva.
May you be one for whom a guest is a Deva.
May you be one for whom his teacher is a Deva."*

Similarly, the *Brahmanda Purana* says:



पातकानां किलान्येषां प्रायश्चित्तानि सन्त्यपि ।

मातृद्वह्मवेहि त्वं न किञ्चित् किल निष्कृतिः ॥

The above shloka nearly translates to: to neglect the parents, particularly in their old age, when they become weak and dependent and to cause anguish, is a heinous act for which there is no atonement available. The virtuous idea is that one should respect & serve one's parents, guests & gurus, before one worships the Almighty. This has been the tradition of this land since centuries. With no joy in heart, this Court observes that nowadays, a section of youngsters is failing to look after the aged & ailing parents and the number is swelling. This is not a happy development.

(iii) The argument that Petitioners do not have means to pay, is too poor a justification for not looking after the aged & ailing mother, especially when it is not their case that they are not able bodied or diseased. The first Petitioner who is present before the Court and participated in the proceedings, is hale & healthy; the second Petitioner



is not before the Court, is true; but it is not his case too that he is weak & incapable of earning; if an able bodied person is bound to maintain his dependent wife, there is no reason why such a rule should not apply when it comes to the case of a dependent mother. An argument to the contra falls foul of law & religion, to which the Petitioners belong.

(iv) The argument that Petitioners do not have means to pay is liable to be rejected for yet another reason: the first Petitioner on being specifically asked, admitted in the open Court that he owns three shop premises and has been receiving Rs.10,000/- by way of monthly rent. The mother who too present in the Court along with daughters at once retorts that the rental income is far more than Rs.20,000/-. The Petitioners have not produced the rental agreements to demonstrate their assertion. Added, they have suppressed their rental income from the authorities who have made the impugned orders. Such a culpable conduct of the Petitioners disentitles them to any relief in



the equitable jurisdiction under Article 227 of the Constitution, the other provision namely Article 226 having been mindlessly employed in their pleadings.

(v) The next contention of the Petitioners that they are ready & willing to look after their mother and therefore she should be directed to join them, is neither legally sustainable nor factually desirable. This Court saw the mother Smt.Venkatamma, who is absolutely illiterate and who has a fragile health condition; she is aged about 84 years, as admitted in the Petition itself. Her eyesight is considerably diminished. Law of marriage generally provides for restitution of conjugal rights *qua* the deserting spouse, is true. No law or ruling of the kind is cited at the Bar that the unwilling parents can be forced to reside with their children. Such a contention is incongruous and abhorrent to our culture & tradition, to say the least.

(vi) Absolutely no material is produced by the Petitioners to substantiate their allegation that the mother is being manipulated by her daughters. It is not that the daughters



want any share in the family property. It is they who have been looking after the mother abandoned by the sons. But for them, she would have been on the streets. The gestures shown by the daughters merits a deep appreciation at the hands of this Court.

(vii) The last contention of the Petitioners that the amount of Rs.10,000/- is much on the higher side, is simply liable to be rejected. We are living in an age when bread is costlier than blood. Money is loosing its purchasing power; days are proving very costly; a sum of Rs.10,000/- by any measure can be said to be excess; in fact, such a sum falls short of the 'living wages' of an unskilled workman. To hold body & soul together, more than that sum is necessary. However, this Court very reluctantly abstains from revising it upwardly, there being no such prayer from the side of mother.

In the above circumstances, this Writ Petition being devoid of merits is liable to be rejected and accordingly it is, with a cost of Rs.5,000/- which the Petitioners jointly



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shall remit to the 3rd Respondent- mother within thirty days, failing which they are liable to pay an additional levy of Rs.100/- per day, if delay is brooked.

SD/-
JUDGE

Snb/
List No.: 1 SI No.: 8