

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4038 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE K.M.THAKER Sd/-

01.	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
02.	To be referred to the Reporter or not ?	Yes
03.	Whether their Lordships wish to see the fair copy of the judgment ?	No
04.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
05.	Whether it is to be circulated to the civil judge ?	No

PARMAR DAHYABHAI HEMABHAI....Petitioner(s)

Versus

PARMAR PRAKASHBHAI DAHYABHAI & 1....Respondent(s)

Appearance:

MR YH MOTIRAMANI, ADVOCATE for the Petitioner(s) No. 1

MS E.SHAILAJA, ADVOCATE for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 1 - 2

CORAM: **HONOURABLE MR.JUSTICE K.M.THAKER**

Date : 4/03/2013

CAV JUDGEMNT

1. This petition is one disquieting instance where a son has audaciously suggested that his parents should move to and stay in old-age home instead of

claiming order of "care, protection and maintenance". In present petition, the petitioner, a senior citizen, aged about 75 years, has prayed, *inter-alia*, that:

"13(B) To issue a writ of certiorari o a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the judgment and order dated 18.12.2010 passed by the Learned District Magistrate, Patan vide order no.MAJ/Appeal Case No.3811 to 3815 of 2010 confirming the order dated 17.8.2010 passed by the Learned Sub-Divisional Magistrate, Patan and allow the said application and direct the respondent no.1 to pay Rs.5000/- per month to the petitioner from the date of application till realisation and continue to pay the same regularly every month.

13(C) Pending admission, hearing and final disposal of this petition, to direct the respondent no.1 to pay the maintenance of Rs.5000/- per month to the petitioner from the date of application till realisation and continue to pay the same regularly every month."

2. The petitioner is aggrieved by order dated 17.8.2010 passed by Sub Divisional Magistrate (hereinafter referred to as 'the competent authority') in maintenance application which was preferred by present applicant under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') whereby the competent authority rejected the said application. The petitioner is also aggrieved by order dated 18.12.2010 whereby the District Magistrate (hereinafter referred to as 'the Appellate Authority') rejected the appeal preferred by present petitioner against the said order dated 17.8.2010.

3. Facts:

3.1 So far as the relevant facts involved in present case are concerned, it appears from the record that the petitioner herein preferred an application under the provisions of the Act and claimed, *inter-*

alia, that the respondent may be directed to provide proper maintenance, care and protection as contemplated under the Act. The application was directed against petitioner's son and the petitioner alleged therein, *inter-alia*, that he stays at village Balisana with his wife and both of them do not keep good health. The petitioner-applicant also asserted in the application that he suffers from heart ailment and has been diagnosed with heavy artery blockage upto 60% to 80% and he also suffers from prostate problem while his wife, due to advanced age, does not keep in good health and due to weakness, it is difficult for her to do the household work, particularly the cooking and washing work and other daily chores. In the application, the petitioner-applicant also claimed that his two sons are not staying with him and his wife but are staying separate and while the elder son who is a practicing advocate, does take some care, the younger son who is working as Talati-cum-Mantri, and his wife completely ignore them and do not take any care. The petitioner-applicant also alleged that the opponent in the application, i.e. his younger son does not help him and his wife in any manner and he also does not provide for their maintenance.

3.2 The competent authority after registering the application completed the formalities and procedure prescribed under the Act for deciding the application and issued process. The authority also visited the residence of the petitioner-applicant and his sons and statements were recorded and reply from the opponent was also called for.

3.3 The opponent - son opposed the application preferred by his father (i.e. present petitioner) and while stating facts in defence of his conduct, he made several allegations against his parents.

3.4 Besides other allegations, the opponent's son, who works as Talati-cum-Mantri, also opposed the application on the ground that at meagre charge of about Rs.300/- per month, the applicant, i.e. his father and his mother can comfortably stay in an old-age home and that, therefore, they should go and stay in old-age home.

3.5 The respondent even disputed that his parents are not keeping good health as claimed by the petitioner-applicant in his application before the competent authority. The opponent - son also opposed the application claiming that the elder son was not impleaded as the opponent and therefore, application only against one of the sons should not be entertained. The opponent's son also claimed that his father, i.e. the applicant, being a retired Class IV employee of Indian Railway, receives pension at the rate of about Rs.6,000/- per month and that, therefore, his application claiming maintenance care and protection should not be entertained and deserves to be rejected. The opponent also alleged that his father, i.e. the applicant spends the amount of pension in wasteful manner.

4. As mentioned above, the competent authority received the reply from the opponent and also visited

the residence of applicant and opponent and recorded necessary statements. Thereafter, upon hearing the applicant-petitioner and the opponent, the competent authority came to the conclusion that instead of any amount towards maintenance, the applicant needs care and protection and since the applicant receives, as of now, pension at the rate of Rs.6,000/- per month, he is not entitled for any order of maintenance against the opponent because the amount of pension is more than the amount which can be awarded by the competent authority under the provisions of the Act.

5. On such ground, the competent authority did not decide the issue as to whether the petitioner is able to maintain himself and his wife from his income or he actually needs more amount (i.e. in addition to amount from pension) for his and his wife's maintenance as contemplated under the Act or not.

5.1 The competent authority also did not determine the actual requirement of the applicant for his and his wife's maintenance.

5.2 Instead, only on the premise that the competent officer is authorised to award maximum Rs.5,000/- towards maintenance and that, therefore, any order awarding maintenance cannot be passed in favour of an applicant whose income is higher than the maximum amount which can be awarded towards maintenance, the competent officer rejected the petitioner's application considering that present petitioner receives pension at rate higher than

maximum amount which can be awarded.

5.3 The competent officer did not examine the application on merits and by order dated 17.8.2010, the competent authority dismissed the application.

6. Aggrieved by the said order, the applicant-petitioner preferred appeal before the Appellate Authority. By the impugned order dated 18.12.2010, the Appellate Authority confirmed the view of the competent authority and dismissed the appeal.

7. The petitioner is aggrieved by the said orders and denial of order of maintenance. Hence, present petition.

8. In order to consider and appreciate the petitioner's grievance and challenge in present petition, it is relevant and necessary to take into account the provisions under Sections 2(a), 2(b), 2(d), 2(h), 2(k), 4 and 9 of the Act. Since, the real purport and purpose of said provision can be considered and appreciated in light of the object of the Act, it would be appropriate to also take into consideration the object of the Act as well. The relevant provisions and the statement of object read thus:

"Objects and Reasons:

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older

persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

- (a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting-up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.

Relevant provisions:

2(a) "children" includes son, daughter, grandson and granddaughter but does not include a minor;

2(b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;

2(d) "parent" means father or mother whether biological, adoptive or step-father or step-mother, as the case may be, whether or not the father or the mother is a senior citizen;

2(h) "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above;

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) Any person being a relative of a senior citizen and having and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen;

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be

payable by such relative in the proportion in which they would inherit his property.

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."

8.1 On examination of the record, it appears that after the application was presented, the statements of the concerned persons were recorded in accordance with the provisions under the Act. From the statement of original applicant i.e. present petitioner recorded by the Authority, it emerges that the original applicant is a Senior Citizen and has retired as Class IV employee from Railways. Initially, the applicant-petitioner received Rs.500/- per month and at present, he receives Rs.6,000/- per month towards pension. It also emerges from the record that the applicant has two children. One of the two sons is a practicing advocate and the younger son is employed as Talati-cum-Mantri and stays separate at a distance of about 1 km. from the applicant's house.

9. It has also emerged from the record that the applicant and his wife are 'senior citizens' as defined and contemplated under Section 2(h) of the Act and being biological father and mother of the respondent herein, the applicant and his wife are 'parents' within the meaning of the term under Section 2(d) of the Act and the respondent being son of the applicant, is covered within the meaning of the term

'children' under Section 2(a) of the Act. The applicant prayed for order of care, protection and appropriate amount for his and his wife's 'maintenance' as defined and contemplated under Section 2(b) of the Act.

9.1 The applicant-petitioner claimed in his application as well as his statement before the authority that he and his wife are not keeping good health and he, in particular, suffers from heart ailment as well as prostate problem and due to his ill-health, he has to incur substantial expenses towards medicines. It has also emerged from the record that while opposing the application, the respondent's son alleged that the expenditure towards medicines of applicant and his wife are being reimbursed, however, the applicant has emphatically denied the said allegation and asserted that the said expenses are not being reimbursed and he has to meet with all expenses including the expenditure towards medicines for himself and his wife out of his pension-amount and he does not have any other income / source of income except pension.

10. It is not in dispute that the respondent is in regular / permanent employment and he is working as Talati-cum-Mantri. It is also not in dispute that the respondent does not stay with his parents and from the material on record, it does not come out that he is extending any care or help to his parents and/or he does not provide for, or does not even contribute any thing for, their maintenance.

10.1 On overall assessment of the material on record and the impugned orders, it emerges that the applicant-petitioner does not receive any monetary help from his children and except the income of Rs.6,000/- towards pension, he does not have any other income / source of income to maintain himself and his wife and to meet with their regular domestic expenses as well as the expenditure towards their medicines.

10.2 It is apparent and obvious from the material on record that the applicant and his wife do not get any physical or emotional care, protection and support or any monetary help from their two children and their families.

11. In such background of facts and circumstances, the applicant-petitioner preferred the application which came to be rejected on the aforesaid ground by the competent authority and the appellate authority also confirmed the order passed by the competent authority and rejected the appeal.

12. Mr.Motiramani, learned advocate submitted that the authorities have committed error in not granting order for maintenance at appropriate rate. He made reference of the application filed by the petitioner, the reply filed by the respondent and the statements recorded by the competent officer. In light of the material available on record before the competent authority and the appellate authority, learned advocate for the petitioner submitted that there was sufficient material before the authority to

pass order for payment of appropriate amount as maintenance in favour of the petitioner, however, the authorities misdirected themselves and passed the impugned order. In addition to the submissions by learned advocate, the petitioner has tendered written submission and alleged that his sons have failed to take his and his wife's care and he also mentioned the details of narrated ill-treatment by his sons and their wives to him and his wife. It is also submitted that the authorities have erred in rejecting his application.

13. Ms.Shailaja, learned advocate for the respondent supported the order and submitted that the order does not suffer from any infirmity. She reiterated the allegations made by the respondent in his statement before the authorities and submitted that the applicant does not need any amount towards maintenance. She also raised the contention that the applicant should not and could not have made the application without impleading other son, (i.e. brother of present respondent) and for want of necessary party, the application was not maintainable. Any other submissions are not made.

14. It emerges from the statement of objects and reasons that the Act addresses the need arising from the unfortunate plight which many elderly persons and senior citizens have to suffer on account of thinning of family fabric and rise of micro families as well as on account of economic compulsion of the family where man and wife have to work full time.

14.1 The Legislature has noted that "...due to withering of the joint family system a large number of elderly are not being looked after by their family. Consequently many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and lack of physical and financial support.....and there is need to give more attention to the care and protection of older persons.....". The Legislature has also emphasized that, "The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property....."

14.2 The term "maintenance" and other expressions such as "needs of such citizen" and "may lead normal life" and "unable to maintain himself" as well as other provisions under the Act have to be understood and must be construed in light of the object of the Act so as to advance the intention of legislature and object of the Act. The term "maintenance" is defined, under Section 2(b) and it includes provision for food, clothing, residence and medical attendance and treatment.

14.3 While defining the term "maintenance", the Legislature has consciously attached and injected wider connotation to the said term so that the said expression is not understood or construed in narrow sense.

14.4 The said intention of the legislature

emerges from the definition of the term "maintenance" which is defined so as to include obligation to provide not only food, clothing or residence or medicine but also "medical treatment" as well as "attendance". The use of the terms "treatment" in conjunction with the term "attendance" and use of the conjunctive "and" give very wide meaning and connotation to the term "maintenance".

14.5 The wider connotation assigned to various terms, particularly the term "maintenance", which takes in its fold "treatment" as well as "attendance" suggests and clarifies that the Legislature aims at providing holistic protection to parents and senior citizens so as to protect them from emotional neglect and lack of physical and financial support and to set-up proper mechanism to ensure that the said objects are achieved by simple, inexpensive and speedy system.

14.6 This aspect also becomes clear from plain reading of Section 4 which provides, inter alia, that senior citizen or parent(s) who is unable to maintain himself from "his own earning" or is unable to maintain himself "out of the property owned by him" will be entitled to make an application under Section 5 against one or more of his children (who are not minor) or even against a relative (in case of child-less senior citizen).

14.7 The said Section 4 of the Act further prescribes that the obligation of the children or the relative to maintain parent or senior citizen also

extends to the "needs" of parent's or senior citizens so that he/they may lead a "normal life" and the conferment of the right to claim maintenance under the Act is not restricted qua only biological or adopted children/grand children but it is also extended, in specified cases, qua relative/s as well.

14.8 Moreover, the obligation is not restricted only to provide bare minimum maintenance but the Act imposes obligation to also provide "all needs" of such citizen so that he may lead a "normal life", and to also provide food, clothings, residence, medical attendance and treatment.

14.9 The expression 'lead a normal life' also has wide connotation and meaning and the legislature has advisedly used the said expression with such wide connotation.

14.10 Leading normal life would include all requirements of parents, i.e. physical needs as well as emotional needs.

14.11 The expressions "all needs" in conjunction with "normal life" also lend wide meaning & scope which imply and include obligation to maintain parents/senior citizen so that he may be able to lead normal life which is not uncared for and lonely or short of drudgery compelling the parent/s or senior citizen/s to drag themselves and to beg for every little requirement of life including medicines, treatment, etc. and also implies obligation to provide care and attendance in a manner where they are not

neglected or left without attendance. Therefore competent authority can also pass order restraining the children from ill-treating or abusing or emotionally neglecting senior citizen/parents.

15. Having regard to the provision under Sections 2(b), 2(d), 2(h), 4 and the object of the Act, the expression "to lead normal life" has wide connotation and should receive liberal construction. The provisions under Section 4 and Section 9 should be construed and given effect so as to ensure that the children or relative provide "maintenance" to parents/senior citizens (who are unable to maintain themselves from their own earning/income) as contemplated by the Act. The expression "all needs to lead normal life" should not be and cannot be read and construed in pedantic manner, but must be construed in such a way that would advance and serve the object of the Act. It is the duty and obligation of the authorities under the Act to give effect to the intention of the legislature and the object of the Act while considering and deciding the application/s preferred under the Act.

16. According to the provisions under Section 4 of the Act, if a senior citizen including parent who is unable to maintain himself with regard to food and/or clothing and/or residence and/or medical attendance and/or medical treatment from his own earning, then he can make an application to claim "maintenance" - as contemplated under Section 2(b) against one or more of his children (not being a

minor) or from any relative (if such senior citizen is child less).

17. In light of the said provision, the petitioner herein filed an application under Section 4 of the Act, because according to the petitioner, his children are not taking sufficient care and are not providing maintenance for him and his wife and he is not able to maintain himself and his wife from his earning/income (i.e. pension amount) and that, therefore, so as to maintain himself and his wife, he needs sufficient amount so that he can maintain himself and his wife and they can provide for their food, clothing, medicine medical treatment and attendance at the time of his or his wife's illness, etc. The said application is rejected by the impugned orders.

18. When the impugned orders are examined in light of the object and the scheme of the Act and the intention of legislature, section 9 of the Act and more particularly the scope of section 4 of the Act, it emerges that both authorities have failed to take into account the object of the Act and scope of section 4 in its right and proper perspective and have misconstrued section 9 of the Act.

19. So far as section 9 of the Act is concerned, it is relevant and necessary to mention, at this stage, that the said section confers power on the competent authority to award such amount towards maintenance as considered appropriate but not

exceeding Rs.10,000/- or such amount as the appropriate government may prescribe.

19.1 On this count, it is necessary to mention that in exercise of power under section 32(2)(c), the State Government has issued notification which confers power on the State Government to frame rules, and vide said notification, the State Government has framed "Gujarat Maintenance and Welfare of Parents and Senior Citizens Rules, 2009" (hereinafter referred to as 'the said Rules'). Rule 5 of said Rules prescribes that amount of allowance can be Rs.5,000/-. Rule 5 of the said Rules reads thus:

"5. Order for Maintenance Allowance

If children or relatives, as the case may be, neglects or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal shall, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rates 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;

Provided that the amount of maintenance allowance shall be at the rate of Rs.5000/- p.m. which can be reviewed by the State Government from time to time."

According to the authorities under the Act, the Rule 5 of the said Rules prescribes limit of the rate at which allowance can be awarded.

20. On perusal of the impugned orders, it appears that it is in view of the Rule 5 of the said Rules read with section 9 that the competent authority and the appellate authority proceeded in the matter and rejected petitioner's application.

20.1 The authorities appear to have assumed that

since any order awarding maintenance for more than Rs.5,000/- cannot be passed, application by any senior citizen or parent/s having income of Rs.5,000/- or more cannot be entertained and allowed and in such cases any amount cannot be awarded as maintenance even if, and irrespective of the fact that, the applicant, i.e. the senior citizen or parent(s) is "not able to lead normal life" from his earning/income and is also able to (and actually does) satisfy the authority that he is unable to "maintain" himself from his earning.

20.2 The said assumption and construction or understanding of the provisions is not correct and is not in consonance with the object, scope and effect of section 4 read with section 9 and Rule 5 of the said Rules.

20.3 While considering the provision under section 9 of the Act with Rule 5 of the said Rules, the authorities have erroneously and without any justification superimposed the pecuniary limit of amount which can be awarded towards maintenance allowance, over the provision under section 4, according to which a parent or senior citizen who is "not able to maintain" himself "from his own earning" can make an application for order of maintenance, care and protection and thereby the authorities have not only restricted the scope and operation of section 4 but have also restricted and curtailed the right of the senior citizen/parents (i.e. the applicants to make and maintain application in the event he is not able to maintain himself from his earning/income.

20.4 It is pertinent that the pecuniary limit as regards the amount which can be awarded as maintenance allowance does not regulate the provision under section 4 of the Act and the provision under section 4 of the Act is not dependent on section 9 or pecuniary limit prescribed by the Rule 5 of the said Rules. It is neither the scope nor effect nor object of section 9 to regulate and/or restrict the scope or operation of Section 4 of the Act. The said two provisions are independent and operate in different sphere with different object.

20.5 The meaning, scope and effect or object of the provisions under Sections 2(b) and 4 are not duly and properly considered and have not been appreciated by the authorities in light of the object of the Act. Having regard to the object of the Act and the intention of the legislature, there is no justification, or even indication in the Act, to restrict the meaning and scope of the provision under section 4 of the Act in light of section 9 and the limit of amount of allowance fixed under section 9 of the Act. The limit fixed under, and for the purpose, of, section 9 of the Act is only for the purpose of limiting the power of the authority to award maintenance and to limit the extent of amount which can be awarded but the said limit cannot govern or restrict section 4 and/or right senior citizen/parents to maintain application for maintenance if he is "not able to maintain himself from his earning".

20.6 It is pertinent that the legislature has not provided or prescribed that the senior citizen/parent who has earning/income of more than a particular (specified/prescribed) amount then he would not be eligible or entitled to make application or that application by a senior citizen/parents having earning/income of more than a particular (specified/prescribed) amount would not be maintainable.

20.7 The authority under the Act has erred in not appreciating that the provision under section 4 is not subject to the pecuniary limitation prescribed under section 9 of the Act. The pecuniary limit prescribed under section 9 of the Act merely restricts the authority's power to grant / award amount towards maintenance allowance in favour of the applicant and and it does not restrict or control right of senior citizens/parents to make an application for order of maintenance if he is unable to maintain himself from him earning/income.

20.8 Therefore, the right of parent or senior citizen to make an application for maintenance, if such parent or senior citizen is not able to maintain himself from his own earning cannot be denied/taken away or curtailed by applying and superimposing the pecuniary limit prescribed for the purpose of section 9 of the Act and the competent authority is obliged to examine the claim-application (made under section 4 of the Act) in light of and from the perspective of the earning of the applicant vis-a-vis his requirements

for leading "normal life" and that right, i.e. the right conferred by section 4 is not subject to or is not dependent on the power of, or restriction on power of the competent authority to determine amount of allowance and to pass order of maintenance allowance.

20.9 What is required to be considered by the authority is as to whether with his own income the applicant is able to maintain himself in such a way that he can lead normal life as contemplated under section 4. If the applicant can satisfy the competent authority that having regard to his requirements to lead normal life as contemplated under section 4 of the Act, his income is insufficient and he needs more amount / assistance from his children so that he can maintain himself and lead normal life, then the competent authority would be obliged to award (upon being satisfied about the requirement for more amount than the income of the applicant) further amount towards maintenance allowance and it is at this stage that the limitation as regards the extent of amount of maintenance allowance fixed under section 9 of the Act will come in operation because the amount to be awarded as maintenance allowance (upon being satisfied that the applicant is unable to maintain himself from his earning) will be subject to, and cannot be more than, the pecuniary limit prescribed under section 9 of the Act.

20.10 However, only on the ground that, or merely because, income of the applicant appears to be more than the pecuniary limit prescribed for the purpose of

section 9 of the Act, the authority cannot refuse to entertain and decide an application and pass appropriate order in cases where the applicant is able to satisfy the authority that he is unable to maintain himself from his own earning/income and that his income (though more than the limit prescribed under section 19 of the Act) is insufficient and inadequate to meet his requirements to lead normal life.

20.11 An illustration would clarify and demonstrate this aspect. If total income/earning of an applicant is more than the pecuniary limit under section 9 of the Act, but at the same time the said applicant is also a patient of serious ailment and he is undergoing such treatment which involves considerable expenses towards medical treatment and attendance (expenses towards medicine and treatment, etc.) and such expenses are more than the pecuniary limit prescribed under section 9 of the Act and are equal to or more than his total income/earnings (which are, incidentally more than the limit under section 9), then the competent authority cannot refuse to entertain an application made under section 4 of the Act and to pass appropriate direction against the opponent/children to pay such further/additional amount, subject to the limit prescribed under section 9 of the Act, to the applicant so as to enable him to "lead normal life" and/or to meet the expenses towards medical treatment and attendance. In such circumstances, the requirement/need of the applicant to lead normal life may be more than his income

(though his income may be more than the limit under section 9 of the Act). It is necessary to clarify that this is only one instance or situation which may occur but there could be many situations or circumstances wherein, the applicant might have income/earning which could be more than pecuniary limit under Section 9 of the Act but the parent/senior citizen may not be able to maintain himself and may not be able to lead normal life or his medical requirements from his own income/earning on account of unavoidable and compelling financial obligations/needs.

20.12 In such circumstances, the competent authority would not be justified in rejecting the application only on the ground that the income of the applicant is more than the amount which it can award under section 9 of the Act and the authority will be obliged to call for and admit on record such evidence which would enable him to ascertain the financial requirement of the applicant and if such requirement exceeds applicant's income, then the competent authority would be obliged to award such amount which should not exceed the pecuniary limit prescribed on his power.

20.13 As mentioned earlier, it is at this stage that the pecuniary limit prescribed under section 19 would come in picture and while directing the opponent/children to pay such further / additional amount to the applicant, the competent authority cannot award more amount (i.e. cannot direct payment

of more amount) than the pecuniary limit prescribed under section 9 of the Act.

20.14 The competent authority has failed to consider this aspect in present case, while passing the impugned order.

20.15 In present case, the competent authority has misapplied the pecuniary limit prescribed under section 9 of the Act. The competent authority has proceeded on the premise that since the income of the applicant is equal to or more than the pecuniary limit on his power, then he cannot award any amount towards maintenance even if the applicant's requirements are more than his earning/income and the applicant is unable to lead normal life and is unable to maintain himself from his earning.

20.16 Of course, the needs and requirements (to lead normal life) should be reasonable and must pass the test of reasonableness. The extent and reasonableness of "requirement" and justifiability for order of maintenance will be decided by the authority in light of facts of each case and there cannot be any straight jacket formula or a thumb rule which can be mechanically applied in every case. The "needs/requirements to lead normal life" have to be examined by the authority on the touch-stone of reasonableness.

20.17 Differently put, in such circumstances, the competent authority can, rather the competent authority should, award such amount in favour of the

applicant which is considered appropriate having regard to the material available on record with reference to the applicant's requirements "to lead normal life", but subject to the pecuniary limit prescribed under section 9 of the Act.

20.18 For such purpose appropriate and sufficient evidence, which may help the authority to decide applicant's "needs/requirements to lead normal life", should be available on record. Though the proceedings before the competent authority are supposed to be in nature of summary proceedings, the authority is obliged to collect or call-for sufficient material which may enable him to reasonable requirements of the applicant.

20.19 Since, in present case, the competent authority has failed to appreciate the scope of provisions under section 4 read with section 2(b) vis-à-vis section 9 of the Act and the competent authority has also failed to record such evidence as would be necessary to consider and decide the relevant aspects e.g. requirements to lead normal life, present petition deserves to be accepted and allowed and the case is required to be remitted to the competent authority for further consideration and fresh decision in light of the discussion in present order.

21. Thus, below mentioned order is passed.

22. The petition is accepted and allowed. In light of the foregoing discussion and the scope and purview of the provisions under Sections 2(a), 2(b),

2(d), 2(h) and Section 4 and Section 9 of the Act and having regard to the object of the Act, the impugned order dated 18.12.2010 passed by the competent authority and the order dated 17.8.2010 passed by the appellate authority are set aside and the case is remanded to the first authority / competent authority for fresh consideration and fresh decision after allowing the applicant to place such material and evidence on record which may satisfy the authority about the applicant's requirements to lead normal life. The competent authority shall endeavour to hear and decide the case as expeditiously as possible and preferably within six weeks. Rule is made absolute to the aforesaid extent. Orders accordingly.

23. In the facts of the case, cost of present petition is quantified at Rs.1,500/- which shall be borne by the opponent who shall pay the same to the petitioner within four weeks.

24. In event of failure, the competent authority shall take appropriate steps for recovery of the amount from the opponent and to pay the same to the applicant.

With the aforesaid clarification and directions, the petition stands disposed of.

Sd/-

(K.M.THAKER, J.)

Bharat