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

+ W.P.(C) 15055/2022 & CM APPL. 46499/2022(Stay)

MANISH GUPTA Petitioner

Through: Mr. Nitin Mittal, Adv.

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Ms. Hetu Arora Sethi, ASC for
GNCTD/R-1, 2 & 4 with Ms.
Kavita Nailwal, Adv.

Mr. Madhu Sudan Bhayana and
Mr. Suresh Chaudhari, Adv.
for R-3.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

01.11.2022

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**CM APPL. 46500/2022, CM APPL. 46501/2022, CM APPL.
46502/2022 (for exemption)**

Allowed, subject to all just exceptions.

The applications shall stand disposed of.

W.P.(C) 15055/2022 & CM APPL. 46499/2022(Stay)

1. This writ petition is directed against the order dated 18 October 2022 passed by the Divisional Commissioner acting as the Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [**“the 2007 Act”**]. In terms of the said order, the prayer for placing the order of the District Magistrate in abeyance during the pendency of the appeal has been negated.

2. Learned counsel for the petitioner would submit that that in light of the serious civil dispute which was pending inter partes and also forms subject matter of the civil suit coupled with the rights which are claimed by the petitioner in the property itself, the Divisional Commissioner has clearly erred in proceeding to reject the application for stay. It was additionally contended that since the appeal had been entertained, there was no justification for the

Appellate Authority to refuse stay.

3. Having heard learned counsel for the petitioner, this Court is of the considered opinion that no interference is warranted with the order impugned for the following reasons.

4. It becomes relevant to note that the forums which stand created under the 2007 Act are neither obliged nor placed under a duty to render categorical findings with respect to the civil rights which are claimed by parties. The primordial consideration of those proceedings is to safeguard the interest of the senior citizens and to ensure that they are not harassed or ill-treated in their twilight years.

5. Dealing with considerations which would weigh with the Appellate Authority while considering applications for stay in those proceedings, this Court in **Virender Singh vs. PR Secretary Cum Divisional Commissioner & Ors.** [W.P.(C) 14149/2022] has held as follows: -

“3. While in the case of ordinary civil litigation, the issue of grant of stay is governed by the principles of prima facie case, balance of convenience and irreparable loss with courts bearing in mind the need to preserve the rights of parties inter se during the pendency of proceedings, the primordial consideration in proceedings under the 2007 Act is the necessity to protect and secure the life and property of the complainant senior citizen/s. While dealing with an application for stay that may be made in a pending appeal under the 2007 Act, the appellate authority would have to necessarily take into consideration the nature of evidence that was placed before the Tribunal and constrained it to frame orders for eviction. If it finds that the order of eviction is predicated upon cogent and reliable material that evidences harassment and ill-treatment, the ends of justice may warrant the order of eviction being permitted to run its course and the offending parties being required to remove themselves from the premises till such time as the appeal is decided.

4. The Court notes that at that stage the authorities administering the provisions of the 2007 Act are to primarily weigh in consideration the imperatives of securing the physical and mental well-being of the senior citizens and their security bearing in mind the predominant objective and purpose of the 2007 Act. In such situations and unlike civil litigation, a prayer for the status quo being maintained is not liable to be granted as a matter of course. This since the continuance of the offending parties in the premises may itself cause irreparable damage and perpetuate the mental and

physical torture which the senior citizens may have suffered in the past and had compelled them to initiate proceedings under the 2007 Act.

5. The appellate authority would also be obliged to bear in mind that the order of eviction would have come to be made after due contest with an opportunity of hearing having been duly provided to parties by the Tribunal. The Court observes that at the interim stage and where the appellate authority comes to the prima facie conclusion that the order of the Tribunal is not shown to suffer from a patent or manifest error or where the ultimate direction of eviction is not ex facie untenable, the ends of justice may merit parties being required to separate and await the final outcome of the appeal.

6. Ultimately it would be the facts of each case which would merit examination and evaluation in order to guide the exercise of the power to stay as conferred upon the appellate authority. All that the Court seeks to emphasize is that the power to grant interim stay is not to be exercised mechanically or as a matter of rote. The mere fact that the appeal has been entertained would also not and necessarily warrant the order of the Tribunal being placed in abeyance. It would be the individual facts of each case on a consideration of which the appellate authority would have to consider whether interim protection is liable to be accorded to parties against whom allegations may have been levelled by the senior citizen/s. The power to grant interim relief would ultimately have to be left to the sound and judicious discretion of the appellate authority.

7. In the facts of the present case, the Court notes that the conclusions with respect to harassment and ill treatment which came to be recorded by the SDM and formed the basis for the order of the Tribunal were neither questioned nor assailed. In view of the aforesaid, the Court finds no justification to interfere with the order impugned.

8. The writ petition shall consequently stand dismissed.”

6. Since learned counsel for the petitioner has failed to point out any material perversity in the order that was passed by the District Magistrate and which had constrained it to frame directions for eviction, the Court finds no ground to interfere with the impugned order. While arriving at the aforesaid conclusion, the Court has also weighed in mind the principles which were enunciated in Virendra Singh and have been extracted hereinabove.

7. Accordingly, and for the aforesaid reasons, the Court finds no ground to interfere with the order impugned. The writ petition fails

and shall stand dismissed.

Order *dasti*.

NOVEMBER 1, 2022/bh

YASHWANT VARMA, J.