Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 219 OF 2025

Mr. Santosh Savlaram Morajkar,
Son of late Shri. Savlaram Morajkar,
Major in age, married, in service,
Indian National, and
R/o Volvonem, Tivim,
Near Maruti Temple,
Tivim, Bardez, Goa. **… Petitioner**

Versus

1. Mrs. Sumitra Savlaram Moraskar,
   W/o late Shri. Savlaram Moraskar,
   Major in age, Widow, Indian National and
   R/at Bamanwaddo, Cuchelim,
   Near Cuchelim Zor, Mapusa, Bardez,
   Goa.

2. Mr. Nandakishore Savlaram Moraskar,
   S/o late Shri. Savlaram Moraskar,
   Major in age, married, retired,
   Indian National and
   R/at Bamanvaddo, Cuchelim,
   Near Cuchelim Zor, Mapusa,
   Bardez, Goa. **…Respondents**

Mr. Deepak Gaonkar, *Advocate for the Petitioner.*

Mr. Sahil Sardesai*, Advocate for Respondents.*

CORAM : VALMIKI MENEZES, J.

DATED : 9TH JUNE, 2025.

ORAL JUDGMENT:

1. Heard learned Advocates for the parties.

2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Sahil Sardesai appointed under the Legal Aid Scheme waives service for Respondents.

3. This petition takes exception to the Judgment and Order dated 12.10.2023, wherein the Maintenance Tribunal (Deputy Collector) under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ("The Act"), had directed the Petitioner, who is the son of the Respondent No.1 to pay a monthly maintenance of Rs. 10,000/- (Rupees Ten Thousand only) to his mother (Respondent No.1). During the pendency of this petition, the Petitioner has deposited the arrears of Rs.1,30,000/-(Rupees One Lakh Thirty Thousand only) before the Registry of this Court, which was released under order of this Court dated 03.07.2024 in favour of the Respondent No.1. By order dated 03.07.2024, this Court had directed the Petitioner to continue payment of the maintenance amount at the rate of Rs. 10,000/- (Rupees Ten Thousand only)

per month, last of which was deposited on 06.03.2025. In total, the Petitioner has deposited an amount of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only).

4. The main contention of the Petitioner is that the Tribunal has passed the impugned order without holding any inquiry contemplated under Sub Section 4 of Section 6 of the Act and there is no reasoning whatsoever in the order to sustain the direction to the Petitioner to pay to Respondent No.1, the aforesaid amount of Rs. 10,000/- (Rupees Ten Thousand only) per month. It is further submitted that the procedure laid down in the Act and the Rules framed thereunder by the State Government have also not been followed.

5. I have perused the impugned order and gone through the records of the proceedings.

6. Proceedings under the Act are commenced by an application under Section 5, by which the Senior Citizen or as in this case, a parent files an application seeking maintenance against his/her children. The application may be filed under Sub Section 5 of Section 5 of the Act for maintenance against one or more persons. Proviso to Sub Section 5 permits that such children against whom the application is filed, may seek impleadment of other persons liable to maintain a parent in the application for maintenance. It is a matter of record which is

not in dispute that Respondent No.1 is the mother of four children of which the Petitioner is one son and Respondent No.2 is her other son. She has three other daughters namely (1) Laxmi Ankush Arlekar, (2) Pratima Gokuldas Arlekar and (3) Ramini Ramdas Kavlekar who have not been impleaded in the proceedings. The records of the Tribunal also do not disclose what was the inquiry conducted and why the Tribunal has not impleaded all children of the Applicant, who would be responsible to maintain the Applicant/Respondent No.1 herein.

7. Sub Section 3 of Section 6, which provides for the procedure and the jurisdiction vested in the Tribunal to inquire into the application, empowers the Tribunal to exercise all powers of a Judicial Magistrate First Class to secure the attendance of the children of the Applicant. In the present case, it appears from the records that the Tribunal has not impleaded the three daughters to the proceedings.

8. Sub Section 4 of Section 6 requires that all evidence to such proceedings be taken in the presence of the children or the persons, who are by law required to maintain the Applicant. Here again, in the present proceedings, it appears that no evidence or any inquiry was conducted by the Tribunal in the presence of the children, three of the daughters having not even having been summoned. There appears to have been a complete

go by given to the procedures laid down under Sections 5 and 6 of the Act.

9. Perusal of the impugned order reveals that no reference has been made on the conduct of the inquiry or to ascertain the liability of each of the children to maintain the Applicant, and on what basis the Tribunal concluded that the maintenance required to be paid by the Applicant was quantified at Rs.10,000/- (Rupees Ten Thousand only) or for that matter, how the Tribunal concluded the apportionment of such maintenance amount amongst the children of the Applicant. These are not empty formalities, but are issues to be dealt with by the Tribunal under Section 6 of the Act, which Tribunal has totally failed to follow.

10. In terms of Section 32 of the Act read with Section 8 thereof, the Government of Goa has framed the Goa Maintenance and Welfare of Parents Senior Citizen Rules, 2009, (herein after referred to as Rules). Rule 4 provides for procedure for filing an application for maintenance. Rule 9 provides for impleadment of other children of the Applicant, which can be exercised either at the behest of the opposite party or by the Tribunal Suo Moto. Rule 10 provides for reference of such application to the Conciliation Officer. Under Rule 10, it is the duty of the Tribunal to seek the opinion of the parties before it, as to whether they desire the matter to be referred to

the Conciliation Officer, and if they express their willingness, he shall refer the matter to the Conciliation Officer for attempting to work out a settlement.

Sub Section 6 of Section 6 enjoins the Tribunal, before hearing any application under Section 5 to refer the application to the Conciliation Officer, the Conciliation Officer being defined under the explanation to Section 6. The Tribunal may refer the matter to the Conciliation Officer specifically appointed for that purpose in terms of Sub Section 1 of Section 5 of the Act or to the Maintenance Officer designated by the State Government under Sub Section 1 of Section 18 or on its own motion, refer the matter to the Conciliator to be appointed by the Tribunal.

11. The record does not disclose any such attempt on the part of the Tribunal to facilitate conciliation among the parties before passing of the impugned order. There appears to have been a complete go by given to the procedures laid down under Sections 5 and 6 of the Act read with provisions of Rules which are referred above. The impugned order, as noted by me in the preceding paragraphs, is devoid of any reasoning recorded therein, nor does it state how it has arrived at the conclusion that it was only the Petitioner, who was responsible to pay the entire maintenance; the Petitioner is one of the four children who is responsible or as to how it has arrived at the quantum of

maintenance. On this count alone, the impugned order would have to be set aside.

12. There is yet another aspect of the matter, which if considered would require the impugned order to be set aside. The Petitioner has filed an application dated 06.04.2023 stating he be permitted to engage the services of an Advocate. The application itself refers a Judgment of the Kerala High Court in ***Adv. K.G. Suresh v. The Union of India***, 2021 SCC OnLine Ker 1686, which was decided on 30.03.2021 declaring the provisions of Section 17 of the Act to be *ultra vires* Section 30 of the Advocates Act, 1961. By this application, the Petitioner had contended before the Tribunal that since Section 17 had been struck down by the said Judgment of the Kerala High Court, an Advocate would be entitled to represent the Petitioner in his cause before the Tribunal. By an order of 06.04.2023 which is also impugned herein, the Tribunal held that Section 17 of the Act imposes a bar on parties being represented by an Advocate and accordingly dismissed the application.

13. In this context, I would refer to the Judgment of ***Adv. K.G. Suresh*** (supra) of the Kerala High Court where a specific declaration was sought that the provisions of Section 17 of the Act are *ultra vires* the provisions of Section 30 of the Advocates Act, 1961. Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides that

Notwithstanding anything contained in any other law, no party to a proceeding before a Tribunal or Appellate Tribunal, under this Act, shall be represented by a legal practitioner. Section 30 of the Advocates Act, 1961 was notified on 15.06.2011, bringing the same into force with immediate effect from that date.

Section 30 of the Advocates Act confers the right on every Advocate Enrolled with the State Bar Council, to practice before any Court, including the Supreme Court, **any Tribunal** or person legally authorized to take evidence. The provision also confers the right to legal practice before any other Authority or person before whom such Advocate is by or under any law for the time being in force entitled to practice. The Kerala High Court considered that the provisions of Section 30 were brought into effect on 15.06.2011, after the Maintenance Act came into force, and consequently held that it would have the effect of rendering Section 17 of the Maintenance Act to be *ultra vires* or contrary to the rights conferred on an Advocate to practice before a Tribunal, as conferred by Section 30 of the Advocates Act.

14. For ready reference, the following paragraphs of ***Adv. K. G. Suresh*** (supra) are quoted below:

"49. As rightly contended by the learned counsel for the Bar Council of India, Maintenance and Welfare of Parents and Senior Citizens Act, 2007 came into force on 24.09.2008 in the State of Kerala, whereas, Section 30 of the Advocates Act, 1961 has been notified on 15.06.2011. Therefore, the latter enactment has an overriding effect on Section 17 of the 2007 Act. When the Central Government, in exercise of the powers conferred under sub-section (3) of Section 1 of the Advocates Act, 1961, have appointed 15th June, 2011, as the date on which Section 30 of the said Act shall come into force, the same has to be given full effect from that date onwards.

....

57. As Section 30 of the Advocates Act, 1961 has been brought into force from 15.06.2011, Advocates enrolled under the said Act have been conferred with an absolute right thereof, to practice before all the Courts and Tribunals. By virtue of Section 30 of the Advocates Act, 1961, coming into force from 15.06.2011, the restriction imposed is taken away and in such circumstances, Article 19 of the Constitution of India, which guarantees the freedom to practice any profession, enables the Advocates to appear before all the Courts and the Tribunals, subject to Section 34 of the Advocates Act, 1961.

58. In the light of the above discussion and decisions, Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is declared as ultra vires of Section 30 of the Advocates Act, 1961 and thus, the petitioner is entitled for a declaration that

> *he has a right to represent the parties before the Tribunal/Appellate Tribunal/Court, constituted under Act 56 of 2007. Accordingly, this writ petition is allowed."*

15. Subsequent to the Judgment of ***K.G. Suresh*** (supra) the Delhi High Court in ***Taruna Saxena v. Union of India & Ors.***, reported in 2021 SCC OnLine Del 2600, has taken a similar view followed by the Karnataka High Court in ***K. Srinivas Ganiga v. Union of India & Ors.***, Writ Petition No. 1912 of 2023 (GM-RES), which has also declared the provisions of Section 17 of the Maintenance Act to be *ultra vires* Section 30 of the Advocates Act, 1961.

In ***Kusum Ingots and Alloys Limited v. Union of India and Anr.***, reported in (2004) 6 SCC 254, the Supreme Court has considered the effect of a Judgment of a High Court declaring a central legislation to be *ultra vires* any enactment or unconstitutional. The effect of such a declaration by a High Court holding a provision of a central legislation to be *ultra vires* has been considered in the following terms:

> *"21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ*

petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum. 22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

16. The effect, therefore of the Judgments of the Kerala High Court in ***K. G. Suresh*** (supra) would be that Section 17 stands struck down as being *ultra vires* Section 30 of the Advocates Act, 1961 in relation to the entire territory of India, which includes the State of Goa or any other State. Consequently, the Maintenance Tribunal ought to have proceeded to hear the matter, where the application seeking representation through an Advocate was sought, granting the parties assistance through legal counsel, instead of rejecting the application by the impugned order dated 06.04.2023. The order dated 06.04.2023 is therefore contrary to the declared law and is consequently quashed and set aside. In all cases pending before the Maintenance Tribunals, where an Advocate puts in an

appearance for any of the parties, he would have the right of audience and to plead on behalf of the parties in the cause before such Tribunal, in terms of Section 30 of the Advocates Act, 1961. Since the entire matter proceeded in the absence of representation of the Petitioner through an Advocate, who had applied for representing the Petitioner through application dated 06.04.2023, which was rejected, this would vitiate the final Order and Judgment dated 12.10.2023 impugned herein, which would have to be set aside also on this ground.

17. Considering all these aspects of the matter, the impugned order cannot be sustained and is hereby quashed and set aside. Consequently, Case No.DC/SDO/MAP/Maint-Claim/2020 is remanded back to the Maintenance Tribunal at Mapusa for fresh consideration in the light of the observations made above. The Maintenance Tribunal shall immediately refer the dispute to the Conciliation Officer, which it may appoint either on its own motion or may refer the matter to the Maintenance Officer appointed by the State Government under Section 18 of the Act, conduct conciliation in the matter and try to arrive with an amicable solution for the issue. The Conciliation Officer appointed shall submit its findings to the Tribunal within one month from the date of reference. This procedure is of course to be undertaken after including the three daughters, namely (1) Smt. Laxmi Ankush Arlekar, 2) Smt. Pratima Gokuldas Arlekar

and 3) Smt. Ramini Ramdas Kavlekar who shall also be impleaded in the proceedings before conciliation commences. For convenience, the Petitioner has provided this Court with the addresses of these parties which are given below:

(1) Smt. Laxmi Ankush Arlekar, Wife of Late Shri Ankush Arlekar. Address: Shelpem, Duler, Mapusa, Bardez, Goa

(2) Smt. Pratima Gokuldas Arlekar, Wife of Shri Gokuldas Arlekar. Address: Naika Wado, Calangute, Bardez, Goa.

(3) Smt. Ramini Ramdas Kavlekar, Wife of Shri Ramdas Kavlekar. Address: Indira Nagar, Dhanva, Tivim, Bardez, Goa.

18. In the event of failure of the Conciliation Proceedings, it is for the Tribunal to carry out a summary inquiry in terms of Section 8 of the Act and with Rule 13 Sub Clause (iv) and thereafter pass its order. While passing this order, considering that the Petitioner has deposited an amount of Rs. 1,30,000/- (One Lakh Thirty Thousand only) before the Registry of this Court till date, the Tribunal shall give due weightage to the amount deposited and consider this position while passing orders. The entire procedure, after this matter is remanded back to the Tribunal, shall be completed within three months from

today i.e. by 30.09.2025. The parties to appear before the Tribunal on 16.06.2025 at 3.00 p.m. The parties may be represented by a legal practitioner or Advocate if they so desire. An authenticated copy of this order shall be placed before the Tribunal for necessary action.

19. Until disposal of the Maintenance Application, the Petitioner has agreed to continue paying a monthly maintenance of Rs. 3,000/-(Rupees Three Thousand only) into the account of the Applicant/Respondent No.1 on the 5th of every month. This amount could also be considered by the Tribunal while passing of its order.

20. Rule is made absolute in terms of the prayer clause (a), (b) and (c) of the petition and in terms of observations made herein above. No costs.

VALMIKI MENEZES, J.