Before Harsimran Singh Sethi, J.

BHAGAN DEVI @ BHAGAN— *Petitioner*

versus

DEPUTY COMMISIIONER CUM APPELLATE TRIBUNAL FAZILKA,DISTRICT FAZILKA AND OTHERS—*Respondents*

CWP No. 11088 of 2021

June 29, 2021

A. Maintenance and Welfare of Parents and Senior Citizens Act, 2007, S.8—Constitution of Tribunal— Tribunal allowed parties to summon witnesses to support their averments by recording their statements that tribunal arrive at just and proper conclusion in resolving dispute between parties— Tribunal decided the lis between parties son basis of statements of witnesses and did not allow cross examination—procedure adopted has caused prejudice— Proper procedure has not been followed by tribunal.

Held that it is not in dispute that the Tribunal is to adopt the summary procedure for deciding the application presented before it under 2007 Act. The procedure to be adopted by the Tribunal should not be such that it causes prejudice to a party to the litigation. Once, the Tribunal decides that in order to arrive at a proper decision for dispensing free and fair justice to the parties the statements of witnesses needs to be recorded, then, the procedure prescribed for recording the evidence has to be followed and there cannot be any short cut process for recording the evidence under the garb of summary proceedings to be adopted by the Tribunal. While recording the evidence, the procedure, as envisaged under Order XVIII Rule 4 of CPC, has to be followed without any fail so as to ensure that no party to the litigation suffers any prejudice and is given equal opportunities to present/defend before the Tribunal.

(Para 12)

B. ***Civil Procedure Code, 1908–Order 18, Rl. 4— Cross examination— Held to be mandatory in order to accept statement of a witness given in examination of chief without the cross examination — Cross examination is weapon in hand of a party to test veracity of statements given by witness in examination in chief — Weapon which is a nature of right cannot be taken away under the garb of summary***

proceedings to be adopted for deciding the lis between parties.

Held that bare perusal of the above would show that while recording the evidence, after the examination-in-chief, the cross-examination is an integral part of the proceedings envisaged for recording the evidence. Cross-examination of a witness carries its own significance for dispensing of justice so as to ensure a proper opportunity to a party to elicit the truth behind the statements given in examination-in-chief by the witness. Not only this, the cross-examination-in-chief is a weapon in hand of a party to test the veracity of the statements given by the witness in examination-in-chief and to put question to the witness to raise question marks on the averments made in the examination-in-chief. The said weapon which is the nature of a right cannot be taken away even under the garb of summary proceedings to be adopted for deciding the *lis* between the parties under 2007 Act, once the Tribunal/Court decides to summon the witnesses or allows a party to examine witnesses so as to record their statements to arrive at a just and proper justice on the controversy raised before the Tribunal.

(Para 13)

Rai Singh Chauhan, Advocate,
for the petitioner.

Charanpreet Singh, AAG, Punjab
for respondents No.1 and 2.

HARSIMRAN SINGH SETHI, J. (ORAL)

(1) Present petition has been filed challenging the order passedin appeal by the Deputy Commissioner-cum-Appellate Tribunal, Fazilka dated 25.03.2021 (Annexure P-10) by which order passed by the Tribunal constituted under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as '2007 Act'), dated 18.09.2019 (Annexure P-8) has been set aside and the case has been remanded back for a fresh adjudication after giving due opportunity of hearing to everyone concerned to present their case in accordance with law.

(2) The facts leading to the filing of the present writ petition are that petitioner Bhagan Devi @ Bhagan was stated to be owner in possession of the land measuring 11 kanal 17.12 marlas, situated in village Dhaba Kokrian, Tehsil Abohar, District Fazilka. Petitioner is stated to be 82 years old and had inherited the said property after the

death of her husband.

(3) After the death of husband of the petitioner, the property was transferred in the name of his legal heirs including the petitioner and his children to the extent of their entitlement. One of the sons of the petitioner, namely, Dalip Kumar died in the year 1995 leaving behind his wife, namely, Kamla Devi, son Bhupinder Kumar and daughters, namely, Vikas Rani, Bansa Devi and Raveena. The property which came to the share of Dalip Kumar, according to the petitioner, was inherited by all his legal heirs in equal shares.

(4) Petitioner has stated in the petition that she was living with her grandson, namely, Bhupinder Kumar-respondent No.3, who was looking after her and was also cultivating the land of the petitioner and was providing basic amenities to her. For the said reason, petitioner executed a transfer deed in favour of respondent No.3 on 20.03.2017, which was registered on 21.03.2017. After the registration of the transfer deed, the mutation was also sanctioned in favour of respondent No.3.

(5) It has been alleged by the petitioner that after getting the property, respondent No.3 started over looking his duties of maintaining the petitioner and rather started threatening her of dire consequences if she acted in any manner causing prejudice to respondent No.3. As per the petitioner, she suffered at the hands of respondent No.3, hence, ultimately, petitioner filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Tribunal for setting aside the transfer deed dated 20.03.2017, registered on 21.03.2017.

(6) It is not disputed by the petitioner that during the said proceedings, on 16.09.2019, Tribunal allowed the petitioner to get her statement recorded and also allowed her to produce witnesses to support her claim, namely, Vijay Pal son of Chiman Lal, Sanjay Kumar son ofPalli Ram and her daughter, namely, Indra Devi and statements of all these witnesses were also recorded by the Tribunal on the same date. Thereafter, on the basis of the said evidence produced by the petitioner, the Tribunal passed an order dated 18.09.2019 (Annexure P-8) acceptingher claim and directed that the transfer deed dated 21.03.2017 is set aside.

(7) Against the said order of the Tribunal dated 18.09.2019 (Annexure P-8), respondent No.3 preferred an appeal. In the appeal, an

objection was raised by the applicant-respondent i.e. respondent No.3 with regard to the procedure adopted by the Tribunal, while conducting the proceedings of the case as far as non-granting respondent No.3 an opportunity to cross-examine the witnesses, which were produced by the petitioner in her support so as to extract the truth. The factum that the witnesses were not allowed to be cross-examined by respondent No.3 was not denied by the petitioner and the appellate authority accepted the appeal of respondent No.3 and the order passed by the Tribunal dated 18.09.2019 (P-8) was set aside and the case was remanded back to the Tribunal to decide afresh in accordance with law by giving due opportunity to all concerned to present their case and also defend the same. The order passed by the appellate authority dated 25.03.2021 (P-10) is under challenge in the present petition.

(8) Learned counsel for the petitioner argues that while deciding the claim under the 2007 Act, the procedure as envisaged before a Civil Court is not required to be followed and summary proceedings are to be followed, hence, the statements, which have been given by the witnesses concerned produced by the petitioner, are to be taken on the face value without subjecting them to cross-examination so as to decide the claim pending before the Tribunal and no fault can be found in the procedure adopted by the Tribunal, therefore, acceptance of the objection of respondent No.3 by the appellate authority that he was not allowed to cross-examine the witnesses, who appeared on behalf of the petitionerand gave the statements on oath, is not correct and is liable to be set aside.

(9) I have heard learned counsel for the parties and have gone through the record with their able assistance.

(10) The procedure to be adopted by the Tribunal while dealing with application filed under 2007 Act has been envisaged in Section 8 of the 2007 Act, which is as under: -

> "**8. Summary procedure in case of inquiry**.— (1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in thisbehalf, follow such summary procedure as it deems fit.
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> (2) The Tribunal shall have all the powers of a CivilCourt for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for

> such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
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> (3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding uponany claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it inholding the inquiry."

(11) A bare perusal of the above would show that the Tribunal have all the powers of a Civil Court for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and for compelling the discovery and production of documents and material objects and anyother fact which the Tribunal deem fit for deciding the application pending before the Tribunal.

(12) It is not in dispute that the Tribunal is to adopt the summary procedure for deciding the application presented before it under 2007 Act. The procedure to be adopted by the Tribunal should not be such that it causes prejudice to a party to the litigation. Once, the Tribunal decides that in order to arrive at a proper decision for dispensing free and fair justice to the parties the statements of witnesses needs to be recorded, then, the procedure prescribed for recording the evidence has to be followed and there cannot be any short cut process for recording the evidence under the garb of summary proceedings to be adopted by the Tribunal. While recording the evidence, the procedure, as envisaged under Order XVIII Rule 4 of CPC, has to be followed without any fail so as to ensure that no party to the litigation suffers any prejudice and is given equal opportunities to present/defend before the Tribunal. For ready reference, the Order XVIII Rule 4 of CPC is reproduced as under: -

> 4. Recording of evidence.—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who callshim for evidence:
>
> Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either bythe Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the dateof issue of the commission unless the Court for reasons to berecorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]"

(13) A bare perusal of the above would show that while

recording the evidence, after the examination-in-chief, the cross-examination is an integral part of the proceedings envisaged for recording the evidence. Cross-examination of a witness carries its own significance for dispensing of justice so as to ensure a proper opportunity to a party to elicit the truth behind the statements given in examination-in-chief by the witness. Not only this, the cross-examination-in-chief is a weapon inhand of a party to test the veracity of the statements given by the witness in examination-in-chief and to put question to the witness to raise question marks on the averments made in the examination-in-chief. The said weapon which is the nature of a right cannot be taken away even under the garb of summary proceedings to be adopted for deciding the *lis* between the parties under 2007 Act, once the Tribunal/Court decides to summon the witnesses or allows a party to examine witnesses so as to record their statements to arrive at a just and proper justice on the controversy raised before the Tribunal.

(14) Even the settled principle of law on this aspect is very clear. The Hon'ble Supreme Court of India has held in **CA No.2747 of 1988** titled as ***Gopal Saran*** versus ***Satyanarayan*** that if a party is not subjected to cross examination, it is not safe to rely on examination-in-chief.Relevant para of the judgment is as under: -

> "5. On the basis of the aforesaid, it was contended that it
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> was the definite case of the defendant in Examination-in-chief, thatthe board belonged to him and that the defendant was carrying on his own business and that there was no dispute as to the same by theplaintiff. It may be mentioned that the plaintiff had not subjected himself to cross-examination in spite of the order of the Court after the remand, therefore, it would not be safe to rely on the examination- in-chief recorded which was not subjected to cross- examination before the remand was made. If that is so, it will appearthat there is no evidence of the plaintiff in respect of allegations in the plaint. This position appears established from the facts on record. When the plaintiff appeared for evidence in rebuttal hecould have been cross-examined on these points. It was submitted that in rebuttal the plaintiff had stated only with regard to the default in payment of rent but the Plaintiff had not chosen to support

his plaint case, before the defendant went to the witness box. There was no question of cross-examining the plaintiff travelling beyond the evidence of the plaintiff given in examination- in--chief and thereby giving an opportunity to make out a case in cross-examination. It, therefore, appears from the pleadings and the evidence that the respondent did not make out any case of the appellant parting with possession by putting up the hoarding. In examination-in-chief also he did not make out such a case and on the contrary his case was that it was that it was the defendent-appellant who had put up the hoarding. The plaintiff did not allege that the defendant-appellant was not carrying on also advertising business. It was submitted on behalf of the appellant that having refused to submit to cross-examination the plaintiff has made the evidence in examination-in-chief non est.

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Hon'ble Supreme Court of India in **CA No.3158 of 2002** titled as ***'P. John Chandy and Company (P) Ltd.*** *Vs.* ***John P. Thomas'***, decided on 29.04.2002 has held that cross-examination constitutes an important part of the statement of a witness and whatever is stated in examination-in-chief stands tested by cross-examination. Relevant part of the judgment is as under: -

"7. xxx xxx xxx xxx xxx xxx xxx

For proper appraisal of evidence, a Court must consider the whole statement. Cross-examination constitutes an important part ofthe statement of a witness and whatever is stated in the examination-in-chief, stands tested by the cross-examination.

xxx xxx xxx xxx xxx xxx xxx xxx xxx"

(15) This makes it clear that cross-examination is held to be mandatory in order to accept the statement of a witness given in examination-in-chief and without the cross-examination, the statement of the witness tendered in examination-in-chief carries no weight and cannot be accepted at all.

(16) In the present case, it is undisputed that the Tribunal in its wisdom had allowed the parties to summon the witnesses to support

their averments by recording their statements that Tribunal arrive at just and proper conclusion in resolving of the disputes between the parties. Admittedly, the Tribunal did not allow the cross-examination of the witnesses after recording their statements in examination-in-chief and the Tribunal decided the *lis* between the parties on the basis of the statements of the witnesses given in examination-in-chief. The said procedure adopted by the Tribunal is not only faulty, but has caused prejudice to the respondent No.3. The statements of the witnesses, which have beenrecorded by the Tribunal on behalf of the petitioner, have adversely commented upon the conduct and attitude of respondent No.3 towards the petitioner. Under these circumstances, relying upon these statements by the Tribunal and that too without allowing respondent No.3 to cross- examine those witnesses, has definitely caused prejudice to respondent No.3. Therefore, the decision which has been arrived at by the Tribunalby following the process, which has caused prejudice to a party to the *lis,* cannot be allowed to operate and the appellate authority has rightly found that the proper procedure has not been followed by the Tribunal while rendering the decision dated 18.09.2019 and the procedure so adopted by the Tribunal was faulty and caused prejudice to respondent No.3, has rightly set aside the same and has remanded the case back to the Tribunalfor a fresh decision by adopting the proper process/procedure. Nothing has been pointed out as to how the order passed by the appellate authority is erroneous or against law so that this Court should interfere with the said order. The law cited hereinbefore clearly support the impugned order, hence, the same needs no interference by this Court.

(17) Keeping in view the facts and circumstances stated above, no interference is called for by this Court in the impugned order passed bythe appellate authority.

(18) Dismissed.

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