

18.03.2026
SL No.6
Court No.12
(gc)

**MAT 2272 of 2025
CAN 1 of 2026
CAN 2 of 2026**

**Smt. Niva Basu
Vs.
Sri Avishek Basu & Ors.**

Mr. Abhijit Majumdar

.....for the Appellant.

Mr. Amales Ray, Sr. Adv.,
Mr. Aman Gupta,
Mr. Ishan Bhattacharya

...for the Respondent No.1.

1. Affidavit of service is taken on record.
2. CAN 1 of 2026 is an application for condonation of delay of 114 days in filing the appeal.
3. The appellant is a widow and a septuagenarian. She has been suffering from serious ailments. Thus, it was not possible for her to approach the Court within the period of limitation. Explanations given in paragraphs 2 to 5 of the application are satisfactory. The delay has been sufficiently explained. We condone the delay and regularize the appeal.
4. Accordingly, CAN 1 of 2026 is allowed and disposed of.
5. CAN 2 of 2026 is an application for stay of the judgment and order dated July 28, 2025 passed by the learned Single Judge in WPA 22622 of 2022. Instead of hearing

the application separately, we propose to hear and dispose of the appeal along with the application.

6. Mr. Majumdar, learned Advocate for the appellant submits that the appellant is the mother of the respondent no.1. The respondent no.1 was the writ petitioner. Aggrieved by the order of the Sub-Divisional Officer, Barasat Sadar, being the Presiding Officer, Tribunal for Maintenance and Welfare of Parents and Senior Citizens the writ petition was filed. The Tribunal passed an order that, the transfer of property in favour of the respondent no.1 to the extent of the share of the mother was void and the family members of the respondent no.1 were directed to vacate the mother's portion to the extent it was occupied by them, within a month.
7. This order was challenged by the son/respondent no.1 on two grounds. Firstly, that the deed of gift was executed by both the parents and the same did not have any condition that the property was being gifted by the parents on the condition that the son would look after the parents till the end of their lives. Secondly, that the Presiding Officer did not consider whether the son had actually failed to maintain the mother or not, by taking evidence.
8. The learned Single Judge set aside the order of the Presiding Officer on the ground that the conditions

precedent to declaring a gift deed void, were not satisfied in the instant case.

9. The specific finding of the learned Single Judge was that, mere mention of the fact that the son was looking after his parents in deed of gift, did not constitute a covenant that the deed of gift was subject to the condition that the maintenance would continue forever.
10. In the decision of **Sudesh Chhikara Vs. Ramti Devi & Anr.** reported at **(2024) 14 SCC 225**, the Hon'ble Apex Court held that, an effective transfer subject to the condition of providing basic amenities and physical needs of the transferor was a *sine qua non* for applicability of sub-section (1) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
11. According to the learned Single Judge, an obligation that the son or the donee would be looking after the parents/donors till the end of their life should have been incorporated in the deed of gift. Such pre-condition was missing.
12. In the instant case, the deed provided that, as the parents were satisfied that the son was looking after them in their old age and also being aware of the fact that the son did not have any alternative accommodation or property, they had decided to gift the

property in favour of the son. In the said deed, no further condition was attached.

13. In **Sudesh Chhikara** (supra), the Hon'ble Apex Court held as follows:-

“12. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance Tribunal under the 2007 Act has invoked the power under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit.

13. Apart from the power to grant maintenance, the Tribunal exercises important jurisdiction under Section 23 of the 2007 Act which reads thus:

“23. Transfer of property to be void in certain circumstances.— (1)
Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic

physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.” (emphasis added)

14. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

(a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

(b) The transferee refuses or fails to provide such amenities and physical needs to the transferor.

If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

15. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

16. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a

reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.”

14. The decision relied upon by the appellant in the matter of ***Urmila Dixit Vs. Sunil Sharan Dixit & Ors.*** reported at **(2025) 2 SCC 787** is not applicable in this case in view of paragraph 3 of the judgment which is quoted below:-

“3. The Appellant herein is the mother of the Respondent (son). The subject property was purchased by her on 23.01.1968. On 07.09.2019, the Appellant executed a Gift Deed in favour of the Respondent wherein it has been stated that the donee (Respondent) maintains the donor and makes provision for everything. This deed came to be registered on 09.09.2019. Allegedly, on the same day, a vachan patra / promissory note is executed by the Respondent wherein it has been stated that he will take care of the Appellant till the end of her life and if he does not do so, the Appellant will be at liberty to take back the Gift Deed. The Respondent, before this Court, has alleged this vachan patra to be fabricated.”

15. In the facts of the above decision, simultaneously with the execution of the deed of gift, the donee had also executed a ‘vachan patra’, undertaking that he would

look after the donor and if he failed to look after the donor, then the donor would be entitled to revoke the deed.

16. The facts are distinguishable. We are conscious of the fact that this is a beneficial legislation and the son's obligation to maintain the mother is irrespective of whether there is any deed of gift or not.

17. Under such circumstances, although we uphold the order of the learned Single Judge upon carefully perusing the reasons afforded, we direct that the mother will be allowed to enter the premises and shall continue to reside in the premises till the end of her life. The son (respondent No. 1) will look after the mother and maintain her with dignity and respect by providing food, clothing, medicines and ensuring her comfort. Further, a pocket money for an amount of Rs.2,000/- shall be paid to the mother every month for her miscellaneous expenses.

18. The police authorities will ensure that the mother is kept in comfort and the order of this Court is complied with. The day the mother wants to return to the premises, she will inform the local police station and the Inspector-in-Charge of the local Police Station will ensure that the mother is put in possession.

19. The order passed by the learned Single Judge is modified accordingly.

20. We are of the view that the conditions for enforcement of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 do not exist in the particular case and the learned Trial Judge rightly held so. The learned Trial Judge did not make any provision for maintenance of the mother which the mother is entitled to under the statute as also under the moral obligation of the son.

21. We also find that the learned Presiding Officer did take into consideration whether either of the two conditions existed for declaring the deed partly void, i.e., to the extent of the share of the mother. The mother's share has not been specifically demarcated in the deed of gift.

22. Accordingly, the appeal and the application are disposed of.

23. There shall be no order as to costs.

24. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)