

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

% *Order delivered on: July 19, 2013*

+ **CM(M) No.711/2013**

MOHD ARIF Petitioner
Through Mr.A.S. Anand, Adv.

versus

PRAMOD TANWAR & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

CM No.10881/2013

Exemption allowed, subject to just exceptions.

The application is disposed of.

CM(M) No.711/2013 & CM No.10880/2013

1. This petition under Article 227 of the Constitution of India is filed for setting aside the order dated 5th July, 2013 passed by the ADJ, Dwarka Courts, New Delhi, who rejected the application filed by the petitioner under Section 151 CPC.

2. The brief facts of the case are that a petition under Section 15 of Delhi Municipal Corporation Act was filed by the respondent No.2 whereby the election of respondent No.1 from Ward No.152 North MCD was challenged on the ground that the respondent No.1 was holding office of profit on the date of election.

3. The respondents No.2 to 9 including the petitioner were defeated in the aforesaid election. The respondent No.2 had contested the election representing BJP and respondent No.3 had contested the election representing Congress and rest of the respondents were from various other parties and included independent candidates. The respondent No.2 had arrayed the other respondents No.1 and 3 to 9, petitioner being respondent No.7 in the said petition as the statute i.e. DMC Act and its rules contained therein, makes all the candidates including petitioner and other respondents as necessary and essential parties.

4. As per the petitioner, after framing of issues on 4th October, 2012, the learned trial court acting in a post-haste manner proceeded to decide the case without conducting proper evidence and declared the election of respondent No.1 as null and void. The said order dated 8th October, 2012 was assailed by the respondent No.1 herein by filing a writ petition, being Writ Petition No.6640/2013, whereby this Court by order dated 4th February, 2013 remanded the election petition back to learned trial court with the direction to decide the case on merit after conducting the evidence.

5. The prayer in the petition is to quash the order dated 5th July, 2013 whereby the application filed by the petitioner (respondent No.7 in the Suit No.376/2012) was dismissed. Similar application for respondent No.6 was also dismissed in the common order.

6. The prayer in the said application was made to allow the petitioner to cross-examine the witnesses of the other respondents as well as petitioner.

7. Learned counsel appearing on behalf of the petitioner has admitted that the matter is now listed for final arguments. He has also not denied the fact that earlier application of respondent No.6 which is verbatim same was

dismissed and at one point of time same counsel was appearing on behalf of both respondents.

8. After small hearing, this Court is agreeable with the view taken in the impugned order that at this belated stage when the evidence is already concluded and the matter is now fixed for final arguments, the petitioner cannot be allowed to cross-examine the witnesses of the other respondents as well as petitioner. Therefore, this Court is not inclined to interfere with the impugned order.

9. The present petition is dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

JULY 19, 2013