

GAHC010158592023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/1984/2023

NIJAM UDDIN CHOUDHURY,
S/O. LT. ISHUB ALI CHOUDHURY, R/O. VILL. PANCHAGRAM, P.O.
PANCHAGRAM, DIST. HAILAKANDI, ASSAM, PIN-788802.

VERSUS

AFTAB UDDIN LASKAR
S/O. LT. MASADDAR ALI LASKAR, VILL. ALGAPUR PT-I, P.O. KALIBARI
BAZAR, DIST. HAILAKANDI, ASSAM-788150.

Advocate for the Petitioner : MR BHARGAV DAS

Advocate for the Respondent :

Linked Case : El.Pet./1/2023

AFTAB UDDIN LASKAR
S/O. LT. MASADDAR ALI LASKAR
VILL. ALGAPUR PT-I
P.O. KALIBARI BAZAR
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NIJAM UDDIN CHOUDHURY

S/O. LT. ISHUB ALI CHOUDHURY
R/O. VILL. PANCHAGRAM
P.O. PANCHAGRAM
DIST. HAILAKANDI
ASSAM
PIN-788802.

Advocate for : MR. N D BHUYAN
Advocate for : MR BHARGAV DAS appearing for NIJAM UDDIN CHOUDHURY

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the applicant	: Mr. K.P. Pathak, Senior Advocate.
	: Mr. A. Baruah, Advocate
For State opposite party	: Mr. N.D. Bhuyan, Advocate.
	: Mr. P.D. Bhuyan, Advocate.
Date of hearing	: 10.10.2023.
Date of judgment	: 16.10.2023.

ORDER
(CAV)

Heard Mr. K.P. Pathak, learned senior counsel, assisted by Mr. A. Baruah, learned counsel for the applicant. Also heard Mr. N.D. Bhuyan, assisted by Mr. P.D. Bhuyan, learned counsel for the opposite party.

Refusal of oral prayer for adjournment made by the learned counsel for the opposite party:

- 2) The applicant is the respondent in the connected election petition and the opposite party is the election petitioner.
- 3) At the outset, it may be stated that this interlocutory application was filed on 21.07.2023 and notice was issued by order dated 22.08.2023. On

19.09.2023, oral prayer for adjournment, made by the learned counsel for the opposite party was accepted and the matter was fixed on 04.10.2023 to enable her to make submissions in the matter. On 04.10.2023, the present set of counsel appeared for the opposite party and the matter was adjourned as their vakalatnama was not on record. The matter was then listed on 09.10.2023, the matter could not be taken up due to paucity of time and was ordered to be listed on 10.10.2023.

4) On 10.10.2023, when the matter was called, the learned counsel for the opposite party has submitted that he was not the filing counsel in respect of the connected election petition and that the opposite party was not aware of the delay in curing the defects. It was submitted that in connection with I.A.(C) 3087/2023, which was filed by the opposite party (i.e. election petitioner) under Order VI, Rule 17 read with section 151 CPC, this Court by order dated 09.10.2023, had allowed the prayer for amendment of the election petition by permitting to bring on record a copy of the order dated 10.01.2022, passed by the Supreme Court of India. Accordingly, it was submitted that in light of amendment allowed, the applicant should be given an opportunity to rebut the statements made in this present interlocutory application for framing and deciding the preliminary issue on whether the election petition filed by the opposite party is barred by limitation.

5) The said oral prayer could not be accepted as no formal application was filed for adjournment of the proceeding, where the Civil Procedure Code is applicable. At no point of time and even on 10.10.2023, the opposite party had not made any application seeking time to file objection. Therefore, as the order dated 10.01.2022 has already been relied by the Stamp

Reporter of the Court in his report, the Court proceeded to hear the matter.

Submissions by the learned senior counsel for the applicant:

6) The applicant is the opposite party in the connected Election Petition No. 1/2023 for challenging the election of the opposite party, who is the returned candidate to the Assam Legislative Assembly from the 8 No. Algapur Legislative Assembly Constituency.

7) The applicant, i.e. the returned candidate has filed this application under the provisions of Section 151 read with Order XIV of the CPC for framing a preliminary issue on the election petition filed by the opposite party is barred by limitation.

8) It was submitted for consideration of the Court that the Stamp Reporter of the Court had observed in its report that there was a delay of 218 days in the presentation of the election petition, but did not have judicial power for recording in his report that as per the order dated 10.02.2022, passed by the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020, there was deemed condonation of delay in presentation of the election petition. It was submitted that order to the said effect could only be passed by the Judge of this Court, assigned/ nominated to try the connected election petition.

9) It was submitted that the order dated 10.01.2022, passed by the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020 could not have been applied in election petition and it was further submitted that if the Supreme Court of India had intended to condone all delay by its order, irrespective of the period of limitation prescribed in a statute, it

could have done so without explaining in which set of statutes it could be condonable and there was no necessity to refer to specific provisions of Arbitration and Conciliation Act, 1996, Commercial Courts Act, 2015 and Negotiable Instruments Act, 1881.

10) It was submitted that the Gauhati High Court Electronic Filing Rules, 2020 had been framed and published vide notification no. 60 dated 27.08.2020 and before that, e-Seva Kendra was made operational by order dated 14.05.2020, which is functioning till date. Therefore, it was submitted that the delay was fatal to the maintainability of the election petition.

11) It was also submitted that usually question of limitation is considered as a mixed question of law and facts. Therefore, the applicant has filed the present application and this point has not been made a ground of attack in any another interlocutory application filed by the applicant for rejection of plaint under Order VII, Rule 11 CPC.

12) In support of his submissions, the learned senior counsel for the applicant has cited the following cases, viz., (1) *Sukhbiri Devi & Ors. v. Union of India*, (2022) SCC OnLine 1322 (paras 16 to 19), (2) *Mongia Realty & Buildwell Pvt. Ltd. V. Manik Sethi*, 2022 SCC OnLine 156 (paras 14-16), (3) *Nusli Neville Wadia v. Ivory Properties*, (2020) 6 SCC 557 (para-51), (4) *Hukumdev Narain Yadav v. Lalit Narayan Mishra*, (1974) 2 SCC 133 (para nos. 19, 20, 23, 24, 25); (5) *Charan Lal Sahu v. Nandkishore Bhatt*, (1973) 2 SCC 530: (1973) 0 Supreme (SC) 228, (6) *Tanajirao Martinrao Kadambande v. M.J. Chinoy*, (1969) 71 BomLR 732 (para-9), (7) *Queen Empress v. Tulja & Ors.*, (1888) ILR 12 Bom 36 (para-7).

13) A copy of the written note of submissions filed by the learned senior counsel for the applicant on 10.10.2023 is retained on record.

Submissions made by the learned counsel for the opposite party:

14) The learned counsel for the opposite party has submitted that the order dated 10.01.2022, passed by the Supreme Court of India, extending the period of limitation between 15.03.2020 till 28.02.2022, cannot be given a restrictive interpretation by this Court. Accordingly, it was submitted that there existed no ground for the applicant to pray for framing a preliminary issue and non-suit the opposite party on the ground of limitation.

Discussion and decision:

15) Considered the submissions and also the materials available on record.

16) The first and foremost question that arises for decision in this interlocutory application is whether the issue that the connected election petition is barred by limitation can be adjudicated as a preliminary issue or whether the issue of limitation is a mixed question of fact and law, and that such an issue should be decided on conclusion of the trial. This question has been answered in the later part of this order in the affirmative, after discussion on the issue as under.

17) In this case, the election result was declared on 02.05.2021. Therefore, as per the provisions of section 81 of the Representation of the People Act, 1951 (hereinafter referred to as "RP Act, 1951"), the election petition was required to be presented within 45 days from the declaration of result of the returned candidate, i.e. within 16.06.2021. It would be relevant to

refer to the provision of sub-section (3) of Section 81 of the RP Act, 1951 is as follows:-

“81. Presentation of petitions.-

Explanation:

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

18) By referring to the filing slip accompanying the election petition, it was pointed out by the learned senior counsel for the applicant that the opposite party had filed the election petition on 25.01.2022, i.e. after 97 days from the declaration of result. However, the filing was not a proper presentation, but the filing was defective. The date-wise sequence in curing defect is as follows:-

- a. The Stamp Reporter had mentioned about two defects his report dated 27.01.2022, viz., (1) annexures to be certified; (2) copy of notice with stamped envelope be filed.
- b. Thereafter, in his report dated 09.02.2022, the Stamp Reporter had again mentioned about two defects, viz., (1) relevant portion of all relevant documents; (2) two nos. of written up notices along with *talabana* (i.e. usual process with process fees and postal stamp) bearing filing number.
- c. As per the report dated 06.04.2023 of the Stamp Reporter, one envelope with postal stamps worth Rs.240/- (Rupees Two hundred forty only) was received and that the election petition was ready for

registration.

- d. The Stamp Reporter, in his report dated 27.04.2023, had mentioned that *"The case was received back from the concerned Section due to defects in the steps taken for service of notice. Accordingly, Id Advocates for the petitioner was informed to remove the defects. Today (27.4.23) the aforesaid defects have been removed."*

19) In his report dated 06.04.2023, the Stamp Reporter has mentioned to the effect that the petition along with spare copy for office use was within 218 days and that as per Gauhati High Court Rules, the limitation period for election petition was 45 days, however, in light of the order dated 10.01.2022, passed by the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020, the said delay of 218 days is deemed to have been condoned.

20) In this regard, the Court is of the considered opinion that the Stamp Reporter can merely give his observations in the report to be placed before the concerned Judge. However, a Stamp Reporter is not vested with judicial power to condone the delay. The Court is inclined to hold that in the proceeding of election petition, the power to condone delay and/or extend the period of limitation, if available, can only be exercised by the assigned Judge by passing a judicial order and not otherwise.

21) The relaxation order dated 10.01.2022, passed by the Supreme Court of India was operative upto 28.02.2022. Therefore, assuming that the said order dated 10.01.2022 of the Supreme Court of India applied to election petition, even then from 01.03.2022, the forty five days time to present election

petition had expired on 15.04.2022. Therefore, as the opposite party had cleared the defects only on 27.04.2023, the election petition is held to be barred by limitation.

22) The alternative submission of the learned senior counsel for the applicant was that the 10.01.2022 of the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020 was not applicable in election petition. In the said context, it was submitted that the Supreme Court of India had given a clear direction that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the periods prescribed in respect of laws which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay). In this regard, it was submitted that while under proviso to section 116(a) of the Representation of the People Act, 1951, the Supreme Court had to power to entertain an appeal after the expiry of the period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period. However, such *pari materia* provision is not provided under section 81 thereof for the High Court to condone the delay. Therefore, it was submitted that there could not have been any extension of the period of limitation to present an election petition. Similarly, it was also submitted that under Rule 13A of Chapter V of the Gauhati High Court Rules, in case of defects in the Memorandum of Appeal the filing advocate gets 7 (seven) days time to cure the defect, but such provision is not available under Chapter VIII-A of the Gauhati High Court for presentation of election petition. Hence, it was submitted by the learned senior counsel for the applicant that the delay in the presentation of the election petition was not condonable.

23) It would be appropriate to quote the relevant operative para-5 of the herein before referred order dated 10.01.2022, passed by the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020, which is extracted below:-

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

24) In light of the observations made by the Supreme Court of India, which has been extracted herein before, the Court finds force in the submissions made by the learned senior counsel for the applicant that act of presentation of an election petition or preparing of a filing report by the Stamp Reporter of this Court is not a judicial proceeding. The words "judicial proceeding" is not used in

the order dated 10.01.2022 passed by the Supreme Court of India. One plausible reason, as urged by the learned senior counsel for the applicant, could be that the Supreme Court of India did not deem it fit to give a blanket extension of time and therefore, under para-5(IV) of its order, it was clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

25) In this regard, it is seen that under the provisions of Section 81 of the RP Act, 1951, the election petition is required to be accompanied by as many copies thereof as there are respondents mentioned in the petition and there is also a requirement that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The learned counsel for the opposite party has not been able to show that under the RP Act, 1951 or under the Gauhati High Court Rules, time is allowed to cure defect, if any, in an election petition. The "date of presentation", irrespective of the "date of filing of an election petition", would only be the date when a election petition is presented in a manner prescribed by section 81 of the RP Act, 1951 and in accordance and/or consonance with Chapter VIII-A of the Gauhati High Court Rules, i.e. after all defects being cured.

26) It would be appropriate now to refer to paragraphs 2 to 6 of the case of *Charan Lal Sahu (supra)*, as extracted from (1973) 0 Supreme(SC) 228,

is quoted below:-

2. *It was contended before us that the petition can only be dismissed after the trial commenced and the trial commences only after notices are issued to the respondents. In support of this proposition, provisions of the repealed Section 85 of the Act are referred to. We are unable to appreciate how the repealed Section 85 of the Act furthers the submission of the petitioner or has any relevance. It is apparent that prior to repeal by Act 47 of 1966, Section 81 provided for the presentation of the election petition by any candidate aggrieved by the result of the election to the Election Commission; Section 83 prescribed what the contents of the petition should be; and Section 85 provided:*

"If the provisions of Section 81, Section 83 or Section 117 are not complied with, the Election Commission shall dismiss the petition:

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure."

Presentation of the petition under the repealed S.81, beyond the period prescribed for its presentation could be condoned by the Election Commission in its discretion under the proviso to the repealed S.85 of the Act, but there is nothing in Section 85 which permits the Election Commission to condone the non-compliance with the provisions of Section 117. Before the amendment of the Act in 1966, once the Election Commission finds the election petition to be in order and does not dismiss it under S. 85 for non-compliance with the requirements of Ss. 81, 83 and 117, it has to appoint an Election Tribunal for the trial of the petition. The trial by the Tribunal therefore is only after compliance with the mandatory provisions prescribed in Sections 81, 83 and 117 so that the trial is unrelated to the non-compliance by the petitioner with the requirements of Section 117. After the amendment, the jurisdiction of both the Election Commission and the Tribunal in respect of election disputes has been abolished and the High Courts of respective States have been vested with the jurisdiction in this regard. But the conferment of jurisdiction to entertain try and determine an election petition has not in any way materially affected the position stated by us, as will be presently indicated.

3. *The right to challenge an election is a right provided by Article 329 (b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute*

had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N. P. Ponnuswami v. Returning Officer, Namakkal Constituency, 1952 SCR 218 it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

4. *On behalf of the appellant the case of K. Kamaraja Nadar v. Kunju Thevar, 1959 SCR 583 has been relied upon in support of the submission that the provisions of Section 117 of the Act are directory and not mandatory in their character. An examination of this decision does not support this contention of the appellant. That was a case under the unamended S. 117 of the Act under which the petitioner was required to enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. The petitioner therein had deposited Rs. 1000/- but had not mentioned the complete head of account in the Government Treasury receipt nor was the deposit made in favour of the Secretary to the Election Commission as laid down in the aforesaid section. The Election Commission discussed this defect and left the question to the Tribunal to decide after hearing the parties whether the defect could be treated as fatal or one that could be cured by fresh deposit or otherwise so as to secure the costs of the candidate if eventually awarded to him. The Tribunal held that there was no defect in the matter of the head of account and was further of opinion that non-mention of the fact that the deposit was made in favour of the Secretary to the Election Commission was immaterial in that it was taken to have been made in favour of the Election Commission at whose disposal the fund was placed, and accordingly there was sufficient compliance with the requirements of S. 117 of the Act. In that case this Court after examining in detail the procedure relating to the filing of the election petition observed at p. 606:*

"It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election

Commission itself would not be sufficient compliance with the provisions of Section 117 and would involve a dismissal of the petition under Section 85 or Section 90 (3). The above illustration is sufficient to demonstrate that the words in favour of the Secretary to the Election Commission" used in Section 117 are directory and not mandatory in their character. What is of the essence of the provision contained in Section 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any one else."

This decision, therefore, cannot come to the rescue of a petitioner who has failed to deposit the security as required under Section 117 of the Act or has paid less than the amount specified therein. The decision in Lalaram v. The SC of India, AIR 1967 SC 847 has no relevance to the matter in issue because as pointed out by the High Court that case relates to security being furnished for filing a review petition under the SC Rules, which, stands on a different footing.

5. *The argument of the appellant's advocate that in view of the marginal note to Section 86 election petition can only be dismissed after the trial has commenced by the issue of a notice to the respondent is equally without substance. Amended S. 86 apart from sub-sec (1) provides for several matters in sub-sections (2) to (7) such as for reference of the election petition or election petitions, where there is more than one in respect of the same election, to a Judge, the ordering of security for costs in case of the application by a candidate who is not already a respondent being made a respondent, the permission to amend or amplify particulars of an corrupt practice alleged in the petition, the continuance of the trial of the election petition from day to day and its expeditious trial to be concluded as far as possible within six months from the presentation of the petition to the High Court. The reference to Trial is in a larger sense and deals with the steps in a trial rather than in a narrower sense of a trial commencing after the notice of the petition is directed to be served on the respondent. The marginal note of Section 36, namely, "Trial of election petitions cannot indicate that under sub-sec. (1) of Section 86 an election petition cannot be dismissed for non-compliance with the provisions set out therein, unless notice is issued to the respondent. Where the language is clear and can admit of no other meaning such as is evident from sub-s. (1) of Section 86, the marginal note cannot be read to control that*

power.

6. *We are clearly of the view that the non-deposit of the security along with the election petition as required under S. 117 of the Act leaves no option to the Court but to reject it. The appeal is accordingly dismissed with costs.*

27) In the case of *Hukumdev Narain Yadav (supra)*, amongst others, it was held that the provision of Section 5 of the Limitation Act, 1963 had no application in an election petition. The relevant paragraph 25 is quoted below:-

“25. For all these reasons we have come to the conclusion that the provisions of Section 5 of Limitation Act do not govern the filing of election petitions or their trial and, in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay.”

28) Although the learned counsel for the opposite party has not raised the plea that the defect of non- furnishing of one copy of election petition when election petition was filed was a curable defect, the Court has examined the said point. In this regard, we may refer to the decision of the Supreme Court of India in the case of *A. Manju v. Prajwal Revanna, (2022) 3 SCC 269*. In the said case, the election petition based on allegations of corrupt practices was not supported by an affidavit in Form 25, as prescribed under Rule 94-A of the 1961 Rules, but it was held by the Supreme Court of India that the non-filing of affidavit or non-filing of proper verification is a technical defect which is curable by allowing candidate to file proper affidavit. Nonetheless, the filing of extra true copies of election petition, being a prescription as per *Explanation (3)* to Section 81 of the RP Act, 1951, the Court is of the considered opinion that the requirement is mandatory and it cannot be said that the requirement was directory. In this regard, as discussed herein before, the provisions of Chapter VIII-A of the Gauhati High Court Rules also do not permit time to cure defects in an election

petition.

29) In the present case in hand, the election result was declared on 02.05.2021 and 45 days time available to file election petition had expired on 16.06.2021. Notwithstanding that the election petition was filed on 25.01.2022, its proper presentation after curing all defects was on 27.04.2023. As per *Explanation (3)* to Section 81 of the RP Act, 1951, for a proper presentation of election petition it is a condition prescribed that every election petition shall be accompanied by as many copies thereof as there are opposite party/parties mentioned in the petition with further requirement that and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Therefore, in light of the said provision of Section 81 of the RP Act, 1951, a defective presentation without complying with the provision of Section 81, *Explanation (3)*, cannot be held to be proper presentation and thus, on 27.04.2022, when the connected election petition was presented, the same was barred by limitation, even upon consideration the additional time allowed by order dated 10.01.2022, passed by the Supreme Court of India in Misc. Application No. 21/2022 in SMWP(C) No. 3/2020.

30) As per the ratio laid down by the Supreme Court of India in the case of *Hukumdev Narain Yadav (supra)*, the Limitation Act, 1963 has no application in an election petition.

31) The dates, relevant in this election petition, have been narrated herein before. Hence, the Court is of the considered opinion that the presentation of Election Petition No. 1/2023 on 27.04.2023, after all defects were cured, was barred by limitation.

32) In the case of *Nusli Wadia (supra)*, the Supreme Court of India had held in para-51 that in a case question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b).

33) Thereafter, in the case of *Mongia Realty (supra)*, the Supreme Court of India had held as follows:-

14. *Order XIV Rule 2 of the CPC stipulates that when issues of both law and facts arise in the same suit, the Court may dispose the suit by trying the issue of law first. For this purpose, the provision specifies two questions of law, which are (i) jurisdiction of the Court; and (ii) a bar to the suit created by any law for the time being in force. The provision is extracted below:*

2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to-

- (a) the jurisdiction of the Court, or*
- (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.*

15. *Before this Court in Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557, the issue was whether the issue of limitation can be determined as a preliminary issue under Order XIV Rule 2. The three-judge bench of this court observed that if the issue of limitation is based on an admitted fact, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b). However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue. This Court observed as follows:*

51. ... As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted

facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2) (b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.

16. *Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC. Hence, we allow the appeal and set aside the judgment of the trial Judge dated 16 August 2018 and of the Single Judge of the High Court dated 4 September 2019. The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. The appeal shall stand allowed in the above terms.*

34) In the case of *Sukhbiri Devi (supra)*, the Supreme Court of India had referred to the decision rendered in the case of *Nusli Neville Wadia (supra)*, and it was again held that it is clear that the issue of limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2(2)(b) CPC in a case where it can be decided on admitted facts.

35) The relevant dates referred above, are available in the record, which is undisputed. Therefore, it is held that the preliminary issue regarding

whether or not the connected Election Petition No. 1/2023 was barred by limitation is an issue which can be framed and taken up under Order XIV, Rule 2(2)(b) CPC. Resultantly, in light of the discussions above, the said preliminary issue is answered in the affirmative and against the opposite party, i.e. the election petitioner by holding that as the election result was declared on 02.05.2021, and notwithstanding the date of filing the election petition, the date of presentation of the connection election petition was on 27.04.2023, after removing the defects. The said facts are available on record and to find out the relevant dates, the Court would not require any evidence, but only a perusal of the record would suffice. Thus, the preliminary issue raised by the applicant is capable of being answered without any evidence.

36) As elaborately discussed above, the connected election petition, i.e. Election Petition No. 1/2023 is held to be barred by limitation and thus, the same is dismissed on being barred by limitation.

37) Consequential order is also being separately passed in Election Petition No. 1/2023.

JUDGE

Comparing Assistant