

Court No. - 6

Case :- WRIT - C No. - 37428 of 2023

Petitioner :- Shabana

Respondent :- State Of U.P. And 13 Others

Counsel for Petitioner :- Siddharth Nandan, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

The petition has been filed by the petitioner challenging the order dated 13.10.2023 passed by Sub Divisional Magistrate, Beesalpur, District-Pilibhit by which hearing on application filed under Order 7 Rule 11 of C.P.C. has been deferred and the court of Sub Divisional Magistrate, Pilibhit has proceeded to adjudicate the matter/election petition on merits.

Learned counsel for the petitioner has challenged the impugned order stating therein that the court concerned cannot proceed with the trial unless and until the application under Order 7 Rule 11 is decided as prior to deciding the case on merits, the matter regarding maintainability of the same has to be decided first. In support of his submission, he has placed reliance upon a judgment of the Apex Court in the case of ***R.K. Roja vs. U.S. Rayudu & Another reported in AIR 2016 SC 3282.***

On the other hand, learned Standing Counsel submits that a direction was issued by Co-ordinate Bench of this Court by order dated 09.02.2022 passed in Writ - C No. - 1498 of 2022 (Laxmi Singh vs. State of U.P. and 11 Others) to conclude the proceedings of the election petition within six months, after which a contempt petition has also been filed, therefore, the court concerned had no option but to pass the aforesaid order to comply with the directions of this Hon'ble Court as passed in the said writ petition as well as the contempt petition, however, he could not dispute the aforesaid fact that the issue as raised in the application filed under Order 7 Rule 11 regarding maintainability of the election petition should be decided first.

In view of the above, the order dated 13.10.2023 is set-aside to the extent it deffers the decision on the application filed under

Order 7 Rule 11 and a direction is issued upon the prescribed authority/SDO, Beesalpur, Pilibhit to decide the said application within a period of 15 days from today, in accordance with law.

With the aforesaid direction, the instant writ petition is **disposed off**.

Order Date :- 4.12.2023

Kalp Nath Singh