

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.12180/2015 IN  
ELECTION PETITION NO.11 OF 2014**

Kishor s/o Dhansingh Patil  
@ Kishor Appa Patil

.. APPLICANT

Versus

Dilip s/o Onkar Wagh  
...

.. RESPONDENTS

Shri V.D.Salunke,Adv. For applicant  
Shri J.R.Shah,Adv. for respondent State.

**CORAM : N.W.SAMBRE,J.  
DATED : 19TH NOVEMBER,2015**

**ORDER :-**

This Court has issued summons on the Election Petition on 20/4/2015 and the present respondent returned candidate appears to have been served on 8/5/2015.

2] Since the respondent returned candidate failed to appear before this Court, an opportunity was granted to him by order dated 3/7/2015 and the matter was posted on 31/7/2015 on which date the returned candidate remained absent. The petitioner then submitted draft issues and thereafter returned candidate filed application for setting aside exparte order passed against him.

3] The respondent also tendered his written statement alongwith said application.

4] According to the learned counsel for the respondent-turned candidate as he was not aware about the court proceedings he was unable to put his appearance in the matter. The said cause is objected by learned counsel for the petitioner on the ground that returned candidate is an elected legislator, cannot pray for excuse. According to him, this is nothing but delaying tactics and the prayer as such is not bonafide.

5] Prima facie, the submissions made by learned counsel for the petitioner objecting the prayer for setting aside exparte order appears to be reasonable in the present set of circumstances. However, having regard to the fact that the election petition is at initial stage, it will be appropriate in my opinion to grant application. The order passed by this Court on 31/7/2015 against returned candidate proceeding exparte against him is hereby set aside subject to payment of costs of Rs.25,000/- to be deposited in this Court within two weeks from today. The written statement of the respondent-turned candidate is taken on record. The petitioner will be at liberty to withdraw the amount of costs deposited before this Court. It is made clear that if the cost is not deposited within time stipulated, the order passed by this Court proceeding exparte against returned candidate shall be restored. The application as such stands allowed in above terms. Post the Petition for settlement of issues on 21/12/2015. Respondent will be at liberty to file draft issues if he so desires.

**(N.W.SAMBRE,J.)**

**umg/**