

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1858 OF 2016

SHRI. MAINUDDIN SHAMSHUDDIN
BAGWAN

...Petitioner

Versus

SHRI. KHUDBUDDIN ABDULKADAR
KAZI AND ORS.

...Respondents

....
Mr. Ashutosh M. Kulkarni, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 12th FEBRUARY, 2016

P.C.

1. Heard Mr. Ashutosh Kulkarni, learned Counsel for the petitioner, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred as 'returned candidate' has challenged the judgment and order dated 4.1.2016 passed by learned Civil Judge, Senior Division, Sangli below Exh.34 in

Election Petition No.3/2013. By that order, learned trial Judge rejected the application made by the returned candidate for setting aside No-WS order dated 22.7.2014 passed below Exh.1- Election Petition no.3/2013.

3. Respondent No.1, hereinafter referred to as 'election petitioner', has instituted the said petition on 17.7.2013 calling in question the election of the returned candidate. Notices were duly served on the respondents in that Petition. On 24.4.2014 the returned candidate appeared through his Advocate and asked for adjournment for filing say to the Petition. From time to time the matter was adjourned for filing say of the returned candidate and ultimately on 22.7.2014, learned trial Judge passed 'No-Say' order. The returned candidate filed application dated 11.8.2015 at Exh.34 for setting aside No-WS order. While rejecting the application, learned trial Judge noted that the evidence of the election petitioner was recorded and he filed evidence close purshis on 6.2.2015. On 13.4.2015 evidence of the respondent was also closed and the petition was fixed for arguments. Arguments of the election petitioner were heard on 7.7.2015 and the matter was kept for judgment. It is at that

stage on 11.8.2015, the returned candidate filed application Exh.34.

4. Mr. Kulkarni submitted that application Exh.34 may be allowed by imposing costs as also subject to condition of disposing of the Petition in a time bound manner. He submitted that even time may be prescribed for filing written statement. He submitted that the returned candidate also could not cross-examine the witnesses examined by the election petitioner and if he is not permitted to file written statement and cross-examine the witnesses examined by the election petitioner as also he is not permitted to lead evidence, it will cause great prejudice. In short, there will not be effective participation of the returned candidate in the election petition. For all these reasons, he submitted that the impugned order may be set aside

5. It is not possible to accept these submissions for the reasons recorded in paragraphs-3 and 4 of the impugned order. In paragraph-3, the learned trial Judge after considering various dates noted that on 7.7.2015 argument of the election petitioner was heard and matter was kept for judgment. In paragraph-4, the learned trial Judge observed that returned candidate is

delaying the hearing of election petition. In view thereof, I do not find that any case is made out. Hence, the Petition fails and the same is dismissed.

6. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Civil Procedure Code.

(R. G. KETKAR, J.)

Deshmane (PS)