

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1911 OF 2014

Amit Bhaskar Satam ... Petitioner
Vs.
Someshankar Dasappa Gaude & Ors. ... Respondents

Mr. B.D. Joshi, Advocate for the petitioner.
Mrs. D. Mondkar-Hule i/b. Mr. S.B. Shetye, Advocate for respondent no. 4.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE: SEPTEMBER 16, 2016

P.C.:

Rule. Respondent nos. 1 to 4 are served, however, none present for respondent nos. 1 and 2.

2. This Writ Petition is filed under Articles 226 and 227 of the Constitution wherein the order dated 30th January, 2014 passed by the learned Judge of the Small Causes Court is challenged. The petitioner is an elected candidate in the Mumbai Municipal Corporation Election which was conducted in February, 2012. The respondent no. 1 has filed the Petition in the Small Causes Court challenging the election of the petitioner. The petitioner has challenged the maintainability of the said petition on the ground of limitation under section 33(1) of Mumbai Municipal Corporation Act, as the petition is filed beyond 10 days from the date of results. The said application was dismissed by the Small Causes

Court by the order dated 30th January, 2014. Hence, this Petition.

3. Section 33(1) of the Mumbai Municipal Corporation Act states that the Petition is to be filed within 10 days from the date of the declaration of the election results. In the present case, the election of the Mumbai Municipal Corporation was held on 16th February, 2012 and results were declared on 17th February, 2012. Thereafter within 10 days, i.e., till 27th February, 2012 the Election Petition was to be filed. However, as per the contention of Mr. Joshi, the learned counsel for the petitioner, the Election Petition was filed on 1st March, 2012. He submitted that the year 2012 was a leap year and, therefore, there was a delay of 3 days, hence the Election petition is time barred. In support of his submissions, he relied on the decision of the Hon'ble Supreme Court in the case of **Smita Subhash Sawant & Ors. vs. Jagdeeshwari Jagdish Amin & Ors.**, reported in **2015 (6) C.R. 21**.

5. Heard. Perused the papers. In the case of **Smita Subhash Sawant** (*supra*), the election of the Mumbai Municipal Corporation which was held in February 2012 was challenged. As the matters are identical, the last date of filing the petition challenging the election was 27th February, 2012. In the said case, the petition was filed on the next date, i.e., 28th February, 2012, which is considered by the Hon'ble Supreme

Court as the date beyond 10 days and hence the Election Petition was dismissed. In the case of **Smita Subhash Sawant** (*supra*), the Hon'ble Supreme Court has held that the period of limitation of 10 days prescribed for filing Election Petition in Section 33(1) of the Mumbai Municipal Corporation Act would begin from the date of declaration of result. The ratio of the said case is entirely applicable to the present set of facts. Hence, there is no point in keeping Election Petition pending. In view of this, Rule is made absolute in terms of prayer clause 25(a) and election petition is dismissed.

(MRS. MRIDULA BHATKAR, J.)