

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4122 of 2016

ORDER:

In this civil revision petition under Article 227 of the Constitution of India by the unsuccessful respondent who is the 1st respondent in the Election O.P., the challenge is to the order dated 9th June 2016 of the learned Junior Civil Judge, Mahaboobnagar at Narayanpet, passed in I.A.No.3 of 2016 in E.O.P.No.1 of 2013 filed by the Election petitioner/1st respondent herein under Order 16 Rules 1(ii) and 6 of the Code of Civil Procedure requesting to summon the petition listed witnesses and direct the 3rd respondent to produce the postal ballot papers polled and invalid postal ballots and other material documents pertaining of Ward No.3 of Grampanchayat, Jajapur, along with the result sheet.

I have heard the submissions of Sri Rajagopallavan Tayi, learned counsel appearing for the revision petitioner/1st respondent in the Election Petition (hereinafter, '1st respondent') and Sri M.Damodar Reddy, learned counsel appearing for the Election Petitioner (hereinafter, 'Election Petitioner').

I have perused the material record.

It is undisputed that the Election Petitioner filed the Election Petition challenging the election of the 1st respondent/returned candidate *inter alia* contending that the postal ballot of Ward No.4 was wrongly counted in Ward No.3. It is also not in dispute that difference between the number of votes polled for the Election Petitioner and the 1st respondent/returned candidate is only one vote. When the trial in the Election Petition is in progress, the Election Petitioner filed the subject petition to summon the aforementioned documents to substantiate her pleaded case.

The 1st respondent filed counter disputing the contention that the postal ballot of Ward No.4 was counted in Ward No.3 and stating that evidence of both parties is already adduced and that the Election Petitioner could not even say, in her evidence, the names of her agents who were present at the time of counting of the votes and that in the facts and circumstances, she cannot seek to summon of the witnesses and the documents. The Court below, having found that there are two independent prayers in the interlocutory application, first observed that the petition itself is not maintainable, but, however, allowed the petition in part insofar as the relief of summoning the documents and permission to summon the 2nd respondent as witness and directed the 3rd respondent to produce the documents.

Aggrieved thereof, the 1st respondent/returned candidate has filed this revision petition.

The learned counsel for the 1st respondent, while reiterating the pleaded case, would submit that the trial Court having first come to the conclusion that the petition itself is not maintainable, ought to have dismissed the petition and that the election petitioner was already examined and that certain points were already elicited in her cross-examination and that she was not in a position to say the names of her agents who were allegedly present at the time of counting of votes and that her earlier application to summon her agents for examination was dismissed and that the order impugned is devoid of reasons and that while stating that the petition is partly allowed, the trial Court granted both the reliefs by according permission to summon one of the witnesses and directing the other witness/3rd respondent to produce the documents.

Learned counsel for the election petitioner, while supporting the orders of the Court below and while reiterating the pleaded contentions, would submit that the main issue is as to whether postal ballot of Ward No.4 was counted in Ward No.3, and hence, if documents are summoned and are placed before the Court by

examining the competent witness, that evidence would be an assured piece of evidence and would be immense helpful to the trial Court in arriving at just decision in the matter and hence, the order does not brooks interference.

I have given earnest consideration to the facts and submissions.

A plain reading of Rule 55 of the Civil Rules of Practice would reflect that separate applications are to be filed in respect of each distinct relief prayed for. However, when several reliefs are combined in one application, the Court may either direct the applicant to confine the application to only one of such reliefs, unless such reliefs are consequential, and may also direct the applicant to file a separate application in respect of each of the other prayers. In that view of the matter, the Court is having discretion to confine the petition to one of the several distinct reliefs prayed for in the petition and grant in its discretion one of the reliefs. Therefore, the first contention that the application ought to have been rejected in entirety is not having acceptable merit. Be that as it may. In the well considered view of this Court, summoning a witness to produce the document and give evidence are not two distinct prayers and the prayers being inter-related, the request to summon a witness to produce the document being the main prayer, the other prayer to permit to examine him to prove the documents summoned, would be consequential.

Dealing with the merits of the matter, in view of the undisputed facts that the election petitioner is contending that the postal ballot of Ward No.4 was counted in Ward No.3 and that the difference of votes between the election petitioner and the 1st respondent/returned candidate is only one, this Court is of the considered view that the summoning of the documents as sought for by the election petitioner is necessary and that the said documents, if summoned and placed on record before the trial Court, would be of assistance to the trial Court in arriving at a just decision in the matter after taking into consideration the said

documents along with the other evidence that may be brought on record. Though the trial Court allowed the petition and permitted to summon the 2nd respondent as a witness and directed issuance of summons to the 3rd respondent to produce the documents, obviously with a view that the documents produced by the 3rd respondent can be marked proved through the 2nd respondent, considering the fact that the Court is always having a discretion to summon any witness or direct any witness present in Court to be examined, this Court is of the considered view that the said order need not be interfered with while exercising the jurisdiction under Article 227 of the Constitution, as this Court finds no jurisdictional error or illegality in the impugned order.

In the result, the revision petition is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

28th October 2016

ajr



M.SEETHARAMA MURTI, J