

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4483 of 2014

ORDER :

This revision under Article 227 of the Constitution of India is filed by the petitioner assailing the orders dated 09.09.2014, of the learned Junior Civil Judge, Mydukur of Kadapa District, passed in I.A.No.51 of 2013 in E.O.P. (SR).No.967 of 2013.

2. I have heard the submissions of the learned counsel for petitioner and the learned counsel for the 1st respondent and perused the material record.

3. The facts, which are necessary for consideration in brief, are as follows :

The petitioner presented an Election Petition on 21.08.2013 before the trial Court. However, at the time of presentation of the Election Petition, the petitioner did not deposit Rs.100/- as required under Rule 5(i) of the A.P.Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995. Subsequently, the petitioner filed the present interlocutory application before the Court below seeking condonation of delay of 135 days in depositing the said fee under the said Rules. On merits, the trial Court had dismissed the said petition. Feeling aggrieved, the present revision petition is filed.

4. The learned counsel for the revision petitioner would submit that when the Election Petition was presented on 21.08.2013, and though the deposit of Rs.100/- as required under the Rules was not made, the trial Court did not raise an objection at the earliest point of time in regard to non-deposit of such amount and that after the period of 30 days, which is prescribed under law for making such deposit had expired, the trial Court had dismissed the Election Petition pointing out that the required fee was not paid and that at the time when the Election Petition was instituted, the Court staff and Bank staff were on strike, and therefore, there was no possibility for the petitioner to pay the said fee and comply with the provision of the Rule and that under the peculiar circumstances in which the petitioner was placed, the trial Court ought to have allowed the petition and condoned the delay and ought to have received the fee as prescribed under the Rules and that if the fee is not received and the application is rejected at the threshold on technical ground, the petitioner's valuable right to institute the Election Petition and have his grievance ventilated, would be defeated and that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, and therefore, the revision petition, which is having merit may be allowed.

5. On the other hand, the learned counsel for the 1st respondent, while supporting the orders of the Court

below, stated that if Rule 5(i) and 5(ii) of the Rules are read together, it would be clear that the Court has no discretion to extend time for payment of Rs.100/- as prescribed under Rule 5(i) and that the failure to comply with the said requirement shall result in rejection of the Election Petition and that the order of the trial Court, which was rendered after following the ratio of the decision in **Anajamma v. S.Pushpamma & another**^[1], is correct and brooks no interference. It is also submitted that even at that time when the Court staff were on strike, the presiding officers were receiving fee or deposits and that the petitioner did not intentionally make the deposit.

6. I have bestowed my attention to the facts and submissions. As could be seen from the record, the Election Petition was filed on 21.08.2013. Admittedly, the required fee of Rs.100/- was not deposited. According to the petitioner, such a deposit was not made due to non-availability of the staff of the Bank and Court, as they were on strike. It is an admitted fact that at the relevant time, the Court staffs were on strike and that they had, however, resumed duties on 18.10.2013. In fact, the trial Court once returned the Election Petition with office objections on 04.11.2013, but at that time, the trial Court did not take the objection in regard to non-compliance of the provision of Rule 5(i) of the Rules. Be that as it may; the Election Petition, after it was re-presented, was again returned on

25.11.2013 for non-compliance of the objections earlier taken and also by taking the objection in regard to non-deposit of Rs.100/- as required under the said Rule. Without complying with the said objections, the petitioner had sought extension of time by one week for compliance of the office objections. Even after the time as sought for was granted and the petition was again returned for compliance of the objections, the petitioner had re-presented the petition without complying with the objections. Therefore, the petition was again returned on 27.12.2013 for compliance of the objections taken by the office of the trial Court. At that time, the present interlocutory application was filed seeking condonation of delay of 135 days in paying/depositing the required fee of Rs.100/- under Rule 5(i) of the Rules. In this back-drop, it is necessary to refer to the facts and the ratio in the cited decision (supra), which was rendered by a Division Bench of this Court. As the facts of the cited case bear close similarity to the facts of the case, which this Court is dealing presently, it is necessary to refer to the facts of the reported case, which are as under : “The 1st respondent therein filed an Election Petition, but, had not deposited the sum of Rs.100/- at the time of presenting the same. The Court returned the application for compliance of some objections. An objection was also taken that the required fee was not paid. After complying with the objections, the Election Petition was re-submitted. The office issued a

lodgment schedule and the required fee was deposited. Thus, the requirement of payment of Rs.100/- as required under Rule 5(i) was not complied with within the prescribed period i.e. before the expiry of 30 days for the presentation of Election Petition and it is only paid after the expiry of said prescribed period. However, the Tribunal, having taken a view that if the deposit is made before the 1st appearance of the respondent it amounts to compliance, entertained the Election Petition.” In this factual back-ground, this Court, having regard to the purport of Rules 5(i) and 5(ii), which mandate that whenever an Election Petition is presented, the petitioner shall deposit a sum of Rs.100/- with it, found that the finding of the Tribunal that if the deposit is made before the 1st appearance of the respondent it amounts to compliance, is erroneous and cannot be sustained; and, accordingly this Court had set aside the order of the trial Court and held that the Election Petition is liable for rejection for non-compliance of the mandatory provision.

7. Having regard to the facts of the instant case and the ratio in the aforementioned decision of this Court, this Court is of the well considered view that the order of the Court below cannot be faulted and that the revision petition is devoid of merit.

8. In the result, the revision petition is dismissed. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

15th February 2016
ajr

[\[1\]](#) 2001 (1) ALT 235 (D.B.)