

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.525 OF 2016

Shri Ashok Bama Bundhe	]
Age 46 years, Occ : Agricultural	]..... Petitioner.
R/o. Kolkhe, Post ONGC, Taluka Panvel	] (Ori. Resp. No.1)
District Raigad	]

versus

Smt. Mamata Shankar Jadhav	]
Age 23 years, Occ. Advocate	]
R/o. 47, Varachi Ali, Kolkhe, Post ONGC	]..... Respondent.
Tal. Panvel, District : Raigad	] (Ori. Petitioner.)

Mr. S V Gavand for the Petitioner.
Smt. Mamta S Jadhav – Respondent in person.
Respondent Nos.2 to 15 deleted.

CORAM : R. M. SAVANT, J.
DATE : 28th February 2017

ORAL JUDGMENT

1 The learned counsel for the Petitioner Shri S V Gavand seeks deletion of the Respondent Nos.2 to 15 as they are formal parties in the context of the challenge raised in the above Petition. The said Respondents are accordingly allowed to be deleted at the risk of the Petitioner. Amendment to be carried out forthwith.

2 Rule, having regard to the nature of the challenge raised in the above Petition, made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 27/11/2015 and the orders both dated 11/12/2015 passed by the learned Civil Judge, Junior Division, Panvel by which orders, the learned Judge rejected the application (Exhibit 58) of the Petitioner for being provided a translated copy of the Election Petition in marathi and the application (Exhibit 67) for being permitted to file the written statement, and the direction issued by the order dated 11/12/2015 passed below Exhibit 1 that the matter would be proceeded with without written statement of the Petitioner herein. The Petitioner herein is the original Respondent in Election Petition No.1 of 2015 filed by the Respondent No.1 herein. The said Election Petition has been filed questioning the election of the Petitioner herein to the Grampanchayat Kolkhe from Ward No.5 of the said Grampanchayat. In so far as the said Election Petition is concerned, it seems that the process fees were paid on 10/10/2015 and that the Petitioner herein was served by affixing the notice. The Petitioner after the said notice was pasted appeared in the Trial Court on 30/10/2015.

4 The Petitioner thereafter filed an application (Exhibit 58) that he be provided a translated copy of the Election Petition in marathi as the Election Petition filed by the Respondent No.1 is in english. The said application came to be rejected by the Trial Court by the order dated 27/11/2015 on the ground that the advocate appearing for the Petitioner was conversant with english and

that if he so desired, he could get the petition translated itself and cannot ask the Election Petitioner to provide the marathi translation.

5 The Petitioner thereafter filed another application (Exhibit 67) on 11/12/2015 for being permitted to file his written statement. The said application came to be rejected by the Trial Court by an order passed on the same day i.e. on 11/12/2015 (wrongly shown as 27/11/2015 at page 33 of the Petition) on the ground that sufficient time was already granted and the reason given by the Petitioner herein who is the Respondent in the Election Petition was not legal and satisfactory.

6 It seems that the Petitioner herein filed another application on the same day i.e. on 11/12/2015 for being permitted to file written statement which application also came to be rejected by an order passed on the same day i.e. on 11/12/2015. The Trial Court directed that the Election Petition would be proceeded with without the Say of the Petitioner herein who is the Respondent in the said Election Petition.

7 As indicated above, the order dated 27/11/2015 and two orders both dated 11/12/2015 rejecting the applications for being provided a translated copy of the Election Petition in marathi and permitted to file written statement and further directing the Election Petition to be proceeded with

without the written statement of the Petitioner are taken exception to by way of the above Petition.

8 The learned counsel for the Petitioner would seek to reiterate the case of the Petitioner as urged in the said applications filed before the Trial Court. It was the submission of the learned counsel for the Petitioner that in the absence of marathi translation being provided to the Petitioner, the Petitioner was not in a position to file his written statement. The learned counsel Shri Gavand seeks to draw this Court's attention to the Circular dated 01/08/2016 which Circular provides that the proceedings can be filed in marathi in the Trial Court.

9 Per contra, the Respondent No.1 who is appearing in person would submit that in spite of opportunity being granted to the Petitioner, the Petitioner has not filed his written statement. The party in person would contend that the learned Advocate who is appearing for the Petitioner in the Trial Court is very well conversant with english and therefore the applications filed by the Petitioner are merely tactics to delay the adjudication of the Election Petition. The party in person therefore would contend that no indulgence could be shown to the Petitioner.

10 Having heard the learned counsel for the Petitioner and the

Respondent No.1 in person, the question that arises for consideration is whether an opportunity to the Petitioner to file his written statement to the Election Petition is required to be given or not. As indicated herein above, the Petitioner has appeared himself in the Election Petition on 30/10/2015. He has filed an application for being provided a translation of the Petition on 27/11/2015. The said application came to be rejected by the Trial Court on 27/11/2015 itself and thereafter orders both dated 11/12/2015 rejecting the applications filed by the Petitioner herein came to be passed by the Trial Court. Hence the impugned orders dated 11/12/2015 have been passed even before the extended period as contemplated in Order VIII Rule 1 of the Code of Civil Procedure for filing the written statement has come to an end. It is required to be borne in mind that the proceedings are in the nature of an Election Petition filed by the Respondent No.1 herein questioning the Petitioner's election as a member of Grampanchayat, Kolkhe. The Petitioner ought to have been given a fair opportunity to prosecute the Election Petition on merits. The delay that is caused in the instant case can be attributed to the fact that the Election Petition has been filed in english and that the Petitioner was requiring marathi translation to be given to him. Hence the said reason can be said to be the plausible reason for the Petitioner in not filing the written statement expeditiously. However, as indicated above, the period of 90 days as posited in Order VIII Rule 1 of the Code of Civil Procedure was not over when the orders both dated 11/12/2015 came to be passed by the Trial Court.

11 In my view, therefore in a matter as serious as an Election Petition a fair opportunity is required to be given to an elected candidate to contest the Election Petition, and to see to it that his election is not disturbed on a technical ground. However, the Petitioner would not be entitled to the translation of the Election Petition. In that view of the matter, the order dated 27/11/2015 passed on Exhibit 58 would stand confirmed, however, the orders dated 11/12/2015 would stand set aside and the following directions are issued :-

- A] The Petitioner to file his written statement on or before 17/03/2017. The Petitioner would not be entitled to any further extension. If the written statement is not filed on or before 17/03/2017, the Petitioner would forfeit the right to file his written statement.

- B] The Petitioner to pay costs of Rs.3000/- to the Respondent No1. herein on the day he files his written statement.

- C] The Trial Court is directed to proceed with the Election Petition expeditiously.

D] The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]