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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1600 OF 2017

Smt. Zumbar Dharma Arade

.. Petitioner

Vs.

Election Returning Officer

.. Respondent

Mr. A. V. Anturkar, Senior Advocate i/by Mr. S. B. Deshmukh for
petitioner.

Mr. S. B. Shetye for respondent.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

FEBRUARY 06, 2017.

P.C.

1. Not on board, mentioned and, therefore, taken on board.
2. The petitioner failed to put thumb impression on her nomination form. The petitioner seeks direction to accept the nomination form by giving an opportunity to the petitioner to correct the mistake in accordance with the provisions of Rule 9 (11) of Election Rules framed under Schedule D (under Section 453) of the Maharashtra Municipal Corporation Act, 1949 (for short “the Act”). The proviso to Rule 9 (11) reads as under :-

“Provided that, where there is any objection to the filing of nomination paper of a candidate by the Returning Officer or some other person, the candidate concerned may be allowed time up to the next following working day, to rebut the same and Returning Officer shall record his decision on such adjourned day.”

3. Learned Senior Counsel appearing for the petitioner submits that by mistake if the petitioner failed to put thumb impression on the nomination paper, she must be given an opportunity to correct the same and put her thumb impression on the day of scrutiny.

4. Learned counsel appearing for the respondent submits that the defect is of substantial nature and it cannot be cured and the aforesaid proviso would not come to the rescue of the petitioner.

5. We have perused the Rules framed in this behalf. It is submitted that the Returning Officer had already taken a decision of rejection of nomination paper. Said decision is not placed before us. Learned counsel for the respondent refers to the provisions of Section 16 of

the Maharashtra Municipal Corporation Act, 1949 and submits that a statutory remedy is provided to the petitioner.

6. In the facts and considering the provisions of the Rules and Section 16 of the Act, no interference is warranted. Petitioner is at liberty to resort to alternate statutory remedy as permissible in law. Petition is dismissed.

(M. S. KARNIK, J.)

(NARESH H. PATIL, J.)