

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3159 OF 2017

The Pune Family Court Lawyers Association
And Ors.

...Petitioners

Versus

Mr. Sudhir Shivaji Kashyap
And Ors.

...Respondents

....

Mr.P.S. Dani, Senior Advocate a/w. S.D. Butala, Rajesh Kathole
and Harshad Bhadbhade, Advocate for the Petitioners.

Mr.A.V. Anturkar, Senior Advocate a/w Ajit Kulkarni i/b. Hitesh
Vyas, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 21st MARCH, 2017

P.C.

1. Heard Mr.P.S. Dani, learned Senior Counsel for the
petitioners and MrA.V. Anturkar, learned Senior Counsel for
respondent No.1, at length.

2. On the oral application made by Mr.Dani, leave to
delete respondents No.2 to 7 is granted as respondent No.1
being original plaintiff is the only contesting respondent.
Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.1 to 5, 7, 8 and 10' (for short, 'these defendants') have challenged the judgment and order dated 10.3.2017 below Exhibit-12 as also the judgment and order dated 10.3.2017 below Exhibit-69 passed by the learned 7th Jt. Civil Judge, Junior Division, Pune in R.C.S. No.448/2017. By order dated 10.3.2017 below Exhibit-12, the learned trial Judge framed preliminary issue regarding jurisdiction of the Court in view of the application at Exhibit-12 filed by the defendants under Order VII Rule 11 of C.P.C. By order dated 10.3.2017 below Exhibit-69, the learned trial Judge directed the defendants to maintain status quo regarding the election process till next date i.e. on 20.3.2017. It is common ground between the parties that the learned trial Judge has, on application dated 20.3.2017 made by the defendants, continued granted status quo till 23.3.2017. It is against these orders, defendants No.1 to 5, 7, 8 and 10 have instituted present Petition.

4. Rule. Mr.Vyas waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also in view of the order dated 16.3.2017 and at

the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

5. The relevant and material facts giving rise to this Petition, briefly stated, are as follows. The parties shall be referred to as per their status in the trial Court.

6. Respondent No.1, hereinafter referred to as the 'plaintiff', has instituted suit *inter alia* praying for declaration that defendants No.2 to 12 have no right, authority or power to convene Annual General Meeting dated 23.2.2017; for declaration that defendants No.2 to 12 have no right, authority or power to declare the election to be held on 15.3.2017; and for injunction restraining defendants No.2 to 14 from holding elections of defendant No.1 Association on 15.3.2017 for the year 2017-18 without following due procedure established by law.

7. The plaintiff *inter alia* contended that defendant No.1 is a society registered under the provisions of the Societies Registration Act, 1860 as also is a Public Trust duly registered under the provisions of Maharashtra Public Trusts Act (for short, 'Act'). Defendants No.2 to 12 claim to be members of the

Managing Committee / Council of defendant No.1 Association. Defendant No.13 is the Chief Election Officer and defendant No.14 is Additional Election Officer. The plaintiff wishes to become member of defendant No.1 Association.

8. The plaintiff further contended that defendants No.2 to 12 were elected in the Annual General Meeting of defendant No.1 for the year 2014-15. Subsequent thereto, no elections of defendant No.1 were declared by defendants No.2 to 12. Defendants No.2 to 12 proceeded to declare that they will continue as members of Managing Committee / Council of defendant No.1 for successive years i.e. 2015-16 and 2016-17. Defendants No.2 to 12 have been unauthorizedly and illegally holding posts in the Managing Committee / Council of defendant No.1 for consecutive years i.e. 2015-16 and 2016-17 without declaring and/or holding elections for any posts, such as, President, Vice-President, Secretary, Treasurer and members of Managing Committee / Council of defendant No.1. From Paragraphs-3 to 12, the plaintiff has referred to various acts and/or omissions on the part of defendants No.2 to 12 in performing their duties cast upon them by the Memorandum of Association [for short, 'MOA'] of defendant No.1 and the Act. In

paragraph-13, the plaintiff contended that in the alleged Annual General Meeting dated 23.2.2017, defendant No.2 has declared that the elections of defendant No.1 Association will be conducted on 15.3.2017. However, none of the provisions contained in the MOA have been followed while conducting the elections. In fact defendants No.2 to 12 have no right, authority or power to declare the elections since it is unconstitutional body of persons.

9. In paragraph-14, the plaintiff contended that one of the Rules of election is that only existing members of Association are entitled to renew their membership. Defendants No.2 to 12 have no right, authority or power to restrict the other Advocates, who are eligible to become members of defendant No.1 Association. This is absolutely undemocratic on the part of defendants No.2 to 12. The plaintiff is eligible to become a member of defendant No.1 Association. As defendants No.2 to 12 have put up a notice on the notice board for the purpose of paying the membership fee, it is necessary that the name of the member should be there in the members' list. Though the plaintiff is eligible to become a member of defendant No.1 as per provisions of MOA, his right to become a member of defendant

No.1 and vote in the ensuing election is denied by defendants No.2 to 12.

10. On 2.3.2017, the plaintiff along with his Advocate approached defendants No.2 to 12 to furnish him certain documents and information. However, the defendants refused to accept any letter of the plaintiff. In paragraph-19, the plaintiff contended that on 6.3.2017 he requested the office bearers of defendant No.1 to allow him to fill the form of Membership and pay Membership fee. That was turned down. The plaintiff accordingly instituted suit on 6.3.2017 claiming reliefs referred earlier.

11. During pendency of the Suit, the plaintiff filed application Exhibit-5 on 6.3.2017 for injunction restraining defendants No.2 to 14 from holding elections of defendant No.1 on 15.3.2017 for the year 2017-18 during pendency of the suit.

12. On behalf of defendants No.1, 2 to 5, 7, 8 and 10, application was filed under Order VII rule 11 of C.P.C. *inter alia* contending that the plaintiff is not a member of defendant No.1 Society. In paragraph-2 the plaintiff contended that he wishes to become a member of defendant No.1. As plaintiff No.1 is not a

member or has not applied for membership of defendant No.1, no right originated in his favour. He cannot claim infringement of civil rights. The suit is also barred in view of Section 80 of the Act. The plaintiff has not obtained permission under Sections 50 and 51 of the Act. Even otherwise, the plaintiff has efficacious remedy under the provisions of the Act. In view of Section 80 of the Act, the suit before the Civil Court is not maintainable and Civil Court's jurisdiction is specifically ousted. Prayer was, therefore, made that in view of the provisions of Order VII Rule 11(d) of C.P.C., the plaint may be rejected with costs.

13. On behalf of the plaintiff, reply was filed on 9.3.2017. In paragraph-7 of the reply, the plaintiff contended that ordinarily an application under Order VII Rule 11(d) of C.P.C. requires parties to lead evidence of their side. On 10.3.2017, the plaintiff filed application under Section 9-A(2) of C.P.C. praying that status quo order may be passed in terms of prayer clause (a) of the application Exhibit-5. Defendants No.1 to 5, 7, 8 and 10 filed reply on 10.3.2017 inter alia contending that defendant No.1 by appointing defendants No.13 and 14 have already commenced the election procedure. Accordingly forms were invited from the interested candidates for the respective posts

and thereafter after following procedure by Election Officer, the Election Officer received candidature forms from respective persons for respective posts. However, as nobody has contested the elections, all the candidates were presumed to have been elected for respective posts and a formal declaration is to be made by defendants No.13 and 14 on 15.3.2017. In such circumstances, as the entire procedure of election is completed in all respects and a formal declaration is to be announced by defendants No.13 and 14, injunction as prayed for cannot be granted.

14. By order dated 10.3.2017 below Exhibit-12, the learned trial Judge framed preliminary issue regarding jurisdiction of the Civil Court below Exhibit-1. In paragraph-6, the learned trial Judge observed that as the defendants raised objection regarding the jurisdiction of the Court, in view of Section 9-A of C.P.C., it is necessary to frame preliminary issue and decide the same expeditiously.

15. By order dated 10.3.2017 below Exhibit-69, the learned trial Judge directed the defendants to maintain status quo regarding election process till next date i.e. 20.3.2017. It is

against these orders dated 10.3.2017 below Exhibits-12 and 69, defendants No.1 to 5, 7, 8 and 10 have instituted present Writ Petition.

16. In support of this Petition, Mr. Dani has taken me through the prayers made in the plaint as also the application made by defendants under Order VII Rule 11 of C.P.C. He submitted that the defendants have made application essentially under Order VII Rule 11(a) and (d) of C.P.C. The learned trial Judge, however, proceeded on the premise that application is under Section 9-A of C.P.C. and accordingly framed the preliminary issue. On the same day, the learned trial Judge passed order below Exhibit-69 directing the defendants to maintain *status quo*. He submitted that a perusal of orders dated 10.3.2017 below Exhibits-12 and 69 leaves no room for doubt that the learned trial Judge proceeded on the premise that the application made by these defendants is under Order VII Rule 11 of C.P.C. Despite that the learned trial Judge framed preliminary issue under Section 9-A and directed the parties to lead evidence. He submitted that the course adopted by the learned trial Judge is wholly impermissible. He submitted that basically there is distinction between application made under

Order VII Rule 11 of C.P.C. and the application under Section 9-A of C.P.C. Whereas in an application under Section 9-A of C.P.C. the parties can lead evidence in an application under Order VII Rule 11 is concerned, it is settled principle of law that the such an application is to be decided only on the basis of the averments made in the plaint and not on the basis of the defence raised by the defendants. He submitted that basically entire approach of the learned trial Judge is vitiated.

17. Mr. Dani further submitted that the learned trial Judge failed to appreciate that as of date the plaintiff is not a member of defendant No.1 society. He, therefore, cannot interfere in the election process of defendant No.1. A perusal of the prayer also does not indicate that the plaintiff has sought any declaration as regards its membership. Unless and until the plaintiff first becomes member of defendant No.1, he is not entitled to challenge the election process of defendant No.1. He, therefore, submitted that the impugned orders are liable to be set aside.

18. On the other hand, Mr. Anturkar supported the impugned orders. He invited my attention to application made

by the defendants under Order VII Rule 11 of C.P.C. He submitted that though this application is styled as one under Order VII Rule 11 of C.P.C., it is essentially under Section 9-A of C.P.C. In particular, he invited my attention to paragraph-12 of application Exhibit-12 wherein defendants submitted that Section 80 of the Act makes it clear that if any issue or question can be decided by any authority or Court as provided under the Act, then such issue cannot be decided by the Civil Court, and the Civil Court's jurisdiction is specifically barred in that case.

19. Mr.Anturkar submitted that Section 9-A of C.P.C. lays-down that notwithstanding anything contained in C.P.C. or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. He submitted that if the provisions of Section 9-A is compared in juxtaposition with

Order VII Rule 11(d), it will be clear that essentially the application Exhibit-12 made by the defendants is under Section 9-A of C.P.C. Order VII Rule 11(d) provides that the plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. As the defendants have contended in paragraph-12 that in view of Section 80 of the Act, Civil Court's jurisdiction is specifically barred, the learned trial Judge was justified in framing preliminary issue under Section 9-A of C.P.C. as also granting interim relief till such time the preliminary issue of jurisdiction is determined.

20. Mr. Anturkar further submitted that basically defendants No.2 to 12 were not justified in announcing the election programme. Their tenure came to an end in the year 2014-15. Thereafter no elections were held. As their tenure came to an end post 2015, they could not have announced the election programme and consequently held elections of defendant No.1. As on the face of it the action of defendants No.2 to 12 is contrary to the provisions of law as also M.O.A., the learned trial Judge was fully justified in directing the defendants to maintain *status quo*. In any case the *status quo* is extended till 23.3.2017. He, therefore, submitted that this Court will not

interfere with the order below Exhibit-69 directing the defendants to maintain status quo.

21. In support of this submission that as the tenure of defendants No.2 to 12 expired in 2014, they could not have announced the election programme of defendant No.1, Mr. Anturkar relied upon the decision of Apex Court in the case of ***Babu Verghese and others v. Bar Council of Kerala and others, (1999) 2 SCC 422*** and in particular paragraph-37 to contend that since the term of defendants No.2 to 12 had expired in 2014, they ceased to be the members of the Managing Committee w.e.f. that year. They, therefore, had ceased to have any jurisdiction and could not declare and hold fresh elections of defendant No.1.

22. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The moot question that requires to be addressed is whether the application Exhibit-12 made by the defendants is under Order VII Rule 11 of C.P.C. or under Section 9-A of C.P.C. A perusal of the opening paragraph of order below Exhibit-12 shows that the learned trial Judge has observed that

defendants No.1, 2 to 5, 7 to 8 and 10 have preferred present application under Order VII Rule 11(d) of C.P.C. for rejection of the plaint in view of Section 80 of the Act and in consonance with Sections 2(10), 41E, 50, 51 and 80 of the Act. Mr. Anturkar submitted that in paragraph-6, the learned trial Judge has referred to the fact that in application Exhibit-12, the defendants have raised objection regarding jurisdiction. In other words, the learned trial Judge held that though the application is styled as one under Order VII Rule 11 of C.P.C., it is essentially under Section 9-A of C.P.C. The learned trial Judge thereafter proceeded to frame preliminary issue under Section 9-A. Paragraph-6 of that order reads thus :

“6] By way of the application at Exh.12 and the aforesaid submissions the Learned Counsel for the defendant at the time of hearing of the application related to the interim relief in the suit, raised the objection regarding the jurisdiction of this court.”

23. It is also material to note that on the same day, the learned trial Judge proceeded to hear application filed by the plaintiff under Section 9-A(2) of C.P.C. for granting *status quo* in terms of prayer clause (a) of application Exhibit-5 till the

determination of preliminary issue as to jurisdiction. In paragraph-4 of the order, the learned trial Judge observed thus:

“4] Undisputedly, the application under Order 7 Rule 11 of the Code of Civil Procedure was moved by the defendant no.1 on 09/03/2017. After hearing both the sides the preliminary issue was framed on 10/03/2017. After passing the order of preliminary issue under section 9-A of The Code of Civil Procedure, the plaintiff preferred the present application under Section 9-A(2) of The Code of Civil Procedure. The defendant filed pursis stating that they don't want to lead oral evidence on preliminary issue. Whereas, the Learned Counsel for the plaintiff submitted that they want to lead the evidence. It means it will take time to take the evidence and decide the said preliminary issue.”

24. Thus, perusal of the opening paragraph of order below Exhibit-12 as also paragraph-4 of the order below Exhibit-69 unmistakably shows that the learned trial Judge did not treat the application Exhibit-12 made by defendants under Section 9-A of C.P.C. A perusal of paragraph-4 also shows that the defendants filed purshis stating that they don't want to lead evidence on preliminary issue.

25. It need not be over emphasized that application under Order VII Rule 11 of C.P.C. has to be decided on the basis of the averments made in the plaint. As against this, if the application

is made under Section 9-A at the time of hearing of application of interim relief, the parties are entitled to lead evidence. The learned trial Judge though observed that the application is under Order VII Rule 11 of C.P.C., however, proceeded to quote Section 9-A in order below Exhibit-12 and thereafter framed preliminary issue. In my opinion, this is a fundamental error committed by the learned trial Judge in framing preliminary issue on the footing that application is under Section 9-A of C.P.C. The learned trial Judge instead of addressing herself as to the locus of the plaintiff as also maintainability of the suit, had directed the parties to lead evidence and also framed preliminary issue under Section 9-A of C.P.C. and directed the defendants to maintain status quo till the preliminary issue is decided.

26. The learned trial Judge ought to have addressed herself as to whether the plaintiff who is not a member of the Association could have claimed any interim relief that too in the matter of elections. It is settled principles of law that normally the Court is reluctant to interfere with the election process. Even this aspect is also not considered by the learned trial Judge. The learned trial Judge also failed to appreciate reply

dated 10.3.2017 filed by the defendants to application filed by the plaintiff under Section 9-A(2) wherein it was set out that entire election process was over and formal declaration is to be announced by defendants No.13 and 14 and in such circumstances interim relief directing the defendants to maintain *status quo* cannot be granted.

27. Mr. Anturkar relied upon the decision of Apex court in ***Babu Verghese*** (supra). In that case on 28.1.1992 the Bar Council of Kerala was constituted under the Advocates Act, 1961. The tenure of the Council was for a period of five years, which expired on 27.1.1997. Before expiry of the term, the State Council approached the Bar Council of India (for short, 'BCI') through its letter dated 31.12.1996 for extension of its term by six months. This was followed by a reminder sent on 13.1.1997. After receipt of the reminder, a resolution was circulated by BCI to all its 18 members on 13.1.1997 proposing to extend the term for a period of six months. On 8.2.1997 BCI confirmed the resolution on which opinion was obtained from the members by circulation. It was during this period of six months that the elections were held and a new State Bar Council for Kerala was

elected.

28. In paragraph-4, Apex Court noted that the Preliminary Electoral Roll was published on 28.12.1996 followed by notice of publication of the final Electoral Roll on 22.1.1997. This was challenged by filing O.P. No. 1987/97 on 31.1.1997. On 6.2.1997, the Petition was dismissed in limine. Writ Appeal No. 307 of 1997 was filed before the Division Bench. In the meantime, the Kerala Bar Council adopted a resolution on 1.2.1997 to conduct the elections. After the extension of term by the Bar Council of India by its resolution dated 8.2.1997, the process of elections was started and the elections were held with counting of votes being completed on 3.4.1997. The results were declared on the same day, but they were published in the Kerala Gazette on 6.5.1997. It was, at this stage, that O.P. No. 8524 of 1997 was filed on 21.5.1997 in the High Court challenging the elections on the grounds, *inter alia*, that the term of the Kerala Bar Council having expired on 27.1.1997, it had ceased to have any jurisdiction to conduct the elections. This Petition as also the Writ Appeal referred to above, were disposed of by a common judgment passed on 11.12.1997 dismissing the Writ Petition as also the Writ Appeal. The High Court held that the term of the

Kerala Bar Council will be treated to have been extended by the Bar Council of India before the expiry of its original term. It is against this judgment that the appeal was preferred before Apex Court.

29. The Apex Court considered the provisions of Sections 8, 8A, 10A, 15 of the Advocates Act, 1961 and the Rules framed thereunder. The controversy centered around construction of Rule 6. The process of extension of the term of Kerala Bar Council was initiated under Rule 6. In paragraph-28 Apex Court observed that said Rule contemplates confirmation of 'action' taken by Bar Council of India. It provides that if urgent action becomes necessary, the Chairman may permit the business to be transacted by circulation of papers to all its members but the action proposed to be taken will not be taken unless agreed to by a majority of the members. The Rule further requires that the action so taken shall be intimated to all the members and the papers shall be placed in the next meeting for confirmation. The Rule, therefore, contemplates "urgent action" being taken on the opinion of the majority of the members. It is this "action" which is confirmed in the next meeting. It is obvious that if no action is taken, the question of confirmation does not arise.

30. In paragraph-29 Apex Court held that the opinion of four members out of eighteen members was wholly irrelevant and insufficient for “action” being taken. On that basis, no action could be granted, nor it was granted.

31. In paragraph-34, Apex Court observed thus:

“34. BCI did not adopt the modes available to it under (a) and (b), but invoked the provisions of Rule 6 and adopted the mode indicated at (c). It circulated the resolution to its members proposing extension in the term of the Kerala Bar Council by six months. Opinion of only four of the members was obtained by 27.1.1997 which is the date on which the term of the Kerala Bar Council expired. Since majority of the members had not expressed their approval by that date in favour of the resolution, no "action" was taken. It was clearly a case of abandonment. The other essential requirements of Rule 6 were, therefore, not complied with. BCI, however, in its regular meeting held on 8.2.1997, passed a resolution extending the term of the Kerala Bar Council by six months under the Proviso to Section 8. Once the move initiated under Rule 6 was abandoned and no "action" was taken as majority opinion had not been obtained by 27.1.1997 nor even thereafter, the BCI or the Kerala Bar Council cannot legally fall back upon Rule 6 to contend that the resolution adopted on 8.2.1997 would relate back to the date on which the resolution under Rule 6 was circulated.”

32. It is in that context, in paragraph-37, Apex Court observed thus :

“37. Learned Counsel for the respondents in their written submissions have referred to Dictionary meaning of the word "confirm" or "confirmation" in support of their argument that it has the effect of validating the earlier act. We appreciate their effort and add to their research the maxim, "Confirmation omnes supplest defectus, licet id quod actum est ab initio non valet". (Confirmation supplies all defects, though that which had been done was not valid at the beginning.) But, as pointed out above, it was not a case of "confirmation" as no "action" under Rule 6 was taken. Since the term of the Kerala Bar Council had expired on 27th January, 1997 and they had ceased to be members with effect from that date, their term could not be legally revived with retrospective effect by BCI on 8th February, 1997 when it adopted the resolution for extension of the term by six months. The Kerala Bar Council had ceased to have any jurisdiction and could not hold fresh elections which could be held only by the Special Committee appointed by the BCI.”

33. In the present case, as of today the plaintiff is not member of defendant No.1 Association. That apart, a perusal of the plaint shows that the plaintiff has challenged the authority of defendants No.2 to 12 to declare the elections in the meeting dated 23.2.1997. The plaintiff has approached defendants No.2 to 12 on 2.3.2017 soliciting certain documents. On 6.3.2017 he approached the officer bearers of defendant No.1 for allowing him to fill-up form of membership and pay for membership fees.

In such state of affairs, the plaintiff could not have sought any interim relief and the Court also should not have granted any interim relief.

34. Apart from challenging the order dated 10.3.2017 below Exhibit-12, the defendants have also challenged the order dated 10.3.2017 below Exhibit-69 directing the defendants to maintain *sutatus quo* regarding election process till next date i.e. 20.3.2017, which is extended till 23.3.2017. Though in all fairness, Mr. Anturkar did not raise any objection about maintainability of this Writ Petition challenging this order on the ground that the defendants have equally efficacious alternate statutory remedy under Order XLIII Rule 1(r) of C.P.C., I have examined the merits of the case in order to find out whether this is a fit case to exercise suo motu powers under Article 227 of the Constitution of India.

35. In the case of **Surya Dev Rai v. Ram Chander Rai and others**, AIR 2003 SC 3044 in paragraph-22, Apex Court has observed thus :

“22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the

territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227 with which we are not concerned hereat. **It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.**

(emphasis supplied)”

36. In paragraph-38, Apex Court sum-up the conclusions in a nutshell. Conclusions-4, 5, 6 and 7 read thus :

“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory

jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or

where such refusal itself would result in prolonging of the lis.”

37. Applying the principles laid down by Apex Court in **Suryadev Rai** (*supra*), I am satisfied that this is a fit case for exercising supervisory jurisdiction under Article 227 of the Constitution of India lest a gross failure of justice or grave injustice would occasion. I feel inclined to intervene as the error is such, as, if not corrected at that very moment, will become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis. Though normally this Court would have relegated the defendants to file appeal under Order XLIII of C.P.C. to challenge the impugned order directing the defendants to maintain status quo, having regard to the fact that the plaintiff is not a member of defendant No.1 as also the learned trial Judge has interfered with the election process, this is an imminent case to exercise suo motu powers for setting aside the orders directing the defendants to maintain status quo in an election matter. Hence, the following order :

- i] Impugned order dated 10.3.2017 below Exhibit-12 is set

aside with direction to the learned trial Judge to proceed to decide the application Exhibit-12 as one under Order VII Rule 11 of C.P.C. It is not necessary to frame the preliminary issue under Section 9-A of C.P.C. as also it is not necessary for the parties to lead evidence.

- ii] The order dated 10.3.2017 below Exhibit-69 directing the defendants to maintain status quo which is further extended till 23.3.2017 is also set aside and application Exhibit-69 is dismissed.
- iii] Rule is made absolute in aforesaid terms with no order as to costs.

38. At this juncture, Mr.Anturkar orally applies for continuation of the status quo order for a period of one week from today. Mr. Dani opposes this prayer. Having regard to the fact that basically the learned trial Judge was not justified in directing the defendants to maintain status quo, in my opinion no case is made out for continuing status quo order. Hence, oral application is rejected. Order accordingly.

(R. G. KETKAR, J.)