

Mr. Anand H. Singh for Petitioner.
Mr. J. A. Madane, AGP for Respondent No.1-State.
Mr. Makarand P. Panchakshari for Respondent No.2.

P.C. :

Heard Mr. Anand, learned Counsel for petitioner, Mr. Madane, learned AGP for respondent No.1-State and Mr. Panchakshari, learned Counsel for respondent No.2 at length. Rule. Learned Counsel for respondents No.1 and 2 waive service. As respondent No.2 is the only contesting respondent, notice on respondents No.3 and 4 is dispensed with. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 01.12.2016 below exhibit-42 as also order dated 01.12.2016 below exhibit-43 passed by the learned 13th Joint Civil Judge, Senior Division, Thane in Election Petition No.57 of 2012. By order dated 01.12.2016 below exhibit-42, the learned trial Judge rejected the application made by the petitioner herein for condoning the delay in filing the written statement and for taking the written statement on record. By order dated 01.12.2016 below exhibit-43, the learned trial Judge disposed of the

application filed by the petitioner for setting aside No W.S. order dated 24.11.2015 and for taking written statement on record as also for setting aside no-cross order dated 30.12.2015. The learned trial Judge permitted the petitioner herein to cross-examine P.W.1 only on law points.

3. In support of this Petition, Mr. Anand strenuously contended that the learned trial Judge should have allowed the applications exhibit-42 and 43 thereby setting aside No W.S. order dated 24.11.2015. The learned trial Judge should have taken written statement of petitioner on record. He submitted that by not taking written statement on record, petitioner will not be in a position to effectively defend the Election Petition. Petitioner will not be in a position to lead evidence in support of his case. Petitioner should be given opportunity to effectively contest the Election Petition. He has taken me through the applications exhibits 42 and 43 to contend that applicant has given justifiable reasons for setting aside No W.S. order by condoning the delay and for taking written statement on record. He submitted that in any case, petitioner should not suffer because of negligence of the Advocate. He further submitted that the learned trial Judge was not justified in permitting the petitioner to cross-examine P.W.1 only on law points. In fact, cross-examination on law points is not necessary. He, therefore, submitted that applications exhibits-42 and 43 deserve to be allowed.

4. On the other hand, Mr. Panchakshari supported the impugned orders. He has taken me through the applications exhibits-42 and 43 and submitted that no cause much less any sufficient cause is made out by the petitioner for condoning the delay as also for setting aside No W.S. order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that petitioner and respondents No.2, 3 and 4 contested the elections of Ward No.32-A of Mira Bhayander Municipal Corporation. Petitioner was declared as an elected candidate. Aggrieved by that result, respondent No.2 filed Election Petition under Section 16 of the Maharashtra Municipal Corporations Act in 2012. It is evident from record that petitioner was served with the Election Petition on 21.08.2014. No W.S. order was passed on 24.11.2015 and no cross order was passed on 30.12.2015 against the petitioner. Petitioner filed applications exhibits-42 and 43 on 30.07.2016 for setting aside No W.S. order and taking his written statement on record as also for setting aside no cross order. Perusal of the application for setting aside No W.S. order shows that petitioner herein gave following reasons:

a. He had instructed his brother Sajid Qureshi to take legal advice. Petitioner was informed by his brother that he would appoint local advocate from Bandra and would take legal advice. He would do all the needful and follow the procedure for defending the petition. It was thereafter decided to entrust matter to Advocate from Thane. Accordingly petition was handed over to Advocate Kadam at Thane. Petitioner was under bonafide belief that his Advocate was attending the proceedings on his behalf before the Court.

b. Advocate Kadam did not inform petitioner about the legal requirement of filing written statement. In April 2016, petitioner was informed that written statement is required to be filed before the Court. Petitioner relied upon his Advocate that he will do the needful as required by Law. His Advocate, however, did not file the written statement. Petitioner has no intention of delaying the proceedings. Petitioner should not suffer because of negligence on the part of his Advocate.

6. Perusal of the applications made by the petitioner shows that no reason is given much less any sufficient cause is made out for condoning the delay in filing the application for setting aside No W.S. order. Application, to say the least, is bereft of any particulars. During the course of hearing of this Petition, Mr. Anand submitted that petitioner did not argue two more points, namely, because of death of his mother, he could not file written statement and he was arrested for the offence punishable under Section 306 Indian Penal Code, 1860. He was ordered to be arrested and thereafter surrendered on 05.07.2015 in Thane Police Station and he was released on 13.08.2015. He submitted that these two grounds constitute sufficient cause for setting aside No W.S. order.

7. I do not find any merit in these submissions. Perusal of the application exhibit-43 itself shows that petitioner's mother died on 21.03.2015. No W.S. order was passed on 24.11.2015. Surely, this cannot be the ground for filing application as late as on 30.07.2016. Equally, petitioner was released on 13.08.2015 and No W.S. order was passed against him on 24.11.2015 and the application is made on 30.07.2016. This also cannot constitute sufficient cause for setting aside No W.S. order. Mr. Anand submitted that in fact written statement of petitioner is ready and he is ready and willing to file the written statement on or before 21.01.2017. As basically petitioner has not made out any cause as also having due regard to the fact that it is an Election Petition instituted in the year 2012, I do not find that any case is made out for setting aside No W.S. order thereby permitting the petitioner to file written statement.

8. As far as the order permitting petitioner to cross-examine P.W.1 only on law points is concerned, Mr. Panchakshari was not in a position

to support the said order. Even otherwise, I find merit in the submission of Mr. Anand that the learned trial Judge was not justified in permitting the petitioner to cross-examine P.W.1 only on law points. In fact, it is also not necessary to cross-examine P.W.1 on law points as it is a matter of arguments. Hence, the order permitting petitioner to cross-examine P.W.-1 only on law points deserves to be set aside. Hence, the following order:

a. The order dated 01.12.2016 below exhibit-43 permitting petitioner to cross-examine P.W.1 only on law points is set aside. Petitioner is permitted to cross-examine P.W.1;

b. The order below exhibit-42 rejecting the application for condoning the delay in filing the written statement and for taking the written statement on record is upheld;

c. Rule is partly made absolute in the aforesaid terms with no order as to costs.

9. Mr. Panchakshari submitted that the learned trial Judge may be directed to dispose of the Election Petition in a time bound manner. Liberty is reserved to the respondent No.2 to file application before the trial Court to dispose of the Election Petition in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order thereon.

10. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab