

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5723 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 07.11.2016 passed by the learned Senior Civil Judge, Vikarabad, Ranga Reddy District, in I.A.No.454 of 2016 in Election O.P.No.18 of 2014. The said O.P. was filed by respondent 1 herein against the petitioner seeking a declaration that he was disqualified to hold the post of Councilor in Ward No.23 of Tandur Municipality, Ranga Reddy District, as he had more than three children in the context of the notified date 30.05.1995. While so, the petitioner herein filed I.A.No.454 of 2016 in the O.P. asserting that the Court below had no jurisdiction to adjudicate upon the disqualification alleged against him under Section 13B of the Andhra Pradesh Municipalities Act, 1965, as the said provision vested such jurisdiction only in the District Judge. He therefore sought transfer of the Election O.P. to the appropriate Court, viz., the District Judge, Ranga Reddy District. By the order under revision, the Court below held that there were no merits in the petition and dismissed it. Aggrieved thereby, the petitioner is before this Court.

Heard Sri P.S.Rajasekhar, learned counsel for the petitioner, and Sri Pale Nageswar Rao, learned counsel for respondent 1.

Though arguments were advanced by both the learned counsel on the merits of the matter, it is fairly conceded by Sri P.S.Rajasekhar, learned counsel, that the interlocutory application filed by his client under Section 151 CPC seeking transfer of the Election O.P. to the District Judge, Ranga Reddy District, was not maintainable in law. Learned counsel would however point out that

the Court below rendered various findings on the merits of the matter which would preclude his client from taking appropriate measures by filing a proper application at this stage.

Perusal of the order under revision manifests that this is correct as the Court below recorded several observations on the merits of the issue raised by the petitioner. Having opined that the petitioner ought to have filed the petition under the specific provision provided for that purpose and not by invoking the inherent jurisdiction provision, the Court below ought not to have gone into the merits of the matter and should have dismissed the application on that short ground at the threshold. Needless to state, the issue raised as to lack of jurisdiction goes to the very root of the matter and would have to be adjudicated as a preliminary issue on a properly instituted application filed in accordance with law.

In that view of the matter, the Civil Revision Petition is dismissed as there was no error on the part of the Court below in dismissing the I.A. filed by the petitioner under Section 151 CPC. However, the petitioner is given liberty to file an appropriate application in accordance with law raising the issue of jurisdiction and in such an event, the Court below shall independently adjudicate the preliminary issue of jurisdiction on its own merits and in accordance with law at the outset, uninfluenced by any of the observations made on merits in the order under revision,. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

27th JANUARY, 2017
PGS