

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1120 of 2017 (O&M)

Date of Order:11th August, 2017

Suman Devi

..Petitioner

Versus

Manisha Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Divanshu Jain, Advocate,
for the petitioner.

Mr. Vikas Lochab, Advocate,
for respondent no.1.

Mr. Kapil Bansal, Advocate,
for respondent no.7.

ANIL KSHETARPAL, J.

Petitioner is in revision petition under Article 227 of the Constitution of India, challenging order dated 18.01.2017 (Annexure P-13), passed by the learned District Judge, Narnaul.

Election for members of District Council, Mahendergarh was held on 28.01.2016. Petitioner-herein was elected, whereas respondent herein i.e. Manisha Devi was declared defeated.

Manisha Devi filed a petition, under Section 176 of the Haryana Panchayati Raj Act, 1994, seeking cancellation of election of Ward No.18, District Council, Mahendergarh and sought re-election.

Under the Haryana Panchayati Raj Act, 1994, election petition is filed under Section 176 of the Act, which is

extracted as under:-

“176. Determination of validity of election enquiry by judge and procedure(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election , present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

2(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

*(ii) any nomination has been improperly rejected;
or*

(iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election

agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.]

(b) If, in any case to which 2[clause (a) or clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of

road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

The election petition was filed on 10.02.2016 i.e. within the period of limitation, which is 30 days from the date of declaration of result. Petitioner herein raised an objection that the petition has not been presented personally and, therefore, it is liable to be dismissed. Manisha Devi filed an application for permission to withdraw the petition, with liberty to file fresh one. The learned Civil Judge (Jr. Division), Narnaul, before whom the election petition was pending, passed order dated 01.03.2016, which is extracted as under:-

“An application for the withdrawn of the suit filed by the plaintiff citing the rationale that the same is afflicted with the legal fissure for not have been personally presented by the plaintiff before the Ld. Court. Keeping in view the aforesaid facts into consideration as well as the legal dictum mandating an election petition to be filed by the plaintiff in person before the Court, the present application is hereby allowed by the furnishing the liberty to the plaintiff to withdraw the present suit to file the fresh one before the Ld. Civil Judge (Sr. Division).”

After removing the defect, Manisha Devi, filed a fresh petition on 02.03.2016, i.e. very next day from the date i.e. 01.03.2016, she was granted permission to file fresh one.

Petitioner herein filed an application under Order 7 Rule 11

CPC, requesting the Court that the aforesaid petition is barred by time and hence it should be dismissed.

Learned trial Court after hearing arguments, allowed the application under Order 7 Rule 11 CPC, and dismissed the election petition.

The reasons given by learned trial court are as under:-

10. No doubt, the previous election petition was filed within 30 days but was not filed in person and present election petition has been filed in person but has not been filed within 30 days. Though, the previous election petition was allowed to be withdrawn with liberty to file fresh one but while allowing the withdrawal, the learned court did not condone the delay and as such, it cannot be said that the opportunity to file the election petition even after expiry of 30 days time fixed under the Haryana Panchayati Raj Act, was given. Since the present petition has not been filed within 30 days of the declaration of result, it is liable to be rejected on this ground alone. Reliance in this regard can be placed upon Parkashi Vs. Bholi Devi 93-94 and Raj Kumar Vs. Lukhtyar Singh and others PLR Volume CLXIII-(2011-13), pahe 44. Resultantly, the present application under Order 7 Rule 11 is allowed and present petition is rejected for non-fulfillment of mandatory condition. File be consigned to the record room after due compliance.”

Appeal filed by Manisha Devi-respondent herein has been accepted. The election petition has been restored to its original number.

First appellate court has held that the period spent while prosecuting the first election petition is liable to be excluded by giving benefit of provisions of Section 14 of the Limitation Act, to Manisha Devi, respondent herein.

Suman Devi-petitioner herein challenged the aforesaid order passed by the learned District Judge.

Counsel for the petitioner has submitted that Section 14 of the Limitation Act, 1963 would not apply in election petition particularly when the election petition was filed in the competent court of jurisdiction and the first petition was liable to be dismissed on the ground that it was not presented in person. Therefore, petitioner cannot be granted benefit of Section 14 of The Limitation Act, 1963. He has further submitted that originally when the second petition was presented in Court, no application under Section 14 of the Limitation Act was filed along with the plaint. Manisha Devi had filed the application under Section 14 of The Limitation Act, 1963 subsequently. Therefore, the learned District Judge was wrong in granting benefit of Section 14 of The Limitation Act, 1963.

I have heard counsel for the parties at length and with their able assistance, gone through the paper book.

It would also be appropriate to extract Section 14 of the Limitation Act, which reads as under:-

14 Exclusion of time of proceeding bona fide in court without jurisdiction. —(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against

the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall

be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

From the reading of Section 14 of the Limitation Act, it is clear that the benefit of Section 14 of the Limitation Act is not restricted to the period for prosecuting with due diligence another civil proceeding, which does not have jurisdiction but had also extents to other cause of a like nature. Sub-section 3 of Section 14 of the Limitation Act deals with a situation where first suit is withdrawn with a permission granted by the Court to file a fresh suit.

The submission of the counsel for the petitioner is that the benefit of Section 14 of the Limitation Act can only be given in a situation where the first civil proceeding was before a Court which did not had jurisdiction, is not correct. Section 14 not only provides for civil proceedings filed before the court which does not have jurisdiction but also provide for “other cause of a like nature”. The word “other cause of a like nature” cannot be given restricted meaning. In a given case, where the previous suit was filed, before a competent Court but there was some defect, the Court can certainly allow the suit to be withdrawn with permission to file a fresh one. In such a situation, the benefit of Section 14 of the Limitation Act can be extended.

Learned counsel for the petitioner has further submitted that when the second petition was filed, no application under Section 14 of the Limitation Act was filed.

I have considered the arguments made by the counsel for the

petitioner.

The application under Section 14 of the Limitation Act was filed subsequently when petitioner herein raised an objections. Section 14 of the Limitation Act does not provide for filing of a separate application. In any case, now application under Section 14 of the Limitation Act has already been filed, therefore, the irregularity, if any, stand cured.

For the reasons recorded above, the order passed by the learned District Judge, Narnaul, is upheld. Revision petition is dismissed.

11th August, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No