

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.2686 of 2017
Date of Decision:05.12.2017**

Anita

...Petitioner

Versus

Manju and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Mohammad Arshad, Advocate for the petitioner.
Mr.Arun Yadav, Advocate for respondent No.1.
Mr.Sharad Kumar Yadav, DAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Petitioner is in the revision petition against the order dated 3.2.2017, dismissing the election petition filed by the petitioner on the ground that it is mandatory for the petitioner to present the petition in person.

Petitioner had filed a petition under Section 176 of the Haryana Panchayati Raj Act, 1994, challenging the election of respondent No.1. Election petition was presented through the counsel. On the application of respondent No.1, election petition was rejected on the ground that it was mandatory for the petitioner to present the Election petition in person.

Hon'ble the Supreme Court in its recent judgment in **Raj Kumar Vs. Mukhtyar Singh and others, 2017(1) RCR (Civil) 392** has held that such provision is not mandatory and it is only procedural and hence curable. The relevant conclusion drawn by the Hon'ble Supreme Court in para 9 of its judgment is extracted as under:-

“We find substance in the submissions made by the learned counsel for the appellant. The provision contained in Section 176 of the Haryana Act, 1994 is not followed by a consequential section entailing dismissal of the Election Petition, if it is not presented by the Election Petitioner in

person. On the other hand, in both Section 81 of the Representation of People Act and Section 80 of the Punjab Act, non presentation of the Election Petition by the Election Petitioner by himself/herself would entail dismissal. Clearly, therefore, the Haryana Legislature had intended to make the provision in Section 1756 procedural. Thereby making the defect in non-presentation of the Election Petition by the Election Petitioner in person curable. A discretion has been vested in the Court to permit the Election Petitioner to cure the defect by appearing before the Court on a later date, if so directed by the Court.”

In view of aforesaid interpretation, the impugned order passed by the learned Additional Civil Judge (Sr.Division), Rewari is not sustainable. The petition was only suffering from curable defect and the court ought to have given opportunity to the petitioner to come and make a statement enabling the petitioner to cure the defect in filing of the petition. However, the learned trial court chose to reject the petition.

In view of the above, the revision petition is allowed. The impugned order dated 3.2.2017 is set aside. Petitioner is granted one more opportunity to appear in person and cure the defect in filing the petition. Parties through their counsel are directed to appear before the court on 19.12.2017 at 10.00 AM.

05.12.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No