

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

**Civil Revision No. 2970 of 2017 (O&M)
Decided on: 11.09.2017**

Suman Parkash

.....Appellant

versus

Bal Mukand & Ors.

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Rao Ajender Singh, Advocate
for respondent No.1.

Mr. Subhash Chander, DAG, Haryana.

Rajbir Sehrawat, J.(Oral)

Challenge in this revision petition is to the order dated 20.03.2017, whereby the application under Order 7 Rule 11 CPC has been allowed by the Civil Court and the election petition filed by the present petitioner; challenging the election of the returned candidate has been rejected.

The facts are not under dispute in the present petition. Learned Civil Court accepted the application filed by the respondents only on the ground that in judgment of this Court rendered in *Fazruddin Vs. Abdul Gafoor & Ors. 201292) PLJ 70, (P&H)* it has been held that if the election petition; challenging an election under Haryana Panchayati Raj Act is not

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presented by the petitioner in person then the same is liable to be rejected.

Now, learned counsel for the petitioner has relied upon a judgement of Hon'ble Apex Court rendered in Civil Appeal No.17041 of 2011 titled as ***Raj Kumar Vs. Mukhtyar Singh and Others*** to contend that the Hon'ble Supreme Court has clarified the position on this point and it has categorically held that there is no requirement of the petitioner to be personally present at the time of filing of the election petition under Haryana Panchayati Raj Act.

This Court finds the submission of the learned counsel for the petitioner to be worth acceptance. Hon'ble Supreme Court has categorically held in this judgment that there is no such provision in Haryana Panchayati Raj Act which mandates a consequential dismissal of the election petition, in case the same is not presented by the petitioner in person. Even the learned counsel for respondent No.1 could not dispute the law laid down by the Hon'ble Supreme Court. Hence the impugned order is set aside.

However, learned counsel for respondent No.1 submits that in the above judgment of the Supreme Court four years had already lapsed when the matter went before the Hon'ble Supreme court. Therefore, the case was not remanded to the Civil Court. It is his submission that in the present case also more than three and a half years have been lapsed, therefore, this case need not be remanded to the Civil Court for any adjudication and that he be permitted to continue in the elected post. However, this Court does not find this prayer of the learned counsel for respondent No.1 worth acceptance.

Firstly, it has been pointed out by the learned counsel for the petitioner that election has taken place only in January 2016, therefore, it is

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only about one year and eight months, which have passed so far and not 3 ½ years as claimed by respondent No.1.

Secondly the Court cannot pass any order which permits the party at fault in the election process to continue in elected office by taking advantage of the time consumed by the process of the Court. The challenging party has full right to get its petition adjudicated as per the law.

Hence the impugned order is set aside and the petition is ordered to be decided as per the law.

Since the matter relates to the elected office, therefore, it would not be in the interest of justice to let the matter linger on for such a period where the proceedings itself are rendered infructuous. Therefore, the trial Court is directed to complete the process of adjudication of the election petition within a period of six months, by providing two effective opportunities to each of the party, to lead their respective evidence.

The revision petition is allowed in the above terms.

11th September, 2017
Manju

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No