

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5146 of 2016
Date of Decision: 31.7.2017

Arjina

---Petitioner

versus

Smt. Mustina and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pankaj Jain, Advocate
for the petitioner

Mr. Amit Jain, Advocate,
for respondent No. 1

Rekha Mittal, J.

The present petition directs challenge against order dated 4.7.2016 passed by the Civil Judge (Senior Division), Ferozepur Jhirkha whereby application under Order 7 rule 11 of the Code of Civil Procedure (in short "CPC") for rejection of the election petition filed by the petitioner was dismissed.

The trial court by relying upon judgment of this Court **Raj Kumar vs. Mukhtyar Singh (P&H) 2011(3) PLR 44** has held, quoted thus:-

"In the present case it is only the court to which the petition was assigned which would actually question the petitioner regarding the maintainability of the petition. The Court of learned Additional Civil Judge (Senior Division) has only assigned the petition to the other court and it would never

question the petitioner as to why the petitioner has been filed by him or her.

9. Accordingly, in view of these facts this Court is of the finding that there is no illegality in the presence of the petitioner not being shown (sic) at the time of assigned (sic) by the learned Additional Civil Judge (Senior Division) because the presence of the petitioner has been duly shown before the court has been duly assigned.”

Counsel for respondent No. 1 has submitted that the judgment of this court in **Raj Kumar's case (supra)** was challenged before Hon'ble the Supreme Court of India in petition for Special Leave to Appeal (Civil) No. 17041 of 2011 wherein Leave to Appeal was allowed and the appeal was decided on 22.4.2014 and the Apex Court has held, quoted thus:-

“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 Legislature had intended to make the provision in Section 176 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.”

Counsel for the petitioner has submitted that though he possibly cannot dispute what has been held by the Apex Court but reading of Section 176 of the Haryana Panchyati Raj Act, 1994 would make it evident that it does not envisage any such discretion with the Court to cure the defect by appearing before the court on a later date.

I have heard counsel for the parties, perused the paper book particularly the order impugned, unreported judgment of Hon'ble the Supreme Court **Raj Kumar's case (supra)** decided on 22.4.2014.

In view of enunciation laid down by Hon'ble the Supreme Court of India, there is no escape except to affirm the order passed by the court below. The petition is, accordingly, dismissed.

(Rekha Mittal)
Judge

31.7.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No