

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5702 of 2018(O&M)
Date of Decision: 05.10.2018

Ranbir Singh Rathi

.....Petitioner

Versus

Zile Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. O.P. Sharma, Advocate
for the petitioner.

Mr. G.P. Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of orders dated 26.07.2018 and 07.08.2018 passed by Civil Judge (Senior Division), Gurugram.

[2]. At the time of issuance of notice of motion on 30.08.2018, following order was passed by this Court:-

“Learned counsel for the petitioner contends that while remanding the case in appeal against the order dated 18.01.2018, the Lower Appellate Court kept the issue of maintainability open vide order dated 14.05.2018 and the same was to be decided by the competent Court after entrustment of the election petition to it i.e. Civil Judge (Senior Division), Gurugram. While passing the impugned order, the

remand order has been misread to mean that issue of maintainability has been decided by the Additional District Judge, Gurugram, whereas it was not the correct position.

Notice of 02.11.2018.

In the meanwhile, Election Tribunal is directed to adjourn the proceedings beyond the date fixed by this Court.”

[3]. Perusal of the record would show that vide order dated 18.01.2018, the application filed by the petitioner for dismissal of the election petition was allowed and the petition was dismissed being not maintainable. An appeal was preferred by the respondent before the Additional District Judge, Gurugram against the order dated 18.01.2018 passed by Civil Judge (Junior Division), Gurugram.

[4]. Vide judgment dated 14.05.2018, the case was remanded to the trial Court with a direction to send it to the appropriate Court having jurisdiction to decide the case as per law in view of notification No.18/802013-3CI dated 05.07.2013 of Government of Haryana. Both the parties were directed to appear before the said Court on 28.05.2018.

[5]. Thereafter, Civil Judge (Senior Division), Gurugram passed the order dated 26.07.2018 on the application for preserving and sealing the EVMs and re-counting of votes. Petitioner pressed the application for dismissal of the election

petition before decision of other applications. The issue of maintainability was the consideration before the trial Court. On the basis of order dated 14.05.2018, it was observed that the issue of maintainability has been settled by the Court of Additional District Judge, Gurugram and the case was adjourned for filing the written statement and arguments on the application for sealing the EVMs and re-counting of votes.

[6]. Petitioner filed an application for recalling of order dated 26.07.2018, but the same was dismissed as not maintainable vide order dated 07.08.2018.

[7]. Perusal of the record would show that the Lower Appellate Court at the time of remanding the case kept the issue of maintainability open vide order dated 14.05.2018 and the same was to be decided by the competent Court after entrustment of the election petition. It appears from the impugned order that the remand order was misread to that extent.

[8]. Having heard learned counsel for the parties, I am of the view that issue of maintainability was kept open by the Lower Appellate Court at the time of passing of order dated 14.05.2018 and the said issue is required to be adjudicated upon by the competent Court in accordance with law.

[9]. For the reasons recorded hereinabove, this revision

petition is allowed. Impugned orders dated 26.07.2018 and 07.08.2018 passed by Civil Judge (Senior Division), Gurugram are hereby set aside. Issue of sealing the EVMs and re-counting of votes would be tested by the competent Court in accordance with law.

October 05, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No