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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO 48 Of 2019

Sonyabapu S/o Govind Shinde

Age-55 years, Occ. Agril.

R/o Naur, Tq. Shrirampur,

Dist. Ahmednagar

= APPLICANT

(Ori. Resp. No. 3)

VERSUS

1. The District Collector,
Ahmednagar

2. The Tahsildar
(Election Officer), Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar

3. Pratap S/o Govind Desai,
Age-69 years, Occ. Agril.,
R/o Naur, Tq. Shrirampur,
Dist. Ahmednagar

= RESPONDENTS

(Resp. No 1 & 2 are
ori. Resp. , Resp.
No.3 ori. petitioner)

Mr.Rahul R.Karpe,Advocate for Applicant;
Mr.K.S.Patil,AGP for Respondent Nos.1 & 2;
Mr.N.B.Jadhav, Adv. For Respondent No.3.

CORAM : P.R.BORA, J.

DATE : 19th March, 2019

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith.

2. Order passed by Civil Judge, Senior

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Division, Shrirampur on 29th January, 2019 below Exhibit-1 in Misc. Civil Application No.8/2018, is challenged in the present petition.

3. Respondent No.3 had preferred an election petition under Section 15 of the Maharashtra Village Panchayats Act, 1959 (herein after referred to as the Act of 1959), challenging election of the present petitioner held on 28th May, 2018, whereby he was elected as Sarpanch of village Naur, Tq. Shrirampur. Since the said election petition was not preferred within limitation prescribed of fifteen days under section 15 itself, Respondent No.3 had also filed an application seeking condonation of delay caused in filing the election petition.

4. It was the contention of respondent No.3 in the said application that previously he had filed writ petition No.4920/2018, challenging the order passed by the Returning Officer whereby the Returning Officer has turned down the objection raised by him to the nomination of the petitioner. It was further contended that while disposing of the said writ petition on 20th August, 2018, the High Court has granted liberty to respondent No.3

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to resort to the remedy as permissible in law and has further observed that the time spent by him in the High court from 16th May, 2018 till passing of the order by the High Court, shall be considered as good ground for condonation of delay, if any.

5. Perusal of the impugned order reveals that the observations made by this court as aforesaid weighed in the mind of the trial court and presuming that when the High Court has already granted liberty to the petitioner by recording specific dates, now it may not be permissible for him to take any contrary view and hence the learned Judge seems to have allowed the said application and condoned the delay occasioned in filing the election petition by Respondent No.3.

6. Shri Karpe, learned counsel appearing for the petitioner, taking me through the relevant provisions of the Act and more particularly Section 15 thereof, submitted that there is no provision in the Act whereby delay caused in filing the election petition can be condoned by the court dealing with such petitions. The learned counsel submitted that the learned trial court failed in appreciating the import of the order passed by this Court on 20th

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August, 2018 in writ petition No.4920/2018 has also not understood the import of the ratio laid down in the judgment of the Hon'ble Apex court in the case of Shaikh Saidulu @ Saida Vs. Chukka Yesu Ratnam and Ors. Decided on 23.1.2002, which has resulted in mis-carriage of justice.

7. The learned counsel further submitted that if the order passed by this court in Writ Petition No. 4920/2018 is read in proper spirit and perspective, the said order in no way can be interpreted to mean that even if there is no such provision of condoning the delay, the same shall stand condoned because of the said order. The learned counsel submitted that the words 'if permissible in law' used in the said order are very significant.

8. The learned counsel, relying upon the judgment of this court in the case of Umesh Tukaram Kamble and Ors. Vs. Shamrao Sakharam Patil and Ors. - 2008 All B.C.R. 639, submitted that the issue, as about the limitation for filing Election Petition under Section 15 of the Act of 1959, has been considered by this Court in the aforesaid judgment by referring to the earlier judgments on

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the issue delivered by the Hon'ble Apex Court and the High Court. The learned counsel, in the circumstances, prayed for setting aside the impugned order.

9. Learned counsel appearing for Respondent No.3 supported the impugned order. The learned counsel submitted that Respondent No.3 was bonafide agitating before the High Court and the moment it was realized that the remedy will be of filing an election petition, he withdrew the writ petition with liberty and thereafter without loss of time, has preferred the election petition. The learned counsel submitted that while permitting the petitioner to withdraw the writ petition, the court has granted liberty to avail appropriate remedy and has further observed that the period spent in agitating before the said Court, shall be taken into account by the concerned court while condoning the delay.

10. Learned AGP submitted for passing appropriate orders in the matters.

11. I have carefully considered the submissions advanced by the learned counsel appearing for the parties. In view of the specific

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provision under Section 15 of the Act, there shall not be any doubt that the election petition, in any case, has to be filed within the period stipulated in the said Act on or before 15th day of declaring the results of the election of the concerned candidate. In the case of Umesh Tukaram Kamble and Ors. Vs. Shamrao Sakharam Patil and Ors. (cited supra), this court has elaborately discussed whether the provisions of the Limitation Act and more particularly Section 5 thereof can be applied to the election petition filed under the said Act and has recorded a clear finding that the said provision cannot be made applicable.

12. It appears, as was submitted by the learned counsel for the petitioner, that the order passed by this court in Writ Petition No.4920/2018 has much weighed in the mind of the learned trial court and that seems to be the only reason that the impugned order has been passed. However, it has to be stated that this court while passing the said order has taken all care to observe '**if permissible in law**'. The words so used carry significance but are misconstrued by the learned trial court. This Court has not given any liberty which is not

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available in law. Had it been the fact that there is some provision in the Act, as is available in the case of Shaikh Saidulu @ Saida Vs. Chukka Yesu Ratnam and Ors., (cited supra) then there may be some meaning in the argument advanced by the learned counsel for respondent and had there been such provision in the Maharashtra Village Panchayats Act, the order passed by the trial court could have been fully justified. However, in view of the fact that the Act does not contain any such provision, the order passed by this court could not have been interpreted to mean that the court has mandated to condone the delay.

13. The impugned order being without jurisdiction and without any provision of law, has to be held non-est and deserves to be set aside and is accordingly set aside. Resultantly the election petition filed by Respondent No.3 has also to be dismissed and is accordingly dismissed.

14. Rule is made absolute in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/