

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 99 OF 2018

Narayan S. Pawar .. Applicant  
vs.  
Sanjay P. Sonar and ors. .. Respondents

Mr. S.M. Oka a/w. Mr. S.A. Joshi for the Applicant.  
Mr. S.S. Kulkarni for Respondent No.1

**CORAM : M. S. SONAK, J.**  
**DATE : 9 APRIL 2019.**

**P.C. :-**

1] Heard Mr. Oka for the applicant and Mr. S.S.Kulkarni for respondent No.1.

2] The challenge in this Civil Revision Application is to the order dated 5<sup>th</sup> December 2017, by which, learned Trial Judge has rejected the applicant's application at Exhibit 42 seeking for rejection of the election petition by resort to the provisions of Order 7 Rule 11 of the CPC.

3] At the very outset, Mr. Oka, learned counsel for the applicant, urged and thereafter reiterated that the election petition has no cause of action to institute the election petition and therefore, the election petition should be rejected by resort to the provisions of Order 7 Rule 11 of CPC. He

thereafter submitted that the main basis for filing the election petition is alleged incorrect particulars in the affidavit filed by the election petitioner along with his nomination papers. He submits that under section 16 of the Maharashtra Municipal Corporation Act, 1888 (MMC Act), there is no ground for setting aside election of a Councilor on the ground that incorrect particulars were stated in the affidavit accompanying nomination papers. He submits that since this is the main ground in the election petition and since based upon such ground no disqualification can be ordered, it will be futile to permit the election petition to go to trial. He submits that learned Trial Judge, in these circumstances, was required to reject the election petition by resort to the provisions of Order 7 Rule 11 of CPC. He submits that the election petition has to proceed strictly in accordance with the provisions of law which provides the remedy of filing election petition.

4] Mr. Oka relies on ***Charan Lal Sahu vs. Giani Zail Singh and anr. - (1984) 1 SCC 390*** to submit that the rights arising out of elections, including the right to contest

or challenge an election are, not common law rights, but they are creatures of the statute which create, confer or limit those rights. Therefore, for deciding the question as to whether an election can be set aside on any alleged ground, the Courts have to consult the provisions of law governing the particular election. For all these reasons, Mr.Oka submits that the impugned order is liable to be set aside.

5] Mr. Kulkarni, learned counsel for the respondent No.1- election petitioner, defends the impugned order on the basis of the reasoning reflected therein.

6] At the outset, it is necessary to note that since the application was pressed on the ground that the election petitioner has no cause of action to institute an election petition. Such a ground cannot be invoked for seeking rejection of election petition by resort to Order 7 Rule 11 of CPC. Order 7 Rule 11 of CPC can apply to a situation where the plaint/election petition does not disclose a cause of action. This is a different and distinct from there being no cause of action to a election petitioner or to a plaintiff to

institute a election petition or a plaint. Accordingly, the application made by the applicant herein was required to be rejected on this principal ground itself.

7] That apart, from perusal of the election petition, it is clear that cause of action has been disclosed. The issue as to whether on the basis of such a cause of action, the election can be set aside or not is a matter which will have to be decided after trial. In any case, this is a matter which goes to the issue of dismissal of the election petition, but not a matter which concerns rejection of election petition at the very threshold. In any case, reference is necessary to the provisos of section 16 of the MMC Act, referred to by the applicant herein.

8] Section 16(1) of the MMC *inter alia*, provides that if the qualification of any person declared to be elected a Councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Election Commissioner of a nomination, or of the improper reception or refusal of a vote, or by reason of a material

irregularity in the election proceedings, corrupt practice, *or any other thing materially affecting the result of the election*, any person enrolled in the municipal election roll may, at any time within ten days after the result of the election has been declared, submit an application to the Judge for the determination of the dispute or question.

9] According to me, the italicized phrase “*or any other thing materially affecting the result of the election*” is wide enough to include the allegations made in the election petition. Besides, in this case, Mr.Kulkarni has pointed out that there are allegations of corrupt practice, undue influence and material irregularity affecting results of the election. No doubt, election petitions have to be decided within four corners of the Statue which provide for such remedies. In the present case, it cannot be said that the election petition, as filed, discloses no cause of action or that it is barred on the basis of any statement in the election petition so as to invoke the provisions of Order 7 Rule 11 of CPC.

10] Accordingly, there is no jurisdictional error in the view taken by the learned Trial Judge so as to warrant interference in the exercise of revisional jurisdiction under section 115 of the CPC. This Civil Revision Application is therefore, dismissed. There shall be no order as to costs.

11] However, it is made clear that the observations in the impugned order or for that matter the present order are only in the context of deciding whether the applicant had made out any case for grant of relief under Order 7 Rule 11 of CPC. Therefore, the observations in the impugned order or for that matter in the present order need not influence the learned Trial Judge whilst disposing of the election petition on its own merits and in accordance with law.

12] With clarification as aforesaid, this Civil Revision Application is dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**