

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.195 OF 2019

Ajit Govindrao Darekar ...Applicant
vs.
Yogesh Shrikant Mokate and Ors. ...Respondents

None for the Applicant.
Mr. Harshad Sathe, for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : APRIL 11, 2019

P.C.:

- . None for the Applicant.
2. The challenge in this Revision Application is to the order dated 15th October, 2018 by which the learned trial Judge has rejected the Applicant's application under Order VII Rule 11 of Code of Civil Procedure for rejection of the Election Petition. The main ground urged by the Applicant was that the Applicant was a nominated councilor and therefore the Election Petition was not maintainable to question the nomination.
3. In the Revision Application, it appears that there are two further grounds. One is ground is of limitation. This has been addressed in the impugned order in paragraph 12 and it cannot be said that there is any jurisdictional error in the decision which is

arrived at. So also the ground of *Res Judicata* has been considered and rejected in paragraph 11 of the impugned order. According to me, the issue of *Res Judicata* can be kept open since such an issue will have to be decided along with other issues after the evidence in the matter. Accordingly, it is directed that this issue be kept open. However, on the basis of plea of *Res Judicata*, the Election Petition could not be rejected at threshold.

4. Mr. Sathe, the learned counsel for the Respondent points out that the learned trial Judge has relied upon the ruling of the full Bench Judgment **Anil (Vidyarthi) Chanderlal Ailani vs. State of Maharashtra and Ors.** in which the view taken that the remedy of election dispute under section 16 of the MMC Act or section 21 of the Municipal Councils Act is available to a voter entitled to vote in the election to dispute or question the nomination of nominated Councillor.

5. Accordingly, following the decision of the full Bench in the case of **Anil Ailani** (supra) it can not be said that there is any error in the view taken by the learned trial Judge.

6. Accordingly, this Revision Application is dismissed.

7. There shall be no order as to costs.

(M. S. SONAK, J.)