IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(E.P.) No. 13 of 2019
Ref:- Election Petition No. 3 of 2017

Thokchom Lokeshwar Singh, aged about 52 years, S/o (Late) Thokchom Navakumar Singh of Sagolmang Mamang Leikai, P.O. Pangei, P.S. Sagolmang, Imphal East District, Manipur-795114.

..... Applicant.

-Versus-

Thangjam Mohendro Singh, aged about 61 years, S/o (Late) Thangjam Maipak Singh of Haraorou Village, P.O. Pangei Yangdong, P.S. Sagolmang, Imphal East District, Manipur-795114.

.....Respondent

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicant	::	Mr. N. Ibotombi, Sr. Advocate Mr. A. Rommel, Advocate, Mr. H. Prabir Kumar, Advocate.
For the Respondent	::	Mr. N. Mahendra, Advocate.
Date Hearing	::	23.01.2020
Date of Judgment & Order	::	**20.08.2020**

JUDGMENT AND ORDER
(CAV)

This petition has been filed by the petitioner under Order XV, Rules 1 and 3 CPC praying to dismiss Election Petition

No.3 of 2017, as there is no triable cause of action against the petitioner.

2. The petitioner herein is the respondent in Elec. P.No.3 of 2017. The reliefs sought for in Elec. P.No.3 of 2017 reads thus:

(i) To declare that the election of the returned candidate, namely, Thokchom Lokeshwar Singh to fill the seat in Manipur Legislative Assembly from 1-Khundrakpam Assembly Constituency in the Eleventh Manipur State Legislative Assembly Election, 2017 is void.

(ii) To disbar/debar the respondent from contesting a future election for a period of six years.

(iii) To punish the respondent under Section 125A of the Representation of the People Act, 1951.

(iv) To award the cost of litigation.

(v) And pass such other or further order or orders as the Court deems fit necessary.

3. The petitioner has filed M.C. (EP) No.13 of 2019 mainly on the ground that the petitioner has falsely deposed at Para 10 of the Affidavit dated 13.02.2017 filed before the Returning Officer that his educational qualification is Master of Arts

in History, Manipur University, 2003 though there is no such person by name “Thokchom Lokeswar Singh” who obtained degree of Master of Arts in History, Manipur University, 2003. According to the respondent/election petitioner, the petitioner has concealed his real identity by furnishing false information as to his surname and as such the nomination of the petitioner has been improperly accepted by the Returning Officer.

4. It is the say of the respondent/election petitioner that the petitioner by concealing his true identity and by assuming the false name of Thokchom Lokeswar Singh had given statements time and again in the affidavits of nominations as INC candidate in the 9th, 10th and 11th elections to Manipur State Legislative Assembly in the year 2007, 2012 and 2017 from 1-Khundrakpam Assembly Constituency, Manipur with an intent to be elected in the elections. In all the affidavits filed by the petitioner, he had furnished false information intentionally in order to wrongly harness the political legacy of late Thokchom Navakumar Singh, Ex. MLA of 1-Khundrakpam by duping the electors; Therefore, such an act of furnishing false statements/false affidavits amount to violation of the provisions of Section 33 of the Representation of People Act, 1951 and as such, the nomination papers filed for and on behalf of the petitioner stand invalid and void. Further, by

allowing and accepting the defective nomination paper of the petitioner, the Returning Officer of 1-Khundrakpam Assembly Constituency has failed to perform his official duty judiciously and in accordance with law. Thus, the respondent/election petitioner has Filed Elec. P.No.3 of 2017 by mentioning the cause of action dated 13.02.2017 when the nomination of the petitioner was improperly accepted and on 11.03.2017 when the result of the election was declared by the Returning Officer.

5. The petitioner has filed objection to the election petition contending that he was born to O.Khoidumba Singh and O.Ibemchoubi Devi. During the life time of the petitioner's natural parents, he was given in adoption to the adoptive parents viz., Thokchom Navakumar Singh and R.K.Lakhisana Devi after complying with all requisite customary ceremony prevalent in the State of Manipur at the relevant time. It is stated that the petitioner was brought up on the family of adoptive parents after severing all ties with his natural parents. Prior to his adoption, the petitioner was studying in school with the name Oinam Lokeswar Singh and his adoptive parents continued to use the aforesaid name i.e., Oinam Lokeshwar Singh only in the academic records of the petitioner and he used this name only in his academic records till

completion of his education in 2003 i.e., M.A. History from Manipur University.

6. It is stated that the petitioner started using the name Thokchom Lokeswar Singh instead of Oinam Lokeshwar Singh and he discontinued using the name Oinam Lokeshwar Singh except in his academic records and the petitioner also recorded his name as Thokchom Lokeshwar Singh in the electoral roll of Khundrakpam Assembly Constituency and he was familiar with and known in the locality of Khundrakpam Assembly Constituency by his name Thokchom Lokeshwar Singh. The say of the petitioner is that in fact and in truth, Thokchom Lokeshwaar Singh and Oinam Lokeshwar Singh is one and the same person.

7. It is further stated that pending Elec. P.No.3 of 2017, the petitioner herein has filed M.C. (EP) No.28 of 2017 under Order VII, Rule 11 CPC read with Section 86 and Section 100(1)(d)(i) of the Representation of People Act, 1951 to dismiss the election petition on the ground that there is no triable issue left and the issues raised by the election petitioner has already been decided by the Election Commission of India as well as by the Criminal Court including this Court on an earlier occasion. By an order dated 19.6.2018, the said petition was dismissed by this Court, however, liberty was granted to the petitioner to move this

Court at the appropriate stage to pursue his claim for dismissal/closure of the election petition in accordance with law. Now the petitioner has come with the present petition seeking to dismiss the election petition on the ground that there is no triable cause of action against the petitioner.

8. It is to be noted that on 22.8.2019, this Court framed the following issues in the main election petition:

(i) *Whether Oinam Lokeshwar Singh and Thokchom Lokeshwar Singh is one and the same person or not and whether the respondent passed Master of Arts in History from the Manipur University in the year 2003 or not have already been tried and decided by the Competent Authority/Courts i.e., Election Commission of India vide letter dated 20.02.2015. Judgment and order dated 20.8.2015 passed by the Ld. Sessions Judge, Imphal East, Manipur in Cril. Revision Case No.4 of 2015 and order dated 27.4.2016 passed by the Hon'ble High Court of Manipur in Cril. Petition No.6 of 2016 in favour of the Respondent or not?*

(ii) *Whether, the respondent field an affidavit dated 13.02.2017 (Form 26) having substantial defects in as much as the respondent either falsely deposed at para no.10 of the said affidavit dated 13. 02.2017 that his highest educational qualification is 'Master of Arts in History, Manipur University, 2003' since there is no such a person by the name Thokchom Lokeshwar Singh' who obtained the degree of 'Master of Arts in History, Manipur University, 2003' or has concealed the real identity of the respondent by furnishing false information as to his surname of being 'Thokchom' and parentage of being the 'Son of Late Thokchom Navakumar Singh' or not?*

(iii) *Whether, by allowing and accepting the defective nomination paper of the respondent, the RC. of the 1-Khundrakpam A/C has failed to perform his official duty judiciously and in accordance with the provisions of the RP Act, 1951 or not?*

(iv) *Whether, the respondent gave false information which he knows or has reason to believe to be*

false or conceals information in his nomination paper delivered under sub-section 1 of section 33 and/or in his said affidavit with intent to be elected in the said election or not?

(v) *Whether, nomination paper of the respondent was improperly accepted by the Returning Officer,1-Khundrakpam Assembly Constituency in violation of Section 36 of the RP Act, 1951, thus, materially affecting the result of the election in which the candidate, namely, Thokchom Lokeshwar Singh (the respondent), was declared to be the returned candidate to fill the seat in the Manipur Legislative Assembly from 1-Khundrakpam Assembly Constituency in the Eleventh Manipur State Legislative Assembly Election, 2017, thus attracting the provisions as provided U/s 100(1)(d)(i) of Part.,VI Chapter III and 5 125A of the Representation of the People Act, 1951 or not?*

(vi) *Whether, the petitioner has cause of action to file the present petition or not?*

(vii) *Whether, the petitioner is entitled to the relief(s) claimed for or not?*

9. On 27.9.2019, the election petitioner filed his affidavit in chief and on the same date, the petitioner has filed the instant petition M.C (EP) No.13 of 2019 seeking to dismiss the election petition as there is no triable cause of action against the petitioner.

10. The learned counsel for the petitioner submitted that the issue raised by the respondent/election petitioner in the election petition was a subject matter in the earlier election held in the year 2012, where one N.Shinghajit Singh has filed complaint before the Election Commission of India alleging that the petitioner has Filed false Form No.26 in respect of his educational qualification by stating that he had passed M.A. History. He would submit that the allegation against the petitioner was no person by name Thokchom Lokeshwar Singh passed M.A. History from Manipur University in 2003 and it was therefore, alleged in the complaint that Thokchom Lokeshwar was guilty of offence under Section 177 of IPC and Section 125-A of the Representation of People Act, 1951 for submitting wrong information to the authority concerned.

11. The learned counsel further submitted that pursuant to the direction of the Election Commission of India, the Sub Divisional Officer, Sawombung held an enquiry and submitted a report to the effect that Thokchom Lokeshwar Singh and O.

Lokeshwar Singh was one and the same person and no wrong information was furnished by him.

12. The learned counsel would further submit that having not satisfied with the report of the Sub Divisional Officer, N.Shinghajit Singh filed a Criminal Complaint Case No.34 of 2015 before the Learned Chief Judicial Magistrate, Imphal East alleging that the petitioner has filed false affidavit in respect of his passing M.A. History. The Learned Chief Judicial Magistrate, vide order dated 30.3.2015, took cognizance against the petitioner and issued notice. He would submit that challenging the order of the Learned Chief Judicial Magistrate, the petitioner has preferred Criminal Revision Case No.4 of 2015 before the Sessions Judge, Imphal East and by an order dated 20.8.2015, the said revision was allowed thereby setting aside the order of the Learned Chief Judicial Magistrate. Aggrieved by the order of the Learned Sessions Judge, the respondent/election petitioner has Filed Criminal Petition No.6 of 2016 before this Court and by an order dated 27.4.2016, the said petition was dismissed.

13. Referring to the earlier orders of the Sessions Court and this Court, the learned counsel for the petitioner submitted that Thokchom Lokeshwar Singh and O. Lokeshwar Singh are one and the same person and that the petitioner had neither furnished any

wrong information in respect of his educational qualification nor had he furnished any wrong information in respect of his name. Therefore, the issue raised in the election petition has already been dealt with by the Court and the same attained finality. Hence, the respondent/election petitioner has no right to maintain the election petition on the said ground of the alleged false affidavit.

14. The learned counsel for the petitioner next submitted that earlier when the petitioner has filed the petition under Order VII, Rule 11 CPC to dismiss the election petition, this Court dismissed the said petition, however, this Court granted liberty to the petitioner to pursue his claim for dismissal of the election petition at the appropriate stage and that the petitioner has now approached this Court by filing the present petition seeking to dismiss the election petition on the ground that there is no triable cause of action against the petitioner and thus, prayed for dismissal of the election petition by allowing M.C. (EP) No.13 of 2019.

15. On the other hand, the learned counsel for the respondent/election petitioner contended that the election petition is at the stage of recording of evidence and at this stage the instant petition filed by the petitioner is not maintainable. Since the issue of cause of action has already been decided by this Court in M.C.

(EP) No.28 of 2017, the present application is hit by the principle of *res judicata* or on the principle of *estoppel*.

16. The learned counsel for the respondent/election petitioner further submitted that the issue raised in the election petition is whether there is improper acceptance of the nomination paper of the petitioner by the Returning Officer or not despite the presence of substantial defects in the Affidavit dated 13.02.2017 (Form 26) inasmuch as the petitioner either falsely deposed at para no.10 of the said Affidavit dated 13.02.2017 that his highest educational qualification is Master of Arts in History, Manipur University, 2003' as there is no such person by name Thokchom Lokeshwar Singh, who obtained the Degree of Master of Arts in History or has concealed the real identity of the petitioner by furnishing false information as to his surname of being Thokchom and parentage of being son of late Thokchom Navakumar Singh.

17. The learned counsel added that since there was no any earlier election petition decided involving directly and substantially the issue in question, the present petition seeking to dismiss the election petition deserves to be dismissed and that the election petition needs to be tried by adducing oral and documentary evidence.

18. This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

19. At the outset, it is to be pointed out that the respondent/election petitioner challenged the election of the petitioner mainly on the ground that he had concealed his true identity and has filed a false affidavit of nomination (Form 26) with an intent to be elected in the election from 1-Khundrakpam Assembly Constituency. Therefore, such an act of furnishing false affidavit amounts to violation of the provisions of Representation of People Act, 1951. Further, by allowing and accepting the defective nomination of the petitioner, the Returning Officer has failed to perform his official duty in accordance with law. The specific averment of the respondent/election petitioner is that by concealing his true identity and by assuming the false name of Thokchom Lokeshwar Singh, son of Thokchom Navakumar Singh, the petitioner had given statements time and again in the affidavits of nominations as INC candidate in the 9th, 10th and 11th elections to Manipur State Legislative Assembly in the year 2007, 2012 and 2017 respectively from 1-Khundrakpam Assembly Constituency.

20. Earlier, one N.Shinghajit Singh, Ex-candidate from 1-Khundrakpam Assembly Constituency has filed a complaint

before the Election Commission of India against the petitioner alleging that the petitioner has filed false Affidavit in the 10th Manipur Legislative Assembly elections held in the year 2012 with respect to his education qualification by stating that he had passed M.A. History from Manipur University in 2003. The allegation of N.Shinghajit Singh is that no person by name Thokchom Lokeshwar Singh passed M.A. History and thus, prayed for action against Thokchom Lokeshwar Singh under Section 177 IPC and Section 125-A of Representation of People Act, 1951 for submitting wrong information.

21. The complaint of N.Shinghajit Singh was forwarded by the Election Commission of India to the Returning Officer for action in accordance with the letter dated 2.6.2004 of the Election Commission of India. The Returning Officer viz., the Sub-Divisional Officer, Sawombung called for explanation from the petitioner and after examining the materials produced before him, observed as under:

> *"It is observed that Shri Thokchom Lokeshwar Singh has been using his new name while filing nomination papers whenever he contested for Assembly Elections (2007 & 2012) as his old/original name has become obsolete. Hence, I am of the opinion that Shri Thokchom Lokeshwar*

Singh had not furnishing any wrong information in respect of his educational qualification as the person with the name "O. Lokeshwar Singh" appearing at serial number 20 with Roll No.214024 on the Result Sheet of MA (History) Final Examination 2003 of Manipur University is none other than Shri Thokchom Lokeshwar Singh The confusion seems to arise from the fact that his old/original name has become obsolete in his public life as he is known far and wide by his new name at present. It may, therefore, be concluded that the contention that Shri Thokchom Lokeshwar Singh had furnished wrong information as regards to his educational qualification does not hold good and hence, no legal proceedings may be initiated to prosecute Shri Thokchom Lokesh war Singh as per the provisions of Section 125A of the Representation of People Act, 1951 and Section 177 of IPC (read with Section 200 Cr.P.C.) in this regards."

22. Assailing the report of the Returning Officer, the respondent/election petitioner again approached the Election Commission of India and by a letter dated 20.2.2015, the Election Commission of India informed the respondent/election petitioner that if not satisfied with the report of the Returning Officer, it would

be open to him to move the appropriate Court of law under Section 125-A of the Representation of People Act, 1951.

23. Pursuant to the direction of the Election Commission of India, the respondent/election petitioner has filed Criminal Complaint Case No. 35 of 2015 before the Learned Chief Judicial Magistrate, Imphal East under Section 200 of Cr. P. C. praying to take cognizance against the petitioner. By an order dated 30.03.2015, the Learned Chief Judicial Magistrate opined that sufficient grounds have been made out for taking cognizance against the petitioner and accordingly, issued summons for his appearance on 16.4.2015.

24. Assailing the order of the Learned Chief Judicial Magistrate dated 30.03.2015, the petitioner has filed Criminal Revision Case No.4 of 2015 before the Learned Sessions Judge, Imphal East. On notice, the respondent/election petitioner entered appearance and questioned the very maintainability of the revision under Section 397 Cr.P.C. The Learned Sessions Judge, after discussing with the provisions and also case laws, held that the revision is maintainable. Coming to the factual aspects of the matter in respect of furnishing of wrong information about the educational qualification in the Affidavit, the Learned Sessions Judge held that Thokchom Lokeshwar Singh and O. Lokeshwar

Singh are the same person and therefore, there is no occasion of furnishing wrong information and no action lies against the petitioner for committing the offence under Section 125-A of RP Act and Section 177 IPC. The operative portion of the order reads thus:

> *"31. From the above referred decision, it is clear that a revisional court can interfere with a criminal proceeding if the same has been initiated in complete disregard of the mandatory provisions of the law and decisions of superior courts. Since the impugned order and proceeding have been initiated in complete disregard of the law of limitation, jurisdiction and without examining the necessary ingredients of the offences under Section 177 IPC and Section 125-A RP Act, the same are held to be without jurisdiction. Accordingly, the impugned order dated 30.03.2015 passed by the ld. Chief Judicial Magistrate, Imphal East in Cril. (C) Case No.35 of 2015 and the proceeding itself are set aside. The revision petition is allowed and disposed of in terms of the above findings. No costs."*

25. Aggrieved by the order of the Learned Sessions Judge, the respondent/election petitioner preferred Criminal Petition No.6 of 2016 before this Court. By an order dated 27.4.2016, this Court dismissed the petition. As against the order of this Court, N.Shinghajit Singh has not preferred any appeal and the said order attained finality.

26. It is not in dispute that the petitioner was adopted by one Thokchom Navakumar Singh and after his adoption by his adoptive father, the petitioner changed his surname as Thokchom and as such these two names viz., Thokchom Lokeshwar Singh and O. Lokeshwar Singh are one and the same person. Further, from the earlier proceedings, it is clear that the petitioner had not furnished any wrong information in respect of his educational qualification as the person with the name O. Lokeshwar Singh is none other than Thokchom Lokeshwar Singh.

27. The case of .the respondent/election petitioner is that the petitioner has concealed his true identity and also filed false Form 26 by stating his educational qualification which he never obtained. As stated supra, when in the earlier proceedings, the same issue was raised by N.Shinghajit Singh, the authority and the Courts are of the view that Thokchom Lokeshwar Singh and O. Lokeshwar Singh are one and the same person and the name

of O. Lokeshwar Singh mentioned in Serial No.20 of the MA. History examination result is none other than the petitioner Thokchom Lokeshwar Singh, which fact was clearly supported by the report/findings of the Returning Officer, Sawombung dated 22.10.2013.

28. It is to be noted that earlier the petitioner has filed M.C. (EP) No.28 of 2017 in E.P.No.3 of 2017 under Order VII, Rule 11 CPC praying to dismiss the election petition on the ground that there is no triable issue left and the issues raised by the respondent/election petitioner had already been decided by the Election Commission of India as well as by the Courts, including the High Court. The plea of the respondent/election petitioner is that the nomination of the petitioner had been improperly accepted by the Returning Officer. It is also alleged that in the Affidavit Filed by the petitioner, it has been wrongly stated that he had completed Master of Arts in History. Thus, falsification of the educational qualification of the petitioner and his real identity is the only ground raised in the election petition.

29. The learned counsel for the petitioner submitted that the petitioner had obtained his Master of Arts in History from Manipur University in 2003 and his real name after his adoption by Thokchom Navakumar Singh is Thokchom Lokeshwar Singh. He

would submit that since the aforesaid facts have been given judicial recognition and attained finality, the allegation raised by the respondent/election petitioner in his election petition that the petitioner had given wrong information in respect of his educational qualification and also concealed his real identity are without any substance. There is some force in the argument of the learned counsel for the petitioner. As rightly argued by the learned counsel for the petitioner, when the identity of the petitioner and his qualification were judicially recognised by this Court in the earlier proceedings and had attained finality, the judicial discipline is to follow the said order.

30. In the instant petition, the petitioner seeks to dismiss the election petition as "there is no triable cause of action against the petitioner for filing the election petition. The first cause of action for filing the election petition, as could be seen from the petition was arose on 16.2.2017 when the nomination of the petitioner was improperly accepted and the second was arose on 11.3.2017 when the result was declared by the Returning Officer. On a perusal of a copy of the Affidavit (Form 26), this Court finds that the Form 26 is dated 13.02.2017, wherein the educational qualification of the petitioner has been mentioned as Master of Arts in History, Manipur University, 2003. When M.A. History

qualification has been mentioned by the petitioner in the earlier nomination affidavits (2007 and 2012), the same was accepted by the Returning Officer concerned and elected two times to Manipur Assembly. During 2012 when the identity and the qualification of the petitioner was disputed by one Namoijam Singhajit Singh, the same was negatived by the Election Commission of India and the Courts. When the petitioner submitted Form 26 in the election in question, the Returning Officer concerned has not questioned Form-26 dated 13.02.2017 submitted by the petitioner.

31. Section 146(3) and (4) of the Representation of People Act provide that the Election Commission shall be deemed to be a Civil Court and procedure shall be deemed to be judicial proceeding. Since the issue relating to educational qualification of the petitioner and passing of M.A. History in 2003 has attained finality having been decided by the competent Court of law, the respondent/election petitioner has no right to reopen the same, as no appeal has been preferred against the decision of the Election Commission as well as the decision rendered by this Court.

32. The main challenge in the election petition is wrong information in respect of educational qualification given by the petitioner in Form 26 dated 13.02.2017. Since the educational qualification of the petitioner as M.A. History has been accepted

by the authority concerned in the earlier nomination and had attained finality in the judicial proceedings, the respondent/election petitioner has no right to question the very same educational qualification of the petitioner and his identity in the present election petition by mentioning the cause of action dated 16.02.2017 when nomination papers of the petitioner was accepted by the Returning Officer. Since the Returning Officer accepted Form 26 dated 13.02.2017, the respondent/election petitioner has no right to quote same as cause of action for Filing the election petition. When the election petition/plaint has no cause of action, the opposite party has right to file an application to dismiss or reject the election petition/plaint.

33. The learned counsel for the respondent/election petitioner submits that when similar petition being M.C. (EP) No.28 of 2017 has been disposed of by this Court vide order dated 19.6.2018, the present application being M.C. (EP) No.13 of 2019 is not maintainable and the same is hit by the principle of res judicata under Section 11 of CPC.

34. It is true that M.C. (EP) No.28 of 2017 has been dismissed of by this Court on 19.6.2018. However, while dismissing the petition, this Court observed that if at an appropriate stage, it can be established that no triable issue

remains to be adjudicated by this Court as contended by the petitioner, based on the pleadings and materials disclosed with supporting evidences in the written statement, the petitioner may revive the claim for dismissal of the election petition.

35. It is apposite to mention that the facts that gives rise to an enforceable claim constitutes the cause of action. If the respondent/election petitioner alleges that the petitioner had given wrong information about his educational qualification as well as his real identity by giving material facts and details, it can be said that the election petition discloses cause of action. When the fact remains that the petitioner has not given any wrong information in Form 26, it cannot be said that the election petition discloses cause of action. In this regard, it is worthwhile to extract the operative portion of the order in M.C. (EP) No.28 of 2017, which reads as under:

> *"32. In view of the above settled law, the election petition cannot be dismissed at this stage by invoking Order 7 Rule 11 CPC by referring to the pleadings in the written statement filed by the respondent. At this stage this Court has to merely examine the pleadings in the election petition and not to the written statement and this Court finds*

that sufficient material facts have pleaded in the election petition to constitute cause of action. It is an entirely different matter that in the light of the written statement filed by the respondent, the respondent may ultimately, succeed, but that issue cannot be considered at this stage, for the purpose of invoking Order 7 Rule 11 of the CPC for dismissal on the ground that the petition does not disclose cause of action.

33. For the reasons discussed above, as it cannot be said at this stage that the election petition does not disclose any cause of action, this Court does not find merit in the application and accordingly, the present application is dismissed.

34. However, before parting, this Court would like to make the observation that at if at an appropriate stage, it can be established that no triable issue remains to be adjudicated by this Court, as contended by the applicant, respondent in the election petition, based on the pleadings and materials disclosed with supporting evidences in the written statement, the

respondent in the election petition may revive this claim for dismissal/closure of the election petition at such appropriate stage in accordance with the relevant provisions of law. It may be noted that in some cases, there may be situations, where because of certain position obtaining or subsequent developments taking place during the pendency of a suit, the cause of action may not survive anyone. In such situation, there may by nothing left to be decided by the Court, or the judicial exercise may be reduced to purely an academic exercise. In such an eventuality, the suit may be liable to be closed as infructuous or dismissed. Accordingly, it is clarified that in spite of dismissal of this application, the respondent in the election petition may again move this Court, at the appropriate stage, to pursue his claim for dismissal/closure of the election petition, in accordance with law. After all, the jurisdiction of the Court can be invoked to decide and determine live issues only and not non-existent issues and this Court is not expected to undertake a futile judicial exercise."

36. Thus, pursuant to the liberty being given by this Court, the present petition being M.C. (EP) No.13 of 2019 has been filed by the petitioner to dismiss the election petition and therefore, the petition is not hit by the provisions of Section 11 of CPC.

37. Now the petitioner has filed the instant petition under Order XV, Rules 1 and 3 CPC to dismiss the election petition as there is no triable cause of action against the petitioner.

38. Order XV, Rules 1 and 3 CPC reads thus:

> *"**Disposal of the suit at the first hearing***
>
> ***1. Parties not at issue***
>
> *Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.*
>
> *.....*
>
> ***3. Parties at issue***
>
> *(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as herein before provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is*

required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and , if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires."

39. The learned counsel for the respondent/election petitioner submitted that since issues are framed, the petition under Order XV, Rule 1 CPC is not maintainable. Similarly, the

|earned counsel submitted that Order XV, Rule 3 CPC is also not applicable in the case on hand.

40. Placing reliance upon the decision of the Hon'ble Supreme Court in the case of ***Kanwar Singh Saini v. High Court of Delhi, reported in (2012) 4 SCC 307***, the learned counsel for the petitioner submitted that the instant petition under Order XV, Rules 1 and 3 is very well maintainable, as the First hearing of the suit can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the Court does not take up the case for hearing or apply its mind to the facts of the case and it is only after filing of the written statement and framing of issues, the hearing of the case commences. Therefore, the learned counsel contends that the hearing presupposes the existence of an occasion which enables the parties to be heard by the Court in respect of the cause and hearing therefore should be First in point of time after the issues have been framed.

41. In ***Kanwar Singh Saini*** (supra), the Hon'ble Supreme Court held:

> *"13. The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the court proposes to apply its mind*

to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words "first day of hearing" do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Vide Ved Prakash Wadhwa v. Vishwa Mohan, (1981) 3 SCC. 667; Sham Lal v. Atme Nand Jain Sabha, (1987) 1 SCC 222; Siraj Ahmad Siddiqui v. Prem Nath Kapoor, (1993) 4 SCC 406 and Mangat Singh Trilochan Singh v. Satpal, (2003) 8 SCC 357."

42. In the election petition, this Court framed issues on 22.08.2019 and the petition being M.C. (EP) No.13 of 2019 to

dismiss the election petition was filed on 27.09.2019. It also appears that the chief examination of the respondent/election petitioner by way of proof affidavit was filed on 27.09.2019. The Filing of proof affidavit does not preclude the petitioner from filing the instant petition to dismiss the election petition, as the petitioner is entitled to file such petition at the time either the issues are settled or evidence is taken. Since the Filing of the petition to dismiss the election petition and the filing of the proof affidavit of the election petitioner are on the same day, keeping in view the decision of the Hon'ble Supreme Court in the case of ***Kanwar Singh Saini***, the instant petition to dismiss the election petition filed by the petitioner is very well maintainable under Order XV, Rules 1 and 3 CPC and the same is not hit by any provisions of law as alleged by the respondent/election petitioner.

43. It is to be mentioned that earlier the respondent/election petitioner tiled M.C. (EP) No.23 of 2017 seeking leave of this Court to file replication in reply to the written statement of the petitioner field in the election petition. By an order dated 5.7.2019, this Court dismissed the said petition. While dismissing the petition, this Court extracted certain portions of the replication, which are at the cost of repetition again extracted herein below:

"2. ..... It is stated that no date of alleged adoption is mentioned in its written statement which fact, if stated, will have far reaching consequence in the allegations (defence put up) by the respondent in its written statement. The respondent has suppressed vital and material fact regarding the date of alleged adoption, if any, and has not come with clean hands in giving his written state.

3. ..... It is stated that respondent's true identity is Oinam Lokeshwar Singh, s/o Oinam Khoidumba Singh. Shri Thokchom Navakumar Singh (now deceased) had sons, older than the respondent in age, and daughter, namely, Thokchom Nevidita. Nevidita, being the daughter of Late Thokchom Navakumar Singh, he would not have given her hand to the respondent, the alleged adoptive son in marriage. The said Nevidita is the wife of the respondent. Now the respondent has to tell many lies in order to justify one lie, i.e., he is the adoptive son of Late Thokchom Navakumar Singh."

4. ..... It is stated that the respondent's true identify as Oinam Lokeshwar Singh s/o Oinam Khoidumba of Nongmaickhong is entered in the electoral roll of 1989 at Sl.No.230 (2) House no.41 of polling station no. & name 38/20 Arong Nongmaickhong of 38-Hiyanglam A/C, Thoubal District within 2-Outer Manipur Parliamentary S.C. Constituency. Again the respondent's true identity as Oinam Lokeshwar Singh s/o Oinam Khoidumba of Nongmaickhong is entered in the electoral roll of 1993 at Sl. No. 260 (7) House no.41 of polling station no. & name 38/20 Arong Nongmaikhong of 38-Hiyanglam A/C, Thoubal District within 2-Outer Manipur Parliamentary S.C. Constituency.

5. ..... It is stated and reiterated that the respondent deliberately concealed the fact that he is Oinam Lokeshwar Singh s/o Oinam Khoidumba of Nongmaikhong and he gave the wrong statement that he is Thokchom Lokeshwar Singh s/o Thockchom Navakumar Singh resident of Sagolmang Mamang Leikai."

44. Since certain new facts were sought to be introduced by the respondent/election petitioner, this Court dismissed M.C.(EP) No.23 of 2017. The operative portion of the order reads thus:

> *"32. Order 8 Rule 9 CPC invests the Court with wide discretion to receive the reply statement. But the discretion cannot be exercised to cause serious prejudice to the defendants allowing the plaintiff to change the entire plea and complicating the issues involved. The exercise of discretion cannot be extended to the extent of allowing such applications introducing new plea. This is all the more so, in this case where the application is filed belatedly setting forth new plea.*
>
> *33. As stated supra, the plea sought to be raised in the replication are new plea and any new plea and/or ground by way of replication that too in an Election Petition much after the expiry of 45 days, cannot be entertained. Further, permitting a new ground to be raised beyond the time prescribed in Section 81 of the Act would amounts to contravention of the provision and*

also beyond the ambit of Section 87 of the Representation of the People Act, 1951. The reason for leave to file the replication is not convincing and more over, the averments contained in the replication are new pleas and also it has been filed belatedly in contravention of the provisions of the Representation of the People Act, 1951.

34. For the foregoing discussions, I am of the view that the petition filed by the petitioner under Order 8, Rule 9 C.P.C. seeking leave of this Court to file replication deserves to be dismissed. Accordingly, M.C. (Election Petition) No.23 of 2017 is dismissed. No costs."

45. As against the order dated 5.7.2019 passed in M.C. (EP) No.23 of 2017, the respondent/election petitioner has not filed any appeal and the said order attained finality. Since the identity of the petitioner has been clearly stated in the earlier proceedings and also the petitioner has not given any false information in Form 26 qua his educational qualification, this Court is of the view that the petitioner is entitled to maintain the instant petition being M.C. (EP) No.13 of 2019. Further, M.C. (EP) No.13

of 2019 has been filed by the petitioner pursuant to the direction of this Court in M.C. (EP) No.28 of 2017, dated 19.6.2018. As stated supra, the main cause of action for filing the election petition is filing of Form 26 by the petitioner. When Form 26 filed by the petitioner has proved to be genuine and that there is no wrong information in it, the main cause of action for filing the election petition against the petitioner automatically goes. Since there is no triable cause of action against the petitioner, further proceedings in the election petition is wasting the precious time of the Court.

46. The Court can dispose of election petition and pronounce judgment under Order XV, Rule 1 CPC if the Court is satisfied that the parties are not at issue on any question of law and fact. Since there is no triable cause of action against the petitioner, this Court is of the view that there is no triable cause of action and/or issue exist in the election petition.

47. The expression cause of action has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the

expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in cause of action.

48. The expression cause of action has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. IN a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit.

49. It is reiterated that since there is no triable cause of action against the petitioner in maintaining the election petition by the respondent/election petitioner, there is no meaning to conduct trial of the election petition by adducing oral and documentary evidences. It is also reiterated that since Form 26 of the petitioner has been duly accepted by the Returning Officer and the Returning Officer concerned has not questioned the same and also declared the election of the petitioner as winning candidate, the respondent/election petitioner has no right to maintain the election petition by mentioning the cause of action dated

13.02.2017, which is the main cause of action. Except the alleged wrong information in Form 26, nothing has been raised as a ground to declare the election of the petitioner as void. Since this Court finds that the information, specifically the qualification of the petitioner mentioned in Form 26 dated 13.02.2017 is correct one and also the identity of the petitioner has been established, continuance of further proceedings in the election petition is nothing but wasting the judicial time. As there is no cause of action more particularly triable cause of action exist against the petitioner, the election petition deserves to be dismissed.

50. In the result, M.C. (EP) No. 13 of 2019 is allowed and the Election Petition No 3 of 2017 stands dismissed, as there is no triable cause of action against the petitioner/Respondent. No costs.

JUDGE

FR/NFR

Sushil

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.08.20 13:08:42 +05'30'