

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO.1747 OF 2020

MANJULA ANANDA PATIL
VERSUS
SAYABAI GULAB PATIL AND OTHERS

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Advocate for Petitioner : Shri Patil Atmaram J.
AGP for Respondent 5 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 16, 2020

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PER COURT :-

1. The petitioner is aggrieved by the order dated 9.1.2020, passed by the trial Court, by which, her application Exhibit 37 seeking dismissal of the Election Petition under Order VII Rule 11 of the CPC has been rejected by concluding that the parties may lead evidence since the matter has already travelled to the stage of recording of evidence.

2. Reliance is placed upon the following judgments delivered by this Court:-

(i) Shri Umesh Tukaram Kamble and others vs. Shri Sahmrao Sakharam Patil and others - 2008 (2) Mh.L.J. 727 and

(ii) Shri Shankar Sadu Pawar Vs. Shri Balu Laxman Dalvi and others - Writ Petition No.6271 of 1995 dated 24.8.1999.

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3. The record reveals that the petitioner had earlier filed an application Exhibit 15 under Order VII Rule 11 of the CPC alleging that there is no cause of action. The issue of limitation was not taken up by these petitioners. The matter travelled upto this Court in Civil Revision Application No.10 of 2019, which was disposed off by judgment dated 10.10.2019, concluding that the election petition shall be decided on its merits expeditiously. The petitioner preferred a Review Application before this Court and by order dated 13.12.2019, the Review Application was dismissed.

4. The Election Petition has travelled to the stage of recording of the oral evidence and the petitioner herself did not raise the issue of limitation under Order VII Rule 11 of the CPC, when Exhibit 15 was filed. Nevertheless, the trial Court has concluded in the impugned order that after the parties would lead evidence, all issues would be considered.

5. In the peculiar facts of this case, this petition is dismissed. Nevertheless, considering the liberty granted by the trial Court, all contentions of the litigating parties are kept open.

(RAVINDRA V. GHUGE, J.)