

05&06. 16.12.2021
Ct. No.21
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C.O. 1683 of 2021

Ashick Mallick

-VS-

West Bengal State Election Commissioner & Ors.

With

C.O. 1745 of 2021

Ashick Mallick

-VS-

West Bengal State Election Commissioner & Ors.

(Through Video Conference)

Mr. Dev Kumar Sharma

...for the Petitioner.

Mr. Mahendra Prasad Gupta,
Mr. Ayan Mitra,
Ms. Antara Panja

...for the Opposite Party No. 7.

The plaintiff/petitioner being aggrieved by delay in disposal of Title Suit No. 698 of 2018 pending in the Court of Learned Civil Judge (Junior Division), 4th Court, Howrah has filed C.O. No. 1683 of 2021 under Article 227 of the Constitution praying for passing necessary direction on the Court below to hear the petition under Section 84 (5) of West Bengal Panchayat Election Act, 2003 alleging the delay is likely to defeat the purpose of filling of the case.

Such application of the petitioner will be considered in the later part of this order.

By filing C.O. No. 1745 of 2021 the petitioner/plaintiff has challenged the order of acceptance of the W.S. filed by the defendant/opposite no. 7 and setting aside ex-parte proceeding against opposite party no. 7 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 698 of 2018 on 21.09.2021.

For proper adjudication of the present application under Article 227 of the Constitution of India, it is necessary to discuss the facts of the case in gist.

From the record, it is seen in the last Panchayat Election, 2018, the plaintiff/petitioner along with opposite party Nos. 7 to 10 have contested election for the same Gram Panchayat as candidates of different political parties. It has been alleged that the plaintiff got the highest vote but during midst of counting, the opposite party no. 7 a candidate of Trinamool Congress barged inside the counting hall and looted 9 bundles of ballot papers containing 225 ballot papers with valid vote in favour of the petitioner. He brought such incident to the notice of the authorities concerned but in vain. Then, he filed Title Suit No. 698 of 2018 under Section 79 and 94 of the West Bengal Panchayat Elections Act, 2003.

It is also seen from the record of the lower Court the plaintiff having failed to make statutory deposit of Rs. 500/- as security under Section 79 (2) of the

Panchayat Act, before the concerned Court, then Learned Court below rejected the plaint on the application filed by the defendant no. 4 under Order 7 Rule 11 Civil Procedure Code.

Being aggrieved by such order of rejection of the plaint, the petitioner has moved this Court under Article 227 of the Constitution and filed C.O. No. 1589 of 2019 and which was allowed with a direction to the Trial Court to determine the mode of making of deposit under Section 79 (2) of the 2003 Act, and stipulate the mode of such deposit by providing a reasonable time limit for making such deposit. In the event if the plaintiff fails to make deposits then liberty was given to the trial Court to dismiss the election petition.

Challenging such order passed by co-ordinate bench of this court in C.O. No. 1589 of 2019 the opposite party no. 7 has moved Hon'ble Supreme Court, but SLP no. 12228 of 2020 was dismissed on delay as well as on merit on 28.06.2021.

It is seen from the order sheets of the Lower Court the defendant no. 7 against whom the case was proceeded ex parte had apprised the Ld. Court below about filing of the SLP on 22.12.2020, but learned court below did not take any cognizance of the submission of the defendant no.7 and proceeded with the examination of plaintiff P.W. 1 on that day.

Thereafter, the case continued for evidence of P.W. 1 and it was fixed for further cross-examination of P.W. 1 on 16.09.2021. On that day the defendant no. 7 had filed W.S. along with show cause, applications for acceptance of W.S. after setting aside ex-parte order against him and which were allowed, but on payment of cost of Rs. 4000/-on 21.09.2021.

. Challenging such order dated 21.09.2021 the plaintiff has filed the present revisional application.

It is true after amendment in the Code of Civil Procedure time limit for filling W.S. has been fixed within 30 days from the date of service of summon and on sufficient cause being shown not later than 90 days from the date of service of summons.

From the order sheets it is seen the case was filed on 14.01.2018 and defendant no. 7 had put his first appearance before the Court and sought time to file W.S. on 01.09.2018. On his failure to appear and file written statement suit was proceeded ex-parte against him. The defendant no.7 took trouble to put his appearance along with W.S. in the court below on 16.09.2021, almost three months after the dismissal of SLP.

The learned Advocate for the petitioner contended that moment SLP filed by the defendant no. 7 was dismissed he ought to have filed W.S. in the month of June of 2021, but he came with W.S. three

months after the dismissal of the SLP. He further submits learned Court below acted beyond the jurisdiction by permitting the defendant no. 7 to file W.S. when the evidence of plaintiff was almost complete.

On the other hand learned Advocate for the opposite party no. 7 is submitted that question of filling W.S. arises when there exist a lis and lis comes into existence on presenting valid plaint by the plaintiff. The plaint submitted by the plaintiff was defective for non-compliance of mandatory provision of section 79 (2) of the Act of 2003. On the rejection of the plaint and passing of the decree there exists no suit and question of filling W.S. does not arise until and unless the case is restored to its original no. and file by removing defect in the plaint. The defect in the plaint was cured when the plaintiff deposited statutory security of Rs. 500/- on 15.09.2020, but in the meantime the opposite party no. 7 had filed SLP before the Hon'ble Supreme Court challenging the order passed in the C.O. no. 1589 of 2019 and such SLP was dismissed on 28.06.2021. That on dismissal of SLP the liability to file W.S. by defendant has accrued and not before that.

From the facts and events discussed above it becomes clear lis has come into existence on the

presentation of a valid plaint and in the present case not on the day the suit was filed on 14.07.2018, but when the plaintiff had paid the mandatory security deposit as required by section 79 (2) of the Act of 2003 on 15.09.2020. It has also come on record when such defect was removed the SLP no. 12228 of 2020 filed by the defendant no. 7 was pending and which was dismissed on 28.06.2021. It is true the defendant no. 7 ought to have filed W.S. immediate after dismissal of his SLP, but he has filed W.S. only on 16.09.2021 almost three months after the dismissal of the SLP.

It is also worth to mention here the entire world came to halt due to Covid-19 Pandemic some time from the month of March 2020 and Hon'ble Supreme Court in SMW(C) No. 3 of 2020 to mitigate the hardship of litigants in filling application/petition/suits/appeals/all other proceedings during Pandemic Period pleased to extend the period of limitation prescribed under the general law or special law from 23.03.2020 to 03.10.2021. Therefore, I hold the defendant no. 7 is entitled to get the benefit of extension of limitation period granted by the Hon'ble Supreme Court in SMW(C) No. 03 of 2020 for the period between dismissal of SLP on 28.06.2021 and his filling W.S. on 16.09.2021.

In view of the above discussion I do not find any illegality or material irregularities in the impugned order. The impugned order is hereby affirmed.
Accordingly, C.O. No. 1745 of 2021 is dismissed.

Section 84 (6) of 2003 Act clearly provides every election petition shall be tried as expeditiously as possible and endeavor shall be made to conclude the trial within six months from the date on which the election petition is presented to the Court for trial.

In the present case Suit could not be disposed of within prescribed statutory period due to events that had taken place and discussed above. However, from the records it appears at present the case is fixed for cross examination of P.W.1.

Therefore, Learned Civil Judge (Junior Division) 4th Court Howrah is hereby directed to dispose of Title Suit No. 698 of 2018 within two month from the date of receipt of the communication of this order on priority basis and without granting any kind of adjournment whatsoever to the parties to the suit.

I hereby allow the C.O. No. 1683 of 2021 filed by the petitioner where he has prayed for expeditious disposal of the case.

Both the revisional applications are disposed of. Interim order/orders, if any, shall stand discharge.

Connected applications, if any, shall stand disposed of.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

There will be no order as to cost.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)