

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CIVIL REVISION PETITION Nos.
1501 of 2019 AND 507 & 517 of 2020

COMMON ORDER:

1. Civil Revision Petition No.507 of 2020 is filed by the petitioner-respondent No.1 assailing the docket order dated 10.01.2020 in I.A.No.60 of 2019 in Election O.P.No.1 of 2019 pending on the file of Junior Civil Judge-cum-Election Tribunal at Bichkunda. This docket order shows that for the reasons assigned in the affidavit and considering the age factor of the original petitioner, the application filed under Order III Rule 2 of the Code of Civil Procedure r/w. Rule 33 of the Civil Rules of Practice, was allowed. The petitioner-GPA holder is permitted to act as Power of Attorney Holder for the original petitioner.
2. Civil Revision Petition No.517 of 2020 is filed by the petitioner-respondent No.1 assailing the docket order dated 10.01.2020 in I.A.No.61 of 2019 in O.P.No.1 of 2019, wherein, for the reasons stated in the affidavit, the petition filed under Section 151 of the Code of Civil Procedure was allowed and the evidence affidavit of PW-1 was eschewed from consideration and the office was directed to make entries wherever necessary and accordingly, I.A.No.61 of 2019 was closed.
3. Civil Revision Petition No.1501 of 2019 was filed by the petitioner, who is the petitioner in Election O.P.No.1 of 2019 with a

request to direct the Junior Civil Judge-cum-Election Tribunal at Bichkunda to immediately pronounce orders in I.A.No.23 of 2019 in O.P.No.1 of 2019 and to dispose of the main Election Petition within a period of two months or at the earliest as contemplated under the A.P.Grampanchayat Act, 1994.

4. I.A.No.23 of 2019 was filed under Order XXXIX Rules 1 and 2 r/w. Section 151 of the Code of Civil Procedure to grant interim injunction pending disposal of the main Election Petition. It was filed by the petitioner against the declared/elected candidate for the post of Sarpanch, seeking to stop the cheque power given to respondent No.1 and to pass any such other orders as the Court deems fit.

5. Since all these three Civil Revision Petitions are arising out of Election O.P.No.1 of 2019, it is felt essential to pass a common order.

6. The petitioner-Smt.Kamala Bai, who lost the Sarpanch elections, has filed Election O.P.No.1 of 2019 before the Junior Civil Judge-cum-Election Tribunal at Bichkunda. Her grievance appears to be that she is aged around 80 years and there is no progress in Election O.P.No.1 of 2019. Accordingly, she has filed I.A.No.23 of 2019 to stop the cheque power of the elected candidate, who is respondent No.1. That application is still pending without passing any orders by the learned Presiding Officer.

7. Respondent No.1 has filed counter denying the petition averments.

8. Heard on both sides.

9. Civil Revision Petition No.507 of 2020 is filed only assailing the orders in I.A.No.60 of 2019 in O.P.No.1 of 2019, wherein, the petitioner was permitted to be represented by her GPA holder. Considering the age of the petitioner-Smt.Kamala Bai, if she is permitted to be represented by GPA holder-Smt.Deshmukh Laxmi Bai, there cannot be any objection. Though the learned Presiding Officer has passed only cryptic order without assigning any reasons, this order is in tune with Rule 32 of Civil Rules of Practice and the petitioner is entitled to be represented by her General Power of Attorney Holder. Accordingly, C.R.P.No.507 of 2020 is dismissed confirming the order impugned, dated 10.01.2020.

10. Civil Revision Petition No.517 of 2020 is filed questioning the orders in I.A.No.61 of 2019 in O.P.No.1 of 2019. In that Election O.P.No.1 of 2019, the affidavit of the petitioner-Smt.Kamala Bai was filed originally, but through the order impugned, the chief-affidavit of PW-1 was eschewed and office was directed to make entries wherever necessary. The law is well settled that the provisions of the Code of Civil Procedure will apply to the Election matters filed under the Grampanchayat Act before the Election Tribunal-cum-Junior Civil Judge and once the evidence affidavit of PW-1 is filed and she is alive, it cannot be eschewed under any circumstances. If the age of petitioner-PW-1 is not permitting to attend the Court and she is allowed to be represented by a General Power of Attorney Holder, for

her cross-examination as PW-1, the Court below may consider the appointment of Advocate-Commissioner. Merely because petitioner is permitted to be represented by a General Power of Attorney Holder-Smt.Deshmukh Laxmi Bai, she is not entitled to step into the shoe of the petitioner to give evidence on her behalf. By any stretch of imagination, the evidence of General Power of Attorney Holder is not a substitute to the evidence of petitioner. In that view of the matter, the order impugned is irregular and is liable to be set aside. Accordingly, the impugned order dated 10.01.2020 in I.A.No.61 of 2019 in O.P.No.1 of 2019 is set aside and the evidence of PW-1 is restored. If PW-1 is not able to attend the Court owing to her old age for cross-examination by the respondents, the Tribunal may consider appointing of an Advocate-Commissioner for recording the cross-examination. But her evidence as PW-1 cannot eschewed under any circumstance as long as she is within the reach of the Court. With these observations, C.R.P.No.517 of 2020 is allowed setting aside the impugned order dated 10.01.2020.

11. Civil Revision Petition No.1501 of 2019 is filed by the petitioner, who is also the petitioner in Election O.P.No.1 of 2019 seeking a direction to the learned Junior Civil Judge, Bichkunda either to dispose of I.A.No.23 of 2019 within a specified time frame or to direct for disposal of Election O.P.No.1 of 2019 itself within a specified time schedule. The petitioner has contested the Grampanchayat Elections. She lost the election and filed this Election

O.P. against the candidate who has been declared elected as Sarpanch, also against the Returning Officer and the Assistant Election Officer. I.A.No.23 of 2019 is filed to restrain the 1st respondent-Elected candidate from using the cheque power or authority. The grievance of the petitioner is that though she has filed Election O.P. in April 2019 immediately after Sarpanch elections, there is no progress and the respondents are dodging the matter. Having regard to the age of the petitioner, nature of dispute, since there is specified timeline for disposal of Election O.Ps. under the Grampanchayat Act, the learned Junior Civil Judge-cum-Election Tribunal at Bichkunda is hereby directed to dispose of Election O.P.No.1 of 2019 within Six months from the date of receipt of a copy of this order without seeking any further extensions.

12. In the result, C.R.P.No.507 of 2020 is dismissed confirming the order impugned dated 10.01.2020 in I.A.No.60 of 2019 in O.P.No.1 of 2019 and the petitioner-Smt.Kamala Bai is permitted to be represented by her General Power of Attorney Holder-Smt.Deshmukh Laxmi Bai W/o.Madhav Rao.

13. C.R.P.No.517 of 2020 is allowed. The impugned order in I.A.No.61 of 2019 in O.P.No.1 of 2019, dated 10.01.2020 is set aside. The evidence of PW-1 is restored to the file. The Court below is directed to record the cross-examination of PW-1, and if the witness expresses difficulty owing to her old age, consider the appointment of Advocate-Commissioner for recording cross-examination of PW-1.

14. C.R.P.No.1501 of 2019 is allowed. Considering the age of the petitioner and nature of the dispute, as the elections for the post of Sarpanch were held wayback in January 2019, the Junior Civil Judge-cum-Election Tribunal at Bichkunda is hereby directed to dispose of Election O.P.No.1 of 2019 at the earliest possible, under any circumstances not later than Six months from the date of receipt of a copy of this order, without seeking any further extension of time. Both the parties shall co-operate with the Court below for expeditious disposal as directed.

No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

A. VENKATESHWARA REDDY, J

Date: 22nd November, 2021

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