

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPLICATION IN ELECTION PETITION NO. 10 OF 2021
IN
ELECTION PETITION NO. 29 OF 2019

Nagnath Dattatraya Kshirsagar	...	Applicant
<u>In the matter between</u>		
Sachin Bharat Thorat	...	Petitioner
vs.		
Yashwant Vitthal Mane	...	Respondent

Mr. Chintamani K. Bhangoji a/w. Ms. Lata Tandel for the Petitioner.

Mr. Anil Sakhare, Senior Advocate i/b. Mr. Anant Vadgaonkar for the Applicant.

Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. Atul Damle, Senior Advocate and Mr. J. G. Aradwad (Reddy) for the Respondent.

CORAM : A. K. MENON, J.

DATED : 17th FEBRUARY, 2022

P.C. :

1. By this application the applicant seeks to intervene in the above Election petition claiming that he is required to be added as party respondent in the Election Petition. The reason for approaching this court and as canvassed by Mr. Sakhare, learned Senior Counsel appearing on behalf of the applicant, is the applicant's belief that by virtue of Section 86(4) of the Representation of People Act, 1950/1951 the petitioner is obliged to join parties as respondents in cases where the petitioner, in addition to claiming

declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and in cases where no such further declaration is claimed, all the returned candidates would have to be joined as party respondent. Further candidates against whom allegations of any corrupt practice are made are also required to be joined. His case rests not on the basis of Section 82 but on the basis of section 86(4) which reads as under :

86. *Trial of election petitions –*

(1).....

(2).....

(3).....

(4) *Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.*

2. Mr. Sakhare submits that his client is entitled to apply since (i) trial has not commenced and (ii) that the period of 14 days from the date of commencement of the trial has not been triggered. (iii) that period is yet to expire and hence his application is in time. He has relied upon compilation of orders passed by this court, first of which is 15th January, 2020 on which date the court issued notice. That order was subjected to an order of speaking to the minutes of 23rd January, 2020 whereby summons was required to be

issued. Summons was thereafter issued and on 12th February, 2020 the court recorded that Summons was still not served and returnable date was extended by four weeks and the matter was stood over to 4th March, 2020. On 4th March, 2020 the court recorded that the office report indicated that the Summons had been served upon the respondent, but respondent did not appear. Since the returnable date had gone by, the court directed fresh notice to be issued recording that the matter would be taken up on 2nd April, 2020. Private notice was also allowed.

3. Mr. Sakhare submits that in the interim prior to 2nd April, 2020 the pandemic driven lock down was ordered and as a consequence several orders came to be passed by the Supreme Court extending the period of limitation since parties were unable to access the court for filing of applications, including the applicant in the present case. According to Mr. Sakhare therefore the period of 14 days is yet to commence. He therefore submits that the application is within time and that the petitioner is bound to implead the applicant.

4. The application is opposed by Mr. Damle on behalf of the petitioner who submits that the application is misconceived since period of 14 days has commenced in view of the fact that the trial is deemed to have commenced on the returnable date of the Summons as seen from the explanation to Section 86(4). The explanation reads thus :

Explanation : – For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

5. In view of the fact that summons had already been served as of 1st February, 2020 he submits that the time period of 14 days would commence from the returnable date which was 12th February, 2020. There is no dispute that the returnable date was 12th February, 2020. In fact applicant concedes this aspect. Mr. Sakhare submits that he was unaware that the Summons has been served. Mr. Sakhare submits that the order dated 12th February, 2020 indicated that summons was still not served and therefore the court appears to have extended the returnable date.

6. In this view of the matter I had called for the record to ascertain date of service of Summons and from that record I find that the Service Report records that the Summons was served on 1st February, 2020. There is a report of the Civil Court Junior Division, Indapur, Pune addressed to the Prothonotary and Senior Master enclosing the Service Report issued by the bailiff of the court which indicates that summons was duly served on 1st February, 2020. The returnable date being 12th February, 2020 time began to run on 12th February, 2020 and accordingly the period of 14 days would have to be computed from that date. Clearly therefore the application is made beyond time. There being no prospect of condonation of delay in an Election

Petition the applicant cannot succeed in this application. In that view of the matter, I pass the following order :

- (i) Application is dismissed.
- (ii) No orders as to costs.
- (iii) List the petition on 10th March, 2022.

(A. K. MENON, J.)