

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ELECTION PETITION NO. 02 OF 2020

Apparao Gopalrao Kore ... Petitioner.
Versus
Subhash Sureshchandra Deshmukh & Ors. ... Respondents.

**WITH
APPLICATION (L) NO.5728 OF 2020**

The Returning Officer ..Applicant.
In the matter between:
Apparao Gopalrao Kore ... Petitioner.
Versus
Subhash Sureshchandra Deshmukh & Ors. ... Respondents.

None for the Petitioner.
Mr. Pradeep Rajagopal a/w. Drishti Shah for Respondent No.3.
Mr. Kedar Dighe, AGP for Applicant in AEPL/5728/2020.

**CORAM : SARANG V. KOTWAL, J.
DATE : 12th OCTOBER 2022**

PC :

1. This Election Petition was lodged on 05/12/2019. Thereafter, on 03/01/2020 summons were issued to the Respondents and made returnable on 21/02/2020. On 17/01/2020 the Petitioner was directed to remove the office objections within one week from that date. The order dated

10/02/2020 mentioned that the returnable date was extended till 16/03/2020. Thereafter, various orders were passed. The report of the Master and Assistant Prothonotary (Judicial) dated 15/09/2022 reads thus:-

“ Pursuant to the Order dated 19th August 2022, the office is directed to submit a report whether the Respondent No.1 is served with the Summons or not.

I respectfully submit that by order dated 3rd January 2020 passed by the Hon'ble Shri Justice S. C. Gupte, the Registry was directed to issue Summons to the Respondents returnable on 21st February 2020, which was extended till 16th March 2020 by subsequent order dated 10th February 2020. The Advocate for the Petitioner was to lodge Summons in this Office. Since the Petitioner and/or his Advocate has not lodged Summons in this Registry, the Summons could not be issued. Report to that effect was submitted by the Section Officer on 8th January 2021.

I respectfully submit that by Order dated 10th February 2022, returnable date of Summons was extended upto 10th March 2022. However, the Petitioner and/or his Advocate has not taken any steps to lodge the Summons in this Office with postal charges, hence, Summons could not be issued.

Hence, the Respondents are not served with

the Summons till date.”

2. From this report it is clear that, absolutely no steps are taken on behalf of the Petitioner to lodge summons in the office with postal charges and, therefore, summons could not be issued.

3. Order IX Rule 2 of the Code of Civil Procedure, 1908 reads thus:

“2. Dismissal of suit where summons not served in consequence of plaintiff’s failure to pay costs. -

Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.”

4. Section 87 of The Representation of the People Act, 1951 reads thus:

87. Procedure before the High Court. - (1) Subject to the provisions of this Act and of any rules made

thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

5. In this case, the Petitioner has not taken the necessary steps as mentioned earlier. The Respondents have not attended in person or through their Agent in the main Election Petition. Therefore, pursuant to Order IX Rule 2 of C.P.C. r/w. Section 87 of The Representation of People Act, 1951 the Election Petition is dismissed.

6. With disposal of the Election Petition, all connected

applications are also dismissed.

(SARANG V. KOTWAL, J.)