

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****259****CR-6017-2023 (O&M)****Date of Decision : 16.05.2025**

Mandeep Kaur

....Petitioner

VERSUS

Tej Pal and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate for the petitioner.

Mr. Sumit Gupta, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging order dated 29.08.2023 whereby the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the election petition filed by the respondent under Section 176 of the Haryana Panchayati Raj Act, 1994 has been dismissed.

2. Respondent No.1 herein had filed an election petition challenging the election of the petitioner herein. The petitioner herein filed an application under Order VII Rule 11 CPC for rejection of the petition on the following ground :

“3. That the present petition is liable to be rejected as the petitioner has himself not filed the present petition by appearing at the time of filing the petition and he had to file the present petition on his own and not through

counsel. Since the petitioner has not complied with the mandatory provisions while filing the election petition and as such, the same is liable to be rejected.”

3. Reply was filed to the said application. Vide the impugned order dated 29.08.2023 the said application was rejected on the ground that none of the grounds as enunciated under Order VII Rule 11 CPC for rejection of a plaint were made out. The argument of the petitioner that at the time of filing of the election petition respondent No.1 had not complied with the mandatory provisions of filing the petition, was rejected relying on the judgment of this Court in the case of **Seema Devi vs. Suman & Ors. [2017(1) RCR (Civil) 349]**. Aggrieved by the same, the present revision petition has been filed by the petitioner.

4. Learned counsel for the petitioner would contend that no cause of action is made out in the present case as the election petition has been filed only to take revenge from the father-in-law of the petitioner, who had filed a civil suit and that civil suit was decreed in favour of the father-in-law of the petitioner and the regular second appeal filed by the father of respondent No.1, namely, Sardara Ram, was dismissed by this Court vide judgment dated 11.01.2016.

5. *Per contra* learned counsel for respondent No.1 would contend that the only ground raised in the application was that respondent No.1 was not personally present at the time of filing of the election petition. Relying on the judgment in the case of **Seema Devi (supra)**, learned counsel for respondent No.1 would contend that it has been held by this Court that at the

time of presentation of the election petition by the defeated candidate, his non-appearance would not be fatal, much less not mandatory in nature, but curable.

6 Heard.

7. In the present case the only ground, which has been taken in the application under Order VII Rule 11 CPC, is as reproduced above. Though before this Court numerous other grounds are sought to be raised, however, in the application which was filed the only ground raised was that respondent No.1 had not presented himself personally at the time of filing of the election petition. In the case of **Seema Devi** (*supra*) it was held as under:

“8. *I am not in agreement with the submissions of Mr. Sahu as the language of Section 176 of 1994 Act is clear and ambiguous. If the Act is clear and ambiguous, there is no need to take the aid of other provisions and to interpret the same. The other Acts, i.e., 1994 Act and 1950 Act, envisaged the presentation of the petition by a defeated candidate in person but, whereas, Haryana Act does not envisage such mandatory requirement of law and in case, the election petition is filed without the presence of the petitioner therein, the defect is curable and it does not entail into dismissal of the election petition and this was the opinion expressed by the Hon'ble Supreme Court in un-reported judgment cited supra which reads thus :*

“Apart from the aforesaid observations, the High court has also relied on a judgment of the Punjab and Haryana High Court in Gurlal Singh versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others reported in 2010 (5) RCR (Civil) 474 which has been rendered under the Punjab State Election Commission Act, 1994. Before the High Court a submission was made on behalf of the appellant that no reliance can be placed on the provisions of the Representation of People Act, 1950 or on the provisions contained in the Punjab State Election Commission Act, 1994 (hereinafter referred to as the 'Punjab Act') as the provisions contained under the Haryana Act are different. The High Court, has, however, negated the aforesaid arguments with the following observations :

“So far as argument of learned counsel for the petitioner that there is no provision under Haryana Act like Section 80 of the Punjab Act that if petition is not presented in person, as required under Section 76 of the Punjab Act, the same shall be dismissed, is concerned, I am of the view that the said fact is not of any help to the case of present petitioner. Once, a provision is held to be mandatory in nature, non-compliance of the said

provision would be having obvious effect, i.e., dismissal for non-compliance.”

On this basis, it has been held that since the provisions contained in Section 176 of the Haryana Act was mandatory, the non presentation of the petition in person by the Election Petitioner would entail dismissal of his petition. Challenging the aforesaid conclusion, it is submitted by Mr. B.S.Mor that the aforesaid three Acts, i.e., the Representation of People Act, 1950, Haryana Act and the Punjab Act are independent acts and the provisions of each Act have to be interpreted independently. Therefore, the provisions of the Haryana Act have to be interpreted by making a reference to that Act alone.

We find substance in the submission made by the learned counsel for the appellant. The provision contained in Section 176 of the Haryana Act, 1994 is not followed by a consequential section entailing dismissal of the Election Petition, if it is not presented by the Election Petitioner in person. On the other hand, in both Section 81 of the Representation of People Act and Section 80 of the Punjab Act, non presentation of the Election Petition by the Election Petitioner by himself/herself would entail dismissal. Clearly, therefore, the Haryana Legislature

had intended to make the provision in Section 176 procedural. Thereby making the defect in non-presentation of the Election Petition by the Election Petitioner in person curable. A discretion has been vested in the Court to permit the Election Petitioner to cure the defect by appearing before the Court on a later date, if so directed by the Court.

In view of the above, we find that the judgments of the Courts below cannot be sustained and have to be set aside.”

8. None of the grounds now taken in the revision petition were either raised in the application filed under Order VII Rule 11 CPC nor were argued before the court concerned. The learned counsel has argued totally new grounds before this Court. The grounds now argued would also not be a ground to be dealt with at the stage of deciding an application under Order VII Rule 11 CPC. In view of the above, the present revision petition, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is made clear that any observation made herein shall not be considered as an expression of opinion on the merits of the case.

(ALKA SARIN)
JUDGE

16.05.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO