



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 ELECTION PETITION NO. 5 OF 2025

RAJU RAMRAO SHINDE

VERSUS

ELECTION COMMISSION OF INDIA THROUGH ITS PRINCIPAL SECRETARY AND
OTHERS

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Advocate for the Petitioner : COURTS SERVICE NOTICE TO SOLE PETITIONER IS
SERVED (THR. COURT)

Advocate for Respondents : MR.RAJENDRA DESHMUKH, SR. ADVOCATE A/W.
MR. KUNAL KALE AND MR. VIKHYATI JAIN I/B. MR. MUKUL KULKARNI AND MR.
AMOL JOSHI AND MR. SHRIRAM DESHMUKH FOR RESPONDENT NO.4.

Mr. ADV. ALOK SHARMA FOR R/2 AND 3, SHARMA ALOK MADANGOPAL
(Absent), R/1,8,13 AND 19 ARE SERVED, R/10 SERVED THROUGH SON, R/16
SERVED THROUGH WIFE, R/4 SERVED THROUGH PA, R/7 SERVED THROUGH
WIFE, R/11 SERVED THROUGH CLOSE FRIEND, R/20 IS SERVED (RE ISSUED
NOTICE), R/9 SERVED THROUGH WIFE (RE ISSUED NOTICE), R/14 SERVED AS
PER HONBLE COURTS ORDER DTD 21/03/2025, R/20 SERVED, GUJAR
VIVEKANAND VISHWAMBHAR (Absent), ADV. V. V. GUJAR FOR R/9 (Absent),
KADARALE NITIN S. BHAGIRATHA (Absent), ADV. KADARALE N S FOR R/17
(Absent), ADV. A. H . DHUPE FOR R/6 AND 15 (APPEARED IN THE COURT BUT
VP NOT FILED) (Absent), ABHAYSINH K. BHOSLE (Absent), ADV. A.K. BHOSLE
(Absent), ADV. V. V. DONGRE FOR R/20 (Absent).

WITH

APPLICATION IN EP NO. 114 OF 2025 IN EP/5/2025

SANJAY PANDURANG SHIRSAT

VERSUS

RAJU RAMRAO SHINDE AND OTHERS

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Advocate for Applicant : MR.RAJENDRA DESHMUKH, SR. ADVOCATE A/W. MR.
KUNAL KALE AND MR. VIKHYATI JAIN I/B. MR. MUKUL KULKARNI AND MR.
AMOL JOSHI AND MR. SHRIRAM DESHMUKH FOR APPLICANT.

WITH

APPLICATION IN EP NO. 159 OF 2025 IN EP/5/2025

SANJAY PANDURANG SHIRSAT

VERSUS

RAJU RAMRAO SHINDE

Advocate for Applicant : MR.RAJENDRA DESHMUKH, SR. ADVOCATE A/W. MR.
KUNAL KALE AND MR. VIKHYATI JAIN I/B. MR. MUKUL KULKARNI AND MR.

AMOL JOSHI AND MR. SHRIRAM DESHMUKH FOR APPLICANT.

Advocate for Respondents : Mr. COURTS SERVICE NOTICE SERVED TO ORIGINAL SOLE PETITIONER IN EP/5/2025

CORAM : KISHORE C. SANT, J.

DATE : 17.02.2026

PC :-

01. Heard learned Sr. Advocate Mr. Rajendra Deshmukh for the applicant in Application in EP Nos.114 and 159 of 2025, respondent No.4 in the Election Petition.

02. Application in EP No. 114 of 2025 is filed seeking rejection of Election Petition No.5 of 2025 for non-removal of office objections and consequently dismissal of the petition in default. After filing of the Election Petition in this Court, notices were issued to the respondents. Pursuant to the notice, some of the respondents have appeared.

03. However, after filing of the petition and after the present application came to be filed the learned Advocate, who filed Election Petition is elevated as Judge of this Court. In view of this, on 04.09.2025, this Court had issued notice to the petitioner. Said notice was made returnable on 03.10.2025. On 03.10.2025 though report of the service of notice was received stating that the petitioner is served,

still no steps were taken, therefore, eight weeks' time was granted to take steps as regards unserved respondents and the matter was adjourned to 12.12.2025. Still no steps were taken, the petition was adjourned to 30.01.2026. Thereafter, it was adjourned by way of last chance to 13.02.2026. On 13.02.2026 also none appeared for the petitioner. Therefore, this matter was kept today i.e. on 17.02.2026 specifically at 4.30 p.m. Still none appears for the petitioner. This Court, therefore, proceeded to hear application Exh.16 i.e. Application in EP No.114 of 2025.

04. Said Application in EP No. 114 of 2025 is filed on 16.07.2025 and copy is also served on the then Advocate appearing for the petitioner and even time was sought to file reply, which is seen from order dated 07.08.2025. Thus, it can be safely inferred that the petitioner has chosen not to contest this application. As the petitioner is the only contesting party to this application, no notice is required to other respondents in the application except Election Commission of India – original respondent. It is in this view, this Court has proceeded to decide the said application.

05. Learned Sr. Advocate invites attention of this Court to the

Civil Procedure Code, Rules framed under the Representation of the People Act, Bombay High Court Original Side Rules, 1980 and Appendix II to the Rules Framed by the High Court of Judicature of Bombay with regard to Election Petitions under the Representation of the People Act, 1951. He submits that by virtue of said rules, if there are defects in the petition, Office has to raise objection and notify the same to the petitioner. It is thereafter for the petitioner to cure the defects or remove office objections. He submits that in the present case office of this Court, on the Presentation Form of the Election Petition has raised the following objections – 2(iv) Form No.21-C returns of election not filed; 2(v) Form No. 21E – declaration of elected candidate not filed; 2(vi) Form No 22–certificate of declaration not filed; 2(vii) spare copies of notices not filed and 2(viii) Exh.“A” is incomplete. Learned Sr. Advocate submits that all these objections go to the root of the matter. Though subsequently copies are supplied to the respondents, however, other objections are not removed within stipulated time and as a matter of fact even till now the objections are not removed. He thus submits that the election petition deserves to be dismissed solely on the ground of non-removal of office objection.

06. Rules 5,7,8 and 9 of the Appendix II read as under :-

"5. Every election petition shall, in addition to the contents required by the Act, contain information as to the date of election of the returned candidate or if there be more than one returned candidates at the election and the dates of their election are different the later of the two dates and shall also show the election petition is within time as prescribed in section 81 of the Act.

6. xxxx

7. After the petition is presented, the party or Advocate shall be asked to attend the office on the third day from the date of the presentation to remove objections, if any. An undertaking in writing will be obtained from the party or Advocate to remain present in the office on the date appointed. The petitioner shall furnish his address preferably in Bombay or Nagpur, as the case may be, where any communication may be addressed to or served on him.

8. The office shall examine the petition with a view to see whether it is in conformity with the requirements of law and the rules applicable to the same, and if it is not in conformity with law and the rules, raise objections which could be removed by the party or the Advocate concerned. These objections should be brought to the notice of the party or the Advocate on the date fixed for attendance under Rule 7 and such objections shall be removed, subject to the orders of the Judge, if any, within two days thereafter.

9. Immediately after the time fixed for the removal of objections, the petition shall be placed before the Judge for such orders as may be required to be passed under Section 86 of the Act. If the petition is not dismissed under section 86(1) of the Act, a summons, on the direction of the Judge, shall be issued to the respondents to appear before the High Court on a fixed date and answer the claim or claims made in the petition. Such date shall not be earlier than three weeks from the date of the issue of the summons. The summons shall be for written statement and settlement of issues and shall be served on the respondents through the Sheriff in Greater Bombay, and through the District Judges in the rest of the State in the manner provided for the service of summons. The Prothonotary and Senior Master and the District Judges will make their best endeavour to serve the summons on the respondents and make a return of the service of the summons with the greatest expedition. "

07. Order 9, Rules 8 & 9 and Order 17 Rule 2 of the CPC read as under :-

"ORDER IX – APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

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8. **Procedure where defendant only appears** – Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. **Decree against plaintiff by default bars fresh suit** – (1) Where a suit is wholly or partly dismissed under rule 9, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for this non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party."

"ORDER XVII - ADJOURNMENTS

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2. **Procedure if parties fail to appear on day fixed** - Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such order as it thinks fit.

Explanation – Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present."

08. Looking at the above provisions, in the present case, it is seen that the petitioner in spite of service of notice dated 03.08.2025, has not appeared by engaging new Advocate. No any steps are taken.

In view of Order 9 Rule 9, it is clear that where defendant appeared and plaintiff does not appear, where the suit is called on for hearing, Court has power to dismiss the suit. In the present case the applicant-original respondent No.4 has filed application for rejection of the petition for non-removal of office objection. Thus, this Court can safely infer that the petitioner is at default, as no steps are taken.

09. It is thus clear that though it is duty of the petitioner to remove office objections, he has not taken any steps. The Hon'ble Apex Court in the judgment in the case of **Dr. P. Nalla Thampy Thera Vs. B.L. Shanker and Others, AIR 1984 SC 135** held that Election Petition can be dismissed for default by invoking provisions under Order 9 Rule 9 of the CPC. It is open for the party to thereafter file application for restoration. Looking at Order 9 Rule 9, it also gives right to the petitioner/plaintiff in such cases to apply for restoration of the suit. The Court certainly can use the powers in a fit case to restore the petition/suit, as is held by the Hon'ble Apex Court in the case of **Dr. P Nalla [Supra]**.

10. In view of Order 17 Rule 2, a procedure is given. If parties fail to appear on the dates, the Court may proceed to dispose of the suit

in the manner provided under Order 9. In the present case, this Court finds that Order IX Rules 8 and 9 are clearly attracted. This Court, therefore, does not have any hesitation to hold that the petitioner is at default.

11. So far as application of original respondent No.4 is concerned, it is seen that the petitioner has not complied with mandatory provisions of supply of Forms 21C, 21E and 22. Thus, for this reason also, the application needs to be allowed. Non-removal of office objection also can be said to be a default. In any case, it was necessary for the petitioner to remove office objection within a period of limitation.

12. This Court, thus, finds that when the petitioner has not taken steps to remove office objections and has failed to cure defects within stipulated period, this Court has no option but to dismiss the Election Petition for default. Hence, following order :-

ORDER

- (i) Application in EP No. 114 of 2025 is allowed.
- (ii) Election Petition No. 5 of 2025 is dismissed for default.
- (iii) In view of dismissal of Election Petition, Application in EP No. 159 of 2025 does not survive and stands disposed off.

- (iv) Copy of this order be sent to the respondent- Election Commission of India.

[KISHORE C. SANT, J.]