
(2011) 02 CHH CK 0074
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 772 of 2011

Balaram Rathore

APPELLANT

Vs

The Sub-Divisional Officer (Rev.), Bilaspur and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Chhattisgarh Panchayat (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 — Rule 11
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 122
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4, 151

Citation : AIR 2011 Chh 120

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Heard on admission.

2. The petitioner is elected Sarpanch of Gram Panchayat Kodiya, Block-Masturi, Tehsil-Masturi, District Bilaspur (C.G.). His election was called in question by filing an election petition u/S. 122 of the Chhattisgarh Panchayat Raj Adhiniyam, by respondent No. 2. Respondent No. 1 (the Election Tribunal) after taking defence of the parties framed issues on 10-1-2011 and thereafter called upon the parties to lead their evidence. Respondent No. 2 thereafter filed an affidavit of Respondent No. 5 as evidence under Order 18, Rule 4 of C.P.C. The copy of the affidavit of respondent No. 5, filed as evidence by respondent No. 2, was supplied to the petitioner for the purposes of cross-examination on 24-1-2011. On the said date, the petitioner prayed for time to cross-examine Respondent No. 5 who appeared as a witness for respondent No. 2 (Election Petitioner). Thereafter, the petitioner filed an application u/S. 151, C.P.C. taking ground that respondent No. 5 was also respondent No. 4 in Election Petition, therefore, his evidence cannot be adduced on behalf of the election petitioner. The said application filed raising aforesaid objection has been dismissed by the Tribunal. Hence, this writ petition has been filed.

3. Mr. A.N. Bhakta, learned counsel for the petitioner, submits that the status of respondent No. 5 was that of a defendant, therefore, he should not have been called as a witness for respondent No. 2 whose status was that of a plaintiff. He referred to Rule 11 of Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 which says that the provisions of the CPC would apply to the proceedings of Election Petition.

4. The arguments raised by Mr. Bhakta is totally misconceive. The points raised by him was once considered by Division Bench of Patna High Court in Sri Awadh Kishore Singh and Another Vs. Sri Brij Bihari Singh and Others and the view taken vide para 16 reads as under :--

16. Now I proceed to consider the merit of the impugned order. By the impugned order, the plaintiffs have been debarred from examining defendant No. 2 as a witness on their behalf, as no order was passed by trial Court for acceptance of written statement filed by this defendant. No provision could be brought to our notice on behalf of any of the parties to show that a party is debarred from examining its adversary as a witness on his behalf. A plaintiff can examine any witness he so likes -- the witness may be a stranger, may be a man of his own party or party himself or may be a defendant or his man. Therefore, if a plaintiff wants to examine a defendant as a witness on his behalf, he cannot be precluded from examining him on the ground that the said defendant has neither appeared in the suit nor upon appearance filed written statement nor prayer for filing written statement has been rejected. Therefore, in my view, trial Court has committed material irregularity in the exercise of jurisdiction in debarring the plaintiffs from examining defendant No. 2 as a witness on their behalf.

5. Considering the facts and circumstances of the case, in light of the decision referred above, I do not find any substance in this writ petition.

6. The petition is liable to be dismissed and is hereby dismissed summarily.

7. No orders as to cost.