

(2021) 03 GAU CK 0014

In the Gauhati High Court

Case No : Civil Revision Petition No. 19 Of 2021

Dipak Chandra Ruhi Das

APPELLANT

Vs

Pradip Kumar Sarkar And 14 Ors

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Limitation Act, 1963 — Section 3, 14

Code Of Civil Procedure, 1908 — Section 80(2), 115, 115(1), 121, 151, Order 1 Rule 8, Order 7 Rule 11, Order 39 Rule 3, Order 39 Rule 3A, Order 41 Rule 5, Order 43 Rule 2, Order 43 Rule 1(r)

Representation Of the People Act, 1951 — Section 21, 170

Constitution Of India, 1950 — Article 173, 227, 324, 327, 329

Citation : (2021) 03 GAU CK 0014

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M U Mahmud

Final Decision : Dismissed

Judgement

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. S. Sarma, learned counsel for the respondent nos.1 to 3, Mr. G. Bordoloi, learned Govt. Appearing for respondent nos.5 and 10 to 14, Mr. M. Nath, learned standing counsel for respondent no.8 and Mr. D. Baruah, learned standing counsel for respondent no.6.

2. By this application filed under Article 227 of the Constitution of India, the petitioner has assailed the order dated 22.02.2021 passed by the learned District Judge, Bongaigaon in Misc.(J) Case No.6/2021 in Misc. Appeal No.1/2021. By the said order, the order dated 01.02.2021 passed by the learned Civil Judge Bongaigaon in Misc.(J) Case No.6/2021 in T.S.3/2021, thereby granting ex parte ad interim injunction, was stayed till further orders.

3. At the outset, the learned counsel for the respondent nos. 1, 2 and 3 has questioned the maintainability of this application filed under Article 227 of the

Constitution of India on the ground that the statutory remedy available to assail the first appellate order in the matter of injunction would be by invoking revisional jurisdiction under Section 115 CPC. However, it is seen that Court would have jurisdiction to entertain the challenge under Section 115 CPC, as such, incorrect mentioning of the provision of Article 227 of the Constitution of India would not be a good reason to non-suit the petitioner. Therefore, despite objection by the learned counsel for the respondent nos. 1, 2 and 3, the Court deems it appropriate that the matter be heard as if entertaining a revision under Section 115 CPC. The defect can be rectified by directing the Registry to re-register this application as a revision under Section 115 CPC.

4. For the purpose of this order, it would be sufficient to mention that the petitioner had filed a suit before the learned Trial Court, being T.S. No. 3/2001, seeking the following reliefs, viz. (i) To declare that the SC Certificates obtained by private defendants, if any, has no value in the eye of law, as they obtained the same by virtue of fake SC Certificates obtained by their husband/ father on hereditary basis; (ii) To declare on a consequential and collateral relief that SC Certificates, issued by District Magistrate, Bongaigaon, dated 31-03-1990 and 11-06-1995 as or any other date in favor of Late Chandan Kr. Sarkar is illegal, null and void; (iii) To restrain the private defendants from using any SC Certificate for contesting election from the 35.No. South Abhayapuri (Reserved for Scheduled Caste) Legislative Assembly Constituency in the year 2021 or thereafter; (iv) To direct the District Returning Officer/ District Magistrate, Bongaigaon and the Sub-Divisional Returning Officer/ SDO(C) Abhayapuri not to accept the nomination paper of private defendants to contest Election from 35 South Abhayapuri (Reserved for Scheduled Caste) Legislative Assembly Constituency in 2021 or thereafter; (v) To direct the Superintendent of Police, Bongaigaon to launch Criminal Prosecution against the private defendants, if they use the fake SC Certificates anywhere, in future; (vi) to pass any order considering the facts and circumstances of the case to provide complete and adequate relief to the plaintiff and other genuine SC Community people; (vii) Any other relief to which the plaintiff is entitled for as per equity, law and good conscience; and (viii) For the costs of the suit.

5. Along with the plaint, the petitioner filed a separate application under Order XXXIX, Rules 1 and 2 read with section 151 CPC, which was registered as Misc. (J) Case No.6/2021, wherein the petitioner had prayed for an order of ad interim injunction asking the official respondents not to accept the nomination paper, if filed by the private opposite parties to contest election from 35 No. Abhayapuri South (Reserved for Scheduled Caste) Assembly Constituency (hereinafter referred to as "said Assembly Constituency") in the upcoming assembly election to be held in Assam in April, 2021 and to restrain the private respondents herein for filing nomination paper as SC candidate from the said Assembly Constituency in the election to be held in Assam in April, 2021 till disposal of the suit. It appears from the materials available on record that the injunction application was filed on 21.01.2021. It is not known that when the first order was passed in

the said case. However, as per order dated 01.02.2021, the said date was fixed for hearing on the point of jurisdiction and that by order dated 01.02.2021 passed in T.S.3/2021, the learned Trial Court disposed of petition no.77/21 filed under section 80(2) CPC, thereby waving the notice period of 60 days as required by law. By a separate order dated 01.02.2021, in Misc.(J) Case No.6/2021, the learned Trial Court issued an order of ad interim temporary injunction, asking the official respondents not to accept the nomination paper, if filed by the private opposite parties to contest election from 35 No. Abhayapuri South (Reserved for SC) Assembly Constituency.

6. Although the learned trial Court had made it open to the respondents to appear and seek alteration/ modification/ vacation of the said order, the petitioner is aggrieved because the respondent nos.1 to 3 herein, instead of applying for alteration/ modification/ vacation of the said order, had approached the learned first appellate Court under Order XLIII Rule 1(r) CPC, which was registered as Misc. Appeal No.1/2021 and the said first appellate Court by the impugned order had stayed the order of ad interim injunction granted by the learned trial Court.

7. The learned counsel for the petitioner has made elaborate submissions to demonstrate the reasons based on which the petitioner had alleged that Late Chandan Kumar Sarkar had obtained his Scheduled Caste ('SC' for short) certificate by perpetrating fraud. Accordingly, the learned counsel has justified the order of ad interim injunction as passed by the learned trial Court. It is submitted that Late Chandan Kumar Sarkar took the benefit of fake and fraudulently obtained SC certificate and had contested election from said Assembly Constituency on six occasions and that he was returned as elected MLA on three occasions. It is submitted that since the year 1993 till date, the petitioner had approached various authorities like the Election Commission of India, Deputy Commissioner, Bongaigaon, National Commission for Scheduled Caste, this Court and other forums, but no order had been passed to declare that Late Chandan Kumar Sarkar does not belong to the SC community and had no right to contest election from seat reserved exclusively for SC community. It is submitted that the then Commissioner, Revenue Department, Govt. of Assam had opined in his report dated 10.02.1994 that Chandan Kumar Sarkar did not belong to SC community and that he had obtained the SC certificate fraudulently by misrepresentation and directed the State Govt. to cancel the SC certificate dated 31.03.1993. However, no action was taken. Thereafter, by letter dated 15.03.1994, upon considering the said report dated 10.02.1994, the Election Commission of India had desired that the State Govt. should direct the Deputy Commissioner, Bongaigaon to forthwith cancel the SC certificate dated 31.03.1993 issued by him in favour of Chandan Kumar Sarkar, directed initiation of criminal proceedings and further directed the Electoral Registration Officers of the said Assembly Constituency and 13 Falakata (SC) Assembly Constituency of West Bengal to enquire as to how the name of Chandan Kumar Sarkar was enrolled as an elector in the electoral roll of the said Assembly constituencies

before 1993 and to take criminal action under section 31 of the Representation of the People Act, 1950. It is submitted that despite such orders, no action was taken by the authorities and in the meanwhile, Chandan Kumar Sarkar died on 19.11.2018, after enjoying advantage of several fake SC certificates and thereby depriving genuine SC persons. Although the learned counsel for the petitioner had meticulously referred to all the documents annexed to this application, but for the purpose of this order, all the documents are not required to be referred to in this order for the reasons which would be indicated later in this order. In support of his submissions, the learned counsel for the petitioner has relied on the following case citations, viz. (i) Prabir Kumar Das Vs. State of Tripura, 2015 (4) GLT (TR) 719, (ii) Bharati Balakrishna Dhongade Vs. State of Maharashtra, (2015) 1 SCC 566, (iii) Anjan Kumar Vs. Union of India, (2006) 3 SCC 257, (iv) Punit Rai Vs. Dinesh Choudhary, (2003) 8 SCC 204, (v) Bikash Dey Laskar Vs. Nipapriya Das & Ors., 2017 (4) GLT 603, (vi) Bijit Baruah Vs. Indian Council of Child Welfare & Ors., 2015 (5) GLT 397.

8. Per contra, the learned counsel for the respondent nos.1 to 3 had made his submissions to project that material facts have been suppressed not only before the learned trial Court, but also before this Court and he has justified the order passed by the learned first appellate Court. It is submitted that the learned trial Court committed gross and unpardonable error in passing the order of injunction dated 01.02.2021, and thereby restraining the official respondents from accepting nomination paper by overlooking the fact that the Returning Officer concerned was not a party to the suit and the injunction application. In support of his submissions, the learned counsel for respondent nos.1 to 3 has denied on the following case citations, viz. (i) S.P. Chengalvaraya Nidu (dead) Vs. Jagannath (dead) & Ors., (1994) 1 SCC 1, (ii) Akmal Ali & Ors. Vs. Abdul Mannan & Ors., 1984 (1) GLR 133, (iii) Shiv Kumar Chadha Vs. Municipal Corporation of Delhi & Ors., (1993) 3 SCC 161, (iv) Viradhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors., Vs. Tuticorin Educational Society & Ors., (2019) 9 SCC 538, (v) Zila Parishad, Budaun & Ors., Vs. Brahma Rishi Sharma, AIR 1970 All 376 (FB), (vi) Miss Lumbini Bakuah Vs. Cotton College, Guwahati & Ors., 1997 (1) GLT 67, (vii) Gadadhar Barman Vs. Ranendra Mohan Paul, 1998 (1) GLT 137, (viii) Chandan Kumar Sarkar Vs. Chief Elector Commissioner, Delhi and Ors., (1995) 1 GLR 87, (ix) The Election Commission of India & Ors. Vs. Chandan Kr. Sarkar & Ors., 1996 (1) GLT 202, (x) Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar, 2003 (1) GLR 106, (xi) Order dated 15.02.2021 passed in CRP(I/O) 18/2021, (xii) 1996 (2) GLR 473, and (xiii) Md. Saifullah WAKF Estate & Anr. Vs. Sara Devi Agarwalla Alias Madhania, 1995 (1) GLR 43.

9. The learned standing counsel for the Election Commission of India has fairly remained neutral and had referred to the provisions of the Representation of the People Act, 1951 read with Article 173 and Article 329 of the Constitution of India. It was pointed out that the Returning Officer was not party in Misc.(J) Case No.6/2021. It was submitted that under Section 170 of the 1951 Act, the jurisdiction of the Civil Courts to question the legality of any action taken or of

any decision given by the Returning Officer or by any other person appointed under the 1951 Act in connection with an election was expressly barred.

10. On examining the materials available on record, there appears to be as many as six overwhelming reasons to dismiss this revision in limine and to refuse interference with the order impugned herein.

11. Firstly, the right to file an appeal under Order XLIII Rule 1(r) CPC is a statutory right and the learned counsel for the petitioner could not show that such right is subservient to liberty granted by the learned trial Court to apply for modification of the order of injunction. The Full Bench of this Court in the case of Akmal Ali & Ors. (supra) had held that all ex parte ad interim injunctions are appealable under the aforesaid provisions. This Bench is bound by the ratio squarely covering the point. Moreover, the learned counsel for the respondent nos.1 to 3 has been able to demonstrate at least two reasons to justify why the said respondents had approached the learned first appellate Court instead of applying for modification. The reason (i) is that the learned trial Court had failed to take notice of proviso to Rule 3 of Order XXXIX of CPC which requires, inter alia, that the Court should record reasons that the object of granting injunction would be defeated if notice is issued to the opposite parties and failed to record such satisfaction. The reason (ii) is that by passing order of ex parte injunction on 01.02.2021, the learned trial Court had fixed the next date of 05.03.2021, i.e. beyond one month from the date of order, and thereby totally ignored the mandate of Rule 3A of Order XXXIX of CPC to make an endeavour to dispose of the application within 30 days.

12. Secondly, the issue of fraud and suppression of material facts as alleged by the learned counsel for the petitioner as well as the respondent nos. 1 to 3 has compelled this Court to examine the materials available on record. Although from the purpose of examining the legality of order passed in exercise of jurisdiction under Order XLI Rule 5 CPC read with Order XLIII Rule 2 and Section 121 CPC, it is not desirable that the revisional Court would deal with factual aspects, yet as the learned first appellate Court had taken note of allegations of suppression of facts and fraud, and the learned counsel for the petitioner and respondent nos. 1, 2 and 3 have both alleged fraud, the Court has been compelled to refer to certain factual matrix based on material available on record without giving any final opinion thereon. On a perusal of the affidavit- in- opposition filed by the respondent nos.1 to 3 in this case, it prima facie appears that save and except the copy of order dated 15.03.1994 passed by the Election Commission of India, 19 (nineteen) other documents, which the respondent nos. 1, 2 and 3 had filed before the learned first appellate Court had not been produced by the petitioner before this Court in connection with the instant application. Out of these documents, few of the documents involve litigation either by the petitioner or by the other office bearers of the Association of the petitioner is a member. As the petitioner has assailed the appellate order, the Court is appalled by not production of documents on record of the learned first appellate Court. The Court

is also pained to record that in Annexure-6 of this present application, a purported copy of Misc. (J) Case No. 6/2021 in TS 3/2021 has been annexed, however, the contents thereof indicates that it is actually a copy of petition no. 77/11 dated 21.01.2021, seeking leave under Section 80(2) CPC to file suit without serving notice to the Government. Thus, in this present application, the petition for injunction has not been annexed for the reasons best known to the petitioner. Therefore, the Court is constrained to hold that the petitioner had not approached either the learned trial Court or this Court with clean hands by disclosing all material facts. The act of withholding of all documents from this Court is nothing short of an act of playing fraud on the Court as well as on the respondents because had those documents not been produced on record by the respondent nos.1 to 3 by way of an affidavit- in- opposition, there was every possibility that the Court would have proceeded by accepting the stand of the petitioner as gospel truth. In this regard, the Court is inclined to refer to the paragraph 5 and 6 of the case of S.P. Chengalvaraya Naidu (supra), the relevant portion of which is quoted below

"5. ... We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6. ... Non-production and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

13. Thirdly, the learned counsel for the respondent nos.1 to 3 has prima facie been able to demonstrate that the order dated 15.03.1994 passed by the Election Commission of India, referred to above, was held to be illegal and without jurisdiction by judgment and order dated 16.09.1994 by this Court in Civil Rule No.1157/1994. The aggrieved Election Commission of India had preferred an intra-Court appeal, being WA 544/1994, and the Division Bench of this Court by judgment and order dated 18.12.1995, dismissed the said appeal

without interfering with the judgment passed in Civil Rule No.1157/1994. The said Chandan Kumar Sarkar then completed his full term as MLA from 1991 to 1996. In the General Assembly Election, 1996, he was defeated, however, there is nothing on record that any objection was raised in the year 1996 when his nomination papers was accepted. Accordingly, by order dated 25.04.2001, the nomination of the said Chandan Kumar Sarkar was accepted by the Returning Officer of the said Assembly Constituency. The election of the said Chandan Kumar Sarkar was challenged by the petitioner herein by filing election petition no.17/2001. In the said proceeding, the said Chandan Kumar Sarkar filed an application for rejection of election petition under Order VII Rule 11 CPC, which was registered as Misc. Case No.28/2001 and by judgment and order dated 31.07.2002, the election petition was rejected with a cost of Rs.500/-. The aggrieved petitioner herein moved the Supreme Court of India by filing Civil Appeal No. 8448/2002 to assail the said judgment of this Court dated 31.07.2002, but the said appeal was also dismissed by the Supreme Court of India by passing a speaking judgment dated 31.07.2003. Therefore, the learned counsel for the respondent nos. 1 to 3 has been able to successfully demonstrate that by virtue of the judgment dated 31.07.2003 passed by the Supreme Court of India in Civil Appeal No. 8448/2002, the objection by the petitioner that Chandan Kumar Sarkar was not a member of the SC community appears to have attained finality. However, the matter did not end with the judgment passed by the Supreme Court of India. This time the proceeding in respect of SC certificate of Chandan Kumar Sarkar was taken up by the District Scrutiny Committee constituted for verification of disputes/ delays regarding caste certificate of SC/ ST/OBC. The proceedings was held on 26.11.2003 and 29.12.2003 and the said Scrutiny Committee, after examining twenty two documents, held that the SC certificate issued to Chandan Kumar Sarkar by the District Magistrate, Bongaigaon was an authentic document and that he belonged to Namasudra community, which is a recognized Scheduled Caste. Thereafter, the Deputy Commissioner, Bongaigaon had communicated to the Commissioner & Secretary, Govt. of Assam, WPT & BC Department that the SC certificate issued to Late Chandan Kumar Sarkar was found authentic by the District Scrutiny Committee. The learned Counsel for the petitioner could not show that the said opinion and/ or finding of the District Scrutiny Committee dated 29.12.2003 was set aside in an appropriate proceeding. The learned counsel for the respondent nos. 1, and 3 has also shown that by order dated 09.03.2004, passed by the Supreme Court of India in I.A. No. 3/2004, the petitioner herein was permitted to withdraw Civil Appeal No.8513/2003, which was dismissed as withdrawn without any liberty.

14. The learned counsel for the respondent nos. 1 to 3 has referred to the statements made in the plaint and it is submitted that the petitioner was the Ex General Secretary of North Salmara Zilla Anusuchita Jati Parishad and that its the then President and Secretary had previously filed a suit similar to TS No. 3/2001 in representative capacity under Order I, Rule 8 CPC, which was registered as TS 32/1993 and that by order dated 31.05.1995, the learned Munsiff, North

Salmara, Abhayapuri had permitted the plaintiffs therein to withdraw the suit unconditionally without leave to file a fresh suit as per prayer made vide petition no. 151/1995. It has also been demonstrated that the election of the petitioner was once again assailed by filing election petition no.2/2016 and that by judgment and order dated 04.05.2018 passed by this Court in I.A.(Civil) 2004/2016, held that there was no triable issues in the election petition and by allowing the said interlocutory application, the election petition was dismissed. In that connection, this Court had referred to the hereinbefore referred Misc. Case No.28/2001 has decided by this Court as well as order of affirmation by the Division Bench of this Court. Thereafter, the Abhayapuri Nagar Anchalik Ansuchita Jati Parishad has assailed the caste certificate of Chandan Kumar Sarkar by filing WP(C) 1706/2008. However, in view of death of Chandan Kumar Sarkar on 19.11.2018, the challenge was closed as infructuous by order dated 02.01.2020, and similar challenge made by Anusuchita Zati Kalyan Samitee, Asom by filing WP(C) 1722/2014 was closed infructuous by order dated 02.01.2020. Therefore, on the third point, it is seen that Chandan Kumar Sarkar, when alive had endured successive challenge to his SC certificate and after his death on 19.11.2018, the challenge made to his SC certificate was closed as infructuous. Therefore, in view of the herein before referred orders passed by this Court as well as the Supreme Court of India, this is a fit and proper case wherein without expressing any opinion, the Court is required to take note of the provision of Sub-Rule (6) of Rule 8 of Order of the CPC ought to be taken note of. The said provision is quoted below:-

8. One person may sue or defend on behalf of all in same interest.-

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(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

15. Fourthly, from the news appearing in the print and electronic media, it appears that notification for election in the State of Assam was issued on or about 26.02.2021. However, the said date is not so material, but what is material is that on 01.02.2021, the date when the learned trial Court had passed the order of injunction, the election in the said Assembly Constituency was not announced. Therefore, as on 01.02.2021, there would be no Returning Officer in respect of the said Assembly Constituency, as such, the said order of injunction would not bind the Returning Officer, whose appointment did not exist on 01.02.2021, but would come after election notification has been issued. In

connection with the Assembly elections announced for the State of Assam, the Returning Officer appears to be solely empowered under the Representation of the People Act, 1951 to do scrutiny of nomination forms. The constitutional mandate under Article 324 of the Constitution of India that the superintendence, direction and control of elections is vested in an Election Commission. Under Article 327 of the Constitution of India, the Parliament has the power to make provision with respect to election to Legislatures. Accordingly, under section 21 of the Representation of the People Act, 1951 the Election Commission appoints Returning Officer. Therefore, when Returning Officer is not a party in the suit and injunction application, in the opinion of the Court, the trial Court ought not to have restrained the official respondents to receive nomination form of the respondent nos. 1, 2 and 3 and thereby preventing the Returning Officer from exercising his statutory obligation and duty, as such, the impugned order cannot be faulted with. Moreover, the learned counsel for the petitioner has not been able to demonstrate either from any legal provisions or from any case law on the point that when under Section 170 of the Representation of the People Act, 1951 the jurisdiction of civil Courts is expressly barred by providing that no civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any person appointed under the said Act in connection with an election, how the returning officer could be refrained by way of an interlocutory injunction to accept the nomination paper filed by a prospective candidate.

16. Fifthly, the petitioner has alleged that the SC certificate of Chandan Kumar Sarkar is fake and fraudulent. It is already indicated above that the election of the said Chandan Kumar Sarkar was challenged by the petitioner herein by filing election petition no.17/2001, inter alia, on the ground that SC certificate was obtained by fraud. The Court is inclined to take note of the provisions of Article 58 of the Schedule of the Limitation Act, which prescribes limitation of three years to obtain any other declaration from when the right to sue first accrues and under residuary provisions of Article 113 of the said Schedule where the limitation prescribed is three years from when the right to sue accrues to file any suit for which no period of limitation is provided elsewhere in the Schedule. Therefore, when election of Chandan Kumar Sarkar was assailed in the year 2001, in any view of the matter, it prima facie appears that the suit seeking declaration that SC certificates of Chandan Kumar Sarkar on 31.03.1990, and 11.06.1995 is illegal, null and void, appears to be filed beyond the mandate of Article 58 and/or Article 113 of the Schedule of the Limitation Act. But no final opinion is expressed and the issue is left to be decided by the learned trial Court. The issue of limitation has been taken up because in the case of State of Gujarat Vs. Kothari and Associates, (2016) 14 SCC 761: 2015 STPL 9107 SC, the Supreme Court of India had observed as follows:-

6. Section 3 of the Limitation Act explicitly states that "every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence." It is thus

incumbent upon the Court to satisfy itself that the suit is not barred by limitation, regardless of whether such a plea has been raised by the parties. In *Union of India vs. British India Corporation Ltd* (2003) 9 SCC 505, it has been opined that "the question of limitation is a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it, if there is no dispute on facts." It is thus irrelevant that the Appellant State had not raised the issue of limitation before the Trial Court. A duty was cast on the Court to consider this aspect of law, even on its own initiative, and since it failed to do so, the Appellant State was competent to raise this legal question in appeal or indeed even in any successive appeal. Close to a century ago, in *Lachhmi Sewak Sahu vs. Ram Rup Sahu* AIR 1944 Privy Council 24, it has been held that the point of limitation is available to be urged even in the Court of last resort.

The learned trial Court had not made any attempt to ascertain whether the claim is barred by limitation before granting ad interim injunction.

17. Sixthly, what really seals the fate of the petitioner is that in the suit, the petitioner has not made any prayer for permanent injunction. In this regard, it is well settled that in the absence of a prayer for permanent injunction, temporary injunction cannot be granted. If one needs any authority on the point, the case of *Gadadhar Barman Vs. Ranendra Mohan Paul*, 1998 (1) GLT 137. Paragraph 4 thereof is quoted below:-

4. Next coming to the question regarding order dated 3.4.93 in Misc. Case No. 1/89, that was an order of maintenance of status-quo making the earlier order of injunction absolute. It may be stated herein that no such prayer was made in the plaint by the plaintiff. Only three prayers were made in the plaint. But without prayer of an injunction an order of maintenance of status quo was granted. It is well settled that without making prayer of permanent injunction no temporary injunction can be granted. When a permanent injunction was not sought for the question of granting temporary injunction does not arise. That aspect of the matter was not taken into consideration by the learned Munsiff and setting aside the order of cancellation passed by the Deputy Inspector of School is illegal.

Moreover, the learned trial Court has merely mentioned in the order granting injunction that the three cardinal principles governing the grant of injunction would be applicable in this case for granting ad interim injunction, but no discussion has been made as to the existence or absence of prima facie case in favour of the petitioner, why balance of convenience tilted in favour of grant of injunction and when the Representation of the People Act, 1951 is a complete Code, how the petitioner shall suffer any loss or injury, not to speak of irreparable loss, if ad interim injunction is not granted. The Court is conscious of the ratio laid down in the case of *Wander Limited Vs. Antox India Private Limited*, (1990) 1 SCC 727, wherein the Supreme Court of India has held that the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. Therefore, ratio of the case of

Bikash Dey Laskar (supra) cited by the learned counsel for the petitioner does not help the petitioner in any manner. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. There is no doubt that the Revisional Court would be also bound by the same principles. However, in this case, six overwhelming reasons has been discussed, which would demonstrate that in the present case in hand, the learned trial Court had not exercised its discretion reasonably and in a judicial manner. The learned counsel for the respondent nos. 1, 2 and 3 has been able to successfully demonstrate that the learned trial Court had exercised its discretion arbitrarily, capriciously and perversely and that ad interim injunction was granted by order dated 01.02.2021 by ignoring the settled principles of law regulating grant or refusal of interlocutory injunctions. Therefore, the impugned first appellate order is found to warrant no interference.

18. In so far as the case of Prabir Kumar Das (supra), Bharati Balakrishna Dhungada (supra) and Anjum Kumar (supra) is concerned, the same does not help the petitioner in any manner because notwithstanding the cancellation of one SC certificate, the status of Late Chandan Kumar Sarkar as a SC candidate has been upheld by this Court as well as the Supreme Court of India has elaborately discussed hereinbefore. Moreover, the District Scrutiny Committee had declared the status of Chandan Kumar Sarkar as a person from SC community. The said finding has already attained finality. Therefore, once the declaration of status is given and/ or declared by the Court as well as by the competent authority, the onus would shift on the petitioner to disprove such status. In respect of the case of Punit Rai (supra), the action initiated by the Election Commission of India was set aside by this Court and upheld by the Division Bench of this Court. Hence, the said case is squarely distinguishable from the facts of the present case and the said case does not help the petitioner in any manner. The case of Bijit Baruah (supra) was cited to show that the petitioner was entitled to the benefit of section 14 of the Limitation Act in all attempt to overcome the period of limitation. However, there is no statement on oath in this application that each proceeding initiated by the petitioner or any other 3rd party in the matter of challenge to the SC certificate of Late Chandan Kumar Sarkar was before a wrong forum and no particulars have been pleaded to show the date of its filing and disposal. Moreover, there is no statement on oath as to how after disposal of the cases on merit, the principle of section 14 of the Limitation Act can be invoked. The cases are authority for the facts which is actually decided, thus, it is seen that none of the cases cited by the learned counsel for the petitioner is of any assistance to the petitioner in any manner.

19. Therefore, the Court is constrained to hold that the learned first appellate Court is not found to have committed any jurisdictional error as envisaged under Clause (a), (b) and (c) of Sub-Section (1) of Section 115 of the CPC. The Court is reminded of the Constitution Bench decision of the Supreme Court of India in the case of P.D. Chougule Vs. Maruti Hari Jadav & Ors., AIR 1966 SC 153, wherein it

was held that error of lower court in question of law which was not related to question of its jurisdiction, could not have been interfered with and it was held that interference was not justified. Similarly, while dealing with the scope of Revision under Section 115 CPC, the Supreme Court of India in the case of Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137 held that the High Court cannot assume appellate powers to correct every mistake of law, further holding that the High Court should not interfere where long drawn process of reasoning is required to find out and establish error and it was also held that where there can be two opinions, it can hardly be termed as 'error apparent on the face of record'. Therefore, in view of the discussions above, the present application is found wholly without any merit whatsoever. Therefore, for the five reasons as discussed above, there appears to be no reason for referring to the documents produced by the petitioner because the petitioner has suppressed material facts from this Court as already indicated herein before. Thus, the present revision is dismissed in limine. Resultantly, no interference is called for in respect of the order dated 22.02.2021 passed by the learned District Judge, Bongaigaon in Misc.(J) Case No.16/2021 in Misc. Appeal No.1/2021.

20. However, before parting with the records, it is clarified that the observations made herein before is for deciding this revision and should not be construed to be a binding decision on merit, which is left open to be decided by the learned Courts below, as such, the learned Courts below shall decide the matter without being influenced by any observations made in this order.

21. The Registry is directed to re-register this revision as one under Section 115 of the CPC and not under Article 227 of the Constitution of India by making necessary correction in the cause title.