
(2016) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15839 of 2016 (With Stay Application No. 14100 of 2016)

Mani Ram

APPELLANT

Vs

Ramniwas

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Rajasthan Panchayat (Election) Raj Rules, 1994 — Rule 89

Citation : (2017) 1 WLN 87

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mr. Vijay Poonia with Mr. Anil Kumar, Advocates, for the Petitioner;
Mr. Deshraj Kalwania, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Mr. Mohammad Rafiq, J. - This writ petition has been filed by petitioner for setting aside order <ï><ß>dated 24.10.2016 passed by the District Judge, Jhunjhunu, in Election Petition No. 71/2015 ? Ramniwas v. Mani Ram and Others</ß</ï>, whereby the application filed by the petitioner under Order 7, Rule 11 of the CPC has been dismissed.

2. Petitioner is a returned candidate for the post of Sarpanch of Gram Panchayat Govala of District Jhunjhunu. Election-petitioner/Respondent no.1 filed election petition under Section 43 of the Rajasthan Panchayati Raj Act, 1994, read with Rules 80 to 89 of the Rajasthan Panchayati Raj Election Rules, 1994. The election petition came to be decided by the District Judge, Jhunjhunu, by judgment dated 27.08.2016, which was passed ex-parte against the petitioner and his election was declared as illegal and void and the post of Sarpanch of village Panchayat was declared vacant. That judgment was challenged by the petitioner by filing writ petition before this court, which came to be allowed vide judgment dated 26.09.2016 and the judgment dated 27.08.2016 was set aside and election

petition was directed to be reheard on merits. The election petition was taken up by the District Judge, Jhunjhunu, for its decision. The petitioner filed an application under Order 7, Rule 11 of the CPC for rejection of the election petition on various grounds, including the ground that the petition suffers from defects of non-joinder and misjoinder of the parties and that compliance of the provisions of sub-Rule 3 of Rule 80 of the Rules, 1994, was not made by the election-petitioner/respondent no.1. After hearing the parties, learned District Judge rejected the application of the petitioner. Hence this writ petition.

3. Having heard learned counsel for the parties and perused the material on record, this court does not find any error per illegality in the impugned order. Learned court below has recorded that the facts mentioned in the election petition can only be considered while deciding the application. The election-petitioner/respondent no.1 filed the postal receipt which shows that he forwarded the copy of the election petition to the District Election Officer and thus he complied the provisions. The attestation was also on the file and the correctness thereof can be decided at the time of final decision of the election petition. So far the ground of non-joinder and misjoinder of the parties to the election petition is concerned, learned court below has observed that if this is so then the election-petitioner/respondent no.1 would not get proper relief. The main issue in the election petition is that the petitioner herein was not having requisite qualification at the time of filing of the nomination and there is pleading in the election petition to that effect. I do not find any error or illegality in the impugned order and it has rightly dismissed the application.

4. In view of above, the writ petition fails and the same is dismissed. Stay application is also dismissed.