

(2014) 02 KAR CK 0358

In the Karnataka High Court

Case No : Writ Petition No. 101513/2014 (LB-ELE)

Satish

APPELLANT

Vs

Imamhusain and Others

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17
Karnataka Municipal Corporations Act, 1976 — Section 33

Citation : (2014) 02 KAR CK 0358

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Deepak S. Shetty, Advocate for the Appellant; Prakash S. Udikeri, Advocate for C/R.1 and Sri A.G. Maladar, H.C.G.P. For R.7, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Aravind Kumar, J.—Respondent No. 1 in the Election Petition 2/2013 is before this Court seeking for quashing of the order dated 21.01.2014 dismissing IA-14 filed by the writ petitioner (respondent No. 1 before the trial court) under Order XVIII Rule 17 CPC.

2. I have heard the arguments of Sri. Deepak S. Shetty, learned counsel for the petitioner, Sri. Prakash S. Udikeri, learned counsel appearing for caveator/respondent No. 1 and learned High Court Government Pleader appearing for respondent No. 7. Notice to respondent Nos. 2 to 6 dispensed with since they are not either aggrieved by the impugned order or they would be prejudiced in any manner whatsoever by any order that would be passed by this Court in the present writ petition.

3. Petitioner and respondent Nos. 1 to 5 contested for the post of Municipal Councillor from Ward No. 38 of Hubli-Dharwad Municipal Corporation in the municipal elections held on 07.03.2013. The said ward had been reserved for Backward Class-A category. Petitioner herein was duly elected in the said

election, the results which came to be announced and notification was issued on 14.05.2013.

4. First respondent herein filed an Election Petition in E.P.2/2013 u/s 33 of the Karnataka Municipal Corporations Act, 1976, contending inter alia that result declaring writ petitioner herein as successful returned candidate for the seat of the councillor to Corporation of City of Hubli Dharwad Municipal Corporation, Ward No. 38, reserved for Backward Class-A category be declared as null and void since he does not belong to Backward Class-A category. The said election petition came to be resisted by petitioner herein by filing a detailed statement of objections and it is being contested. Parties have tendered their evidence. An application IA-12 came to be filed for production of documents as per the list appended to the said application which is at Annexure-F and said application came to be allowed by the trial court by order dated 13.01.2014 on payment of cost of Rs. 1,000/-. IA-13 had been filed seeking a direction to the State of Karnataka/respondent No. 7 herein to produce the documents pertaining to nomination of writ petitioner which came to be rejected on the ground that these documents are public documents and as such, writ petitioner can obtain certified copies of these documents and produce the same. Writ petitioner obtained certified copies of these documents and filed an application-I.A. No. 14 under Order XVIII Rule 17 CPC for recall of R.W.-1 (writ petitioner) to lead further evidence which application came to be resisted by the 1st respondent herein and trial court by the impugned order dismissed the said application on the ground that election dispute has to be disposed of within a period of six months as contemplated under the Karnataka Municipal Corporations Act, 1976. In so far as the reason given by the Election Tribunal that election dispute is to be resolved or disposed of within six months as contemplated under the Karnataka Municipal Corporations Act, 1976 there cannot be any dispute with regard to the said finding. However, trial court having allowed the application I.A. No. 12 filed by the writ petitioner i.e., 1st respondent before the trial court for production of documents, in the interest of justice, it ought to have allowed respondent No. 1 therein to mark those documents in evidence subject to admissibility and to avoid any further multiplication of litigation in this regard at a later stage.

5. The only apprehension expressed by Mr. Prakash S. Udikeri, learned counsel appearing on behalf of respondent No. 1 herein i.e., the petitioner before the trial court is that the writ petitioner herein being a successful candidate would intend to drag on the proceedings or protract the proceedings and he would make attempts to ensure that election petition would become infructuous by keeping it alive and also ensuring it that it does not see the light of the day by way of final order or judgment. Said apprehension expressed by the learned counsel would be justified and same has to be addressed to and allayed. In the instant case, trial has already commenced and records would clearly indicate that parties have already tendered their evidence and it is at the stage of hearing of final arguments and if parties are put on terms and a time frame is fixed to the trial court to dispose of the election petition, I am of the considered view that it would

meet the ends of justice and would allay the apprehension expressed by the learned counsel appearing for the petitioner also.

6. It also requires to be noticed at this juncture that the documents which are sought to be produced by petitioner are 10 in number. Documents at Sl. Nos. 1, 5 and 10 have already been marked as Ex.P.18, Ex.P.4 and R.29 respectively and as such question of marking these documents once again would not arise and for the limited purpose of permitting writ petitioner i.e., respondent No. 1 before the trial court to lead evidence namely to mark the remaining documents as per the list dated 07.01.2014 other than those noted hereinabove it would meet the ends of justice. Hence, the following:

ORDER

i) Writ petition is hereby allowed in part and order dated 21.01.2014 at Annexure-A is hereby quashed.

ii) IA-14 - Annexure-H is hereby allowed on payment of cost of Rs. 5,000/- and writ petitioner is permitted to mark the documents as per list dated 07.01.2014 in his evidence (R.W.-1 evidence) except document at Sl. Nos. 1, 5 and 10.

iii) Payment of cost as ordered hereinabove shall be condition precedent for permitting the writ petition i.e., respondent No. 1 to mark these documents.

iv) Trial court shall dispose of the election petition within the following time frame:

All parties are directed to co-operate with trial Court. In the event of either of the parties to the proceedings before trial court were to seek for adjournment without any justifiable cause to the satisfaction of the trial court, it shall be at liberty to grant such an adjournment subject to payment of cost which shall not be less than Rs. 10,000/- per hearing.