

# **Anupam Pathak vs Dinesh Chandra @ Dinesh Chandra Bhatt ... on 30 May, 2025**

**Author: Rohit Ranjan Agarwal**

**Bench: Rohit Ranjan Agarwal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No.-2025:AHC:93158

Reserved on : 21.5.2025

Delivered on : 30.5.2025

Court No. - 9

Case :- CIVIL REVISION No. - 63 of 2025

Revisionist :- Anupam Pathak

Opposite Party :- Dinesh Chandra @ Dinesh Chandra Bhatt And 8 Other

Counsel for Revisionist :- Kartikeya Saran,Shikhar Awasthi

Counsel for Opposite Party :- Shreya Gupta,Shahnawaz Akhtar

Hon'ble Rohit Ranjan Agarwal,J.

1. This revision under Section 115 of the Code of Civil Procedure (hereinafter referred as the 'CPC') has been filed assailing the order 28.2.2025 passed by the District Judge, Budaun rejecting the application under Order VII Rule 11 CPC filed in Election Petition No. 1 of 2023 by the returned candidate.

2. Facts, leading to filing of the present revision, are that revisionist alongwith other candidates contested the election for the post of Chiarmen of Nagar Panchayat Mudiya Dhureki. The elections were held on 11.5.2023 and the counting of the votes was held on 13.5.2023. Revisionist having received 1495 votes was declared as winning candidate. Respondent no. 1 Dinesh Chandra @ Dinesh Chandra Bhatt filed an Election Petition No. 1 of 2023 questioning the election of the revisionist. The election petition was contested and written statement was filed. Thereafter, the issues were also framed. On 30.1.2025 the revisionist filed an application under Order VII Rule 11 read with Section 151 CPC for rejection of the plaint. The election tribunal by the order impugned had rejected the said application filed under Order VII Rule 11 CPC. Hence, present revision.

3. Sri Kartikeya Saran, learned counsel appearing for the revisionist, submitted that the power to question a municipal election under The U.P. Municipalities Act, 1916 (hereinafter referred as the 'Act of 1916') is provided under Section 19 by presentation of an election petition. Sub-section 2 (b) of Section 19 of the Act of 1916 specifically bars the institution of an election petition on the ground that any non-compliance with the act or rules, or of any mistake in the form required thereby, unless such irregularity has materially affected the result of the election.

4. According to him, election petition should have disclosed the material facts and particulars for consideration and in the instant case a vague allegation of 250 voters being included in the voter list has been made which cannot be the ground for declaring the result of a returned candidate as void. He then contended that the application under Order VII Rule 11 CPC has been summarily rejected without deciding the points raised therein. Reliance has been placed upon the decisions of Azhar Hissain Vs. Rajiv Gandhi, 1986 SCC 315, Ram Lakhani Yadav Vs. Usha Rani & 8 Others, Writ-C No. 43917 of 2015, Neutral Citation No. 2015:AHC:186058, Poonam Vs. Election Tribunal & Ors. MANU/UP/2496/2016, Shyamdeo Pd. Singh Vs. Nawal Kihore Yadav, AIR 2000 SC 3000, Ashok Kumar Vs. Md. Hasnain & 9 Ors. 2019:AHC:162001, Karim Uddin Barbhuiya Vs. Aminul Haque Laskar & Ors. Civil Appeal No. 6282 of 2023 and Kunwar Nipendra Bahadur Singh Vs. Jai Ram Verma & others, 1977 SCC OnLine SC 222.

5. Ms. Shreya Gupta, learned counsel appearing for the election petitioner/respondent no. 1 submitted that as the election petition is progressing and is at the stage of final arguments, application moved under Order VII Rule 11 CPC was not maintainable. She further contended that the material facts have been disclosed in the election petition and the election tribunal has rightly rejected the application filed under Order VII Rule 11 CPC. Reliance has been placed upon the decision of Apex Court rendered in case of M/S Bhagya Estate Ventures Pvt. Ltd. Vs. Narne Estates Pvt. Ltd. & Another, Civil Appeal No. 4570 of 2023, decided on 11.9.2024. The relevant paragraph nos. 12 to 14 are extracted hereunder;

"12. The above position holds good as we are not of the opinion that issuance of summons shall foreclose the right of the defendant to seek rejection of plaint; but the focal issue for consideration is that till when and for how long can this right of the defendant survive?

13. It is amply clear that the purpose behind such a provision is to ensure that the complaints or petitions which are defective, for any of the reasons enumerated, shall not be allowed to proceed further and shall be put to an end before they progress to an advanced stage. When such is the purpose, we fail to understand as to how an application for rejection of a plaint can be entertained at a stage where written submission has already been filed, evidence has been led and the trial has substantially reached the stage of final arguments, as in the present case. This would rather go completely against the objective of the provision and would effectively not serve the purpose which it intended to.

14. Moreover, when the proceedings have reached such an advanced stage of trial and the Court has gone through the merits of the case, it is fair to presume that the Court has already applied its mind to the substantive submissions and cannot make a prima facie conclusion about a plaint being improper at the outset or not. Also, it is a settled position of law that when the court is considering an application under Order VII Rule 11, it must only peruse and consider the averments in the plaint to check whether the plaint is defective for any of the reasons provided under the rule or is a proper plaint. Since the plaint is the only material to be considered while deciding an application seeking rejection of plaint, then in a case where plaint has been registered, written submission has been filed, evidence has been recorded, and the parties are ready for final arguments, it is only natural that some form of bias or opinion regarding the merits of the case would crop up in the mind of the court. In such a scenario, looking at the plaint in isolation and deciding the rejection application based solely on prima facie reading of the plaint would not be possible. At this point, the trial has rather fructified to a stage where the dismissal of a suit on merits is a more appropriate course of action instead of rejecting a plaint at the outset which should have been done at a preliminary stage."

6. I have heard respective counsel for the parties and perused the material on record.

7. Before advertng to decide the issue in hand a cursory glance of some of the provisions of the Act of 1916 is relevant for better appreciation of the case. Electoral rolls to be maintained for the election to the municipality has been provided under Section 12-A, 12-B, 12-C, 12-D and 12-E. Section 12-F provides for the correction of electoral rolls. Section 12-G provides for the revision of electoral rolls. Section 13-K bars the jurisdiction of civil court to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of an ward or to question the legality of any action taken by or under the authority of State Election Commission in respect of preparation and publication of electoral roll. Further, the legality of any action taken or decision given by the Returning Officer or by any officer appointed under the act in connection with an election also cannot be questioned.

8. Section 19 of the Act of 1916 provides for the power to question municipal election by petition, which is extracted hereasunder;

"19. Power to question municipal election by petition. - (1) The election of any person as a member of a [Municipality] may be questioned by an election petition on the ground, -

(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 28;

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or any other reason was not duly elected by a majority of lawful votes;

[(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.] (2) The election of any person as a member of a [Municipality] shall not be questioned, -

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls;

[(b)] on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

9. From the reading of the above provision, it is clear that the election of any person as a member of a municipality may be questioned through an election petition on the grounds enumerated under clause (a) (b) and (c) of Sub-section (1). Sub-section (2) clearly bars the election petition on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls. Similarly, clause (b) of Sub-section (2) further bars an election petition on the ground of any non-compliance of any provision of the Act or any rule, or any mistake in the forms required thereby, unless such irregularity has materially affected the result of the election petition, meaning thereby that through an election petition the election petitioner cannot challenge an election that a person who was qualified to vote has been omitted from the voter list or the name of any person who was not qualified has been added therein.

10. Similarly, the said provision also restricts the filing of election petition on the ground of any non-compliance of any provision of the act or rules or any mistake in the forms required to be filed by any candidate therein. It is only when there is irregularity which has been committed has materially affected the result of the election that an election petition could be maintainable.

11. Further, Section 20 of the Act of 1916 prescribes the forms and presentation of election petition, which is extracted hereasunder;

"20. Form and presentation of election petitions. - (1) An election petition shall be presented within 30 days after the day of which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set for the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the dates and place of the commission of each such practice.

(2) The petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.

(3) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality or by a person who claims that his nomination paper was improperly rejected.

(4) The person whose election is questioned and, where the petitioner claims that any other candidate should be declared elected in the room of such person, every unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition.] [(5) The petition shall be presented to the District Judge exercising jurisdiction in the area in which the municipality, to which the election petition relates, is situate:

Provided that the petition shall not be entertained by the District Judge, unless it is accompanied by a treasury challan showing that the prescribed security has been deposited]."

12. From the perusal of the said provision, it is clear that election petition which questions the result announced by a Returning Officer shall specify the ground or grounds on which the election is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set for the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices.

13. Thus, from the conjoint reading of Sections 19 and 20 of the Act of 1916, it culls out that the election of any person as a member of municipality may be questioned through an election petition on the grounds enumerated therein, and the election petition has to disclose the concise statement of material facts on which election petitioner relies and also to set for the full particulars.

14. Thus, for the maintainability of an election petition "material facts" and "particulars" have to be disclosed. In the matter relating to the elections held under The U.P. Panchayat Raj Act, 1947, Full Bench of this Court in case of Ram Adhar Singh Vs. The District Judge, Ghazipur & Ors. 1985 AWC 246 had the occasion to consider what are the material facts to be disclosed in an election petition.

The Full Bench in paragraph no. 18 of the judgment held as under;

"We are unable to accept the submission made by the learned Counsel. As already explained the Supreme Court has, in cases arising under the Representation of the People Act, spelt out the condition that all the courts dealing with an election petition should not exercise its discretion to permit inspection of ballot papers unless the petition contains an adequate statement of material facts on which the Petitioner relies in support of his case (viz. that the petition meets the requirements of Section 83(1) of the Representation of the People Act regarding contents of an election petition) for the reason that under the Act, it is a matter of utmost importance to maintain the secrecy of ballot which is sacrosanct and which should not be lightly allowed to be violated on vague and indefinite allegations. This reason applies equally to an election held under the U.P. Panchayat Raj Act which too cherishes secrecy of ballot to the same extent. Viewed from this angle, it becomes evident that the amplitude and purpose of the requirement of Section 83(1)(a) of the Representation of the People Act that the election petition must contain a concise statements of material facts on which the Petitioner relies and that of Rule 24 of the Rules framed under the U.P. Panchayat Raj Act to the effect that an application under Section 12-C(1) of the Act must specify the grounds on which the election of the Respondent is being questioned as also a summary of circumstances alleged to justify the election being questioned on such grounds, is the same, viz. that the court or the authority dealing with an election petition under the respective enactments, should not countenance or proceed to investigate into any ground taken in the election petition unless the ground as well as the material in support of such ground have been adequately disclosed in the petition. Neither of the two enactments countenances the court or the authority to permit the election Petitioner to make or indulge into making of a roving enquiry with a view to fish out material for declaring an election void; and it is this weighty factor which impels the court or the authority not to look into or permit inspection of ballot papers unless the foundation for the purpose has been properly laid in the petition by specifying the ground and the material or the circumstances in support of such ground. Viewed in this light, the provisions contained in the U.P. Panchayat Raj Rules permitting the summary hearing of an application under Section 12-C(1) of the Act and authorising the Sub-Divisional Officer to, instead of recording evidence in full, merely maintain a memorandum thereof, has no bearing on the question regarding circumstances in which the ballot papers can either be looked into or permitted to be inspected in proceedings under Section 12-C of the U.P. Panchayat Raj Act."

15. In *Ram Sewak Yadav Vs. Hussain Kamil Kidwai & Ors.* AIR 1964 Sc 1249, the Constitution Bench of Apex Court while considering the matter under The Representation of People Act, 1951 (hereinafter referred as the 'Act of 1951') held that allegation made by the election petitioner against the returned candidate must be clear and specific and must be supported by adequate statement of material facts, making out prima facie case on the basis of material produced before the Court regarding the truth of the allegations made on record. Relevant paragraph nos. 6 and 7 of the

judgment are extracted hereasunder :

"6. An election petition must contain a concise statement of the material facts on which the petitioner relies in support of his case. If such material facts are set out the Tribunal has undoubtedly the power to direct discovery and inspection of documents with which a civil court is invested under the Code of Civil Procedure when trying a suit. But the power which the civil court may exercise in the trial of suits is confined to the narrow limits of O. 11, Code of Civil Procedure. Inspection of documents under O. 11, Code of Civil Procedure may be ordered under rule 15, of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under rule 18(2) of other documents in the possession or power of the other party. The Returning Officer is not a party to an election petition, and an order for production of the ballot papers cannot be made under O. 11 Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the Returning Officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers. That power is clearly implicit in Sections 100(1)(d)(iii), 101, 102 and rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot papers which is apart from O. 11 Code of Civil Procedure may be exercised, subject to the statutory restrictions about the secrecy of the ballot paper prescribed by 94 and 128(1).

7. An order for inspection may not be granted as a matter of course : having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled :

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

16. In *Udhav Singh Vs. Madhav Rao Scindia*, (1977) 1 SCC 511, the Apex Court had the occasion to consider the difference between "material facts" and "material particulars" in a case dealing with the Act of 1951 held as under;

"42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

43. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

44. The distinction between "material facts" and "material particulars" was pointed out by this Court in several cases, three of which have been cited at the Bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A.N. Ray, J. (as he then was) said on this point in Hardwari Lal case: [SCC p. 220, para 20] "It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by Counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words 'any assistance' were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action."



17. In *L.R. Shivaramagowda vs. T.M. Chandrashekar*, (1999) 1 SCC 666, the Supreme Court again reiterated that election petitioner has to plead that result of election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act and Rules. The Court also stressed importance of pleading in an election petition and distinction between "material facts" and "material particulars". Relevant paragraph 10 and 11 are extracted hereasunder:-

"10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.

11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In *Balwan Singh v. Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91] the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given."

18. In *H.D. Revanna vs. G. Puttaswamy Gowda*, (1999) 2 SCC 217, the Apex Court pointed out the distinction between the "material facts" and "particulars". Relevant paragraph 23 is extracted hereasunder:-

"23. This Court has repeatedly pointed out the distinction between "material facts" and "particulars". Insofar as "material facts" are concerned, this Court has held that

they should be fully set out in the election petition and if any fact is not set out, the petitioner cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an election petition. As regards particulars, the consistent view expressed by this Court is that the petition cannot be dismissed in limine for want of particulars and if the court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in *Balwan Singh v. Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91] held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out."

19. In *Virender Nath Gautam vs. Satpal Singh*, (2007) 3 SCC 617, the Apex Court again had the occasion to consider the difference between "material facts" and "particulars". The Hon'ble Court further held that election petition is liable to be dismissed on the ground as the case is covered by clause (a) of sub-section (1) of Section 83 of the Act of 1951 read with clause (a) of Rule 11 of Order VII CPC. Relevant paragraphs 30, 31, 34 and 35 are extracted hereasunder:-

"30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rd Edn.), p. 349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of

material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

20. In *Kanimozhi Karunanidhi Vs. A. Santhana Kumar* 2023 LiveLaw (SC) 398, the Hon'ble Apex Court again had the occasion to consider the distinction between "material facts" and "particulars" and the Court relying upon its earlier decision enunciated the legal position and summed up the case and held as under:-

"28. The legal position enunciated in afore-stated cases may be summed up as under:-

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act."

21. In the instant case the returned candidate/revisionist has specifically set up a case that election petition was not maintainable in view of Section 19 (2) of the Act of 1916 as vague allegations have been made in the election petition especially in paragraph nos. 8 and 9 that 250 voters were added who were not the resident of Nagar Panchayat Mudiya Dhureki without disclosing their names.

22. Similarly, clause (b) of Sub-section (2) of Section 19 also oust the institution of election petition on the ground of non-compliance of any provision of the act or rules. Prima facie there is no disclosure in the election petition as to who had wrongly voted in favour of election petitioner not being the member of Nagar Panchayat Mudiya Dhureki. A vague figure of 250 voters have been given without there being any disclosure as to their names.

23. Section 23 of the Act of 1916 clearly provides that the procedure of CPC would be followed to the extent which are not inconsistent with the act or rules in question. The application filed under Order VII Rule 11 CPC has to be considered in the light of Section 19 (2) of the Act of 1916. Reliance placed upon the decision of the Apex Court rendered in case of M/S Bhagya Estate (Supra) would not come to rescue of the election petitioner in view of the fact that prima facie election petition itself is not maintainable for non-disclosure of material facts and particulars, which Section 20 mandates.

24. In an election questioned under the Act of 1951 the Apex Court in case of Kanimozhi Karunanidhi (Supra) had summarized the legal position and held that in case material facts are not disclosed in the election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by the clause (a) and Rule 11 of Order VII of the CPC.

25. In the instant case the election tribunal seems to have been swayed away by the fact that the election petition was proceeding and, as such, the application under Order VII Rule 11 CPC was not maintainable. Prima facie, this Court finds that the election tribunal has not decided the application under Order VII Rule 11 CPC on merits and dismissed the same summarily without addressing on Section 19 (2) of the Act of 1916.

26. Considering the facts and circumstances of the case, I find that the order dated 28.2.2025 passed by the District Judge, Budaun is unsustainable in the eyes of law and same is hereby set-aside.

27. Revision stands partly allowed. The matter is remitted to the election tribunal to decide the application under Order VII Rule 11 CPC filed in Election Petition No. 1 of 2023 on merits and thereafter proceed with the election petition, strictly in accordance with law, preferably within a period of two months from the date of receipt of certified copy of this order.

[Rohit Ranjan Agarwal, J.] Order Date :- 30.5.2025 Shekhar