

[2022] 7 S.C.R. 425

K. MADAN MOHAN RAO

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v.

BHEEMRAO BASWANTHRAO PATIL & ORS.

(Civil Appeal No. 6972 of 2022)

SEPTEMBER 26, 2022

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[DINESH MAHESHWARI AND BELA M. TRIVEDI, JJ.]

Civil Procedure Code, 1908 – Or. VII r. 11 – Allowing of application u/Or.VII r.11 and rejection of Election petition by the High Court – Non-availability of the reasoned order – Appellant approached Supreme Court – Appellant pointed out that even after more than three months, the reasoned order is still not available to the parties – Held: An appeal, which could be preferred on the question of law or fact, would also remain an empty formality for the simple reason that neither determination of question of law nor determination of any question of fact by the High Court for the purpose of dealing with the application u/Or. VII r. 11 CPC is available to the parties – A party to the litigation cannot be expected to wait indefinitely for availability of the reasons for the order of the Court – The order passed by the High Court, deserves to be disapproved only for the reason that even until this date, the reasons for the said order are not available with either of the parties nor are available on the website of the High Court nor the copy of the order has been supplied despite the parties having made the applications seeking certified copy of the order – Impugned order set aside and the matter restored for reconsideration.

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*State of Punjab and Others v. Jagdev Singh Talwandi
(1984) 1 SCC 596 : [1984] 2 SCR 50 – followed.*

*Anil Rai v. State of Bihar (2001) 7 SCC 318 : [2001] 1
Suppl. SCR 298 – relied on.*

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<u>Case Law Reference</u>		
[2001] 1 Suppl. SCR 298	relied on	Para 9
[1984] 2 SCR 50	followed	Para 9

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- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6972 of 2022.

From the Judgment and Order dated 15.06.2022 of the High Court for Telangana at Hyderabad in I.A. No. 1/2020 in Election Petition No. 34/2019.

- B Dr. A. M. Singhvi, Sr. Adv., R. Anand Padmanabhan, Shashi Bhushan Kumar, Advs. for the Appellant.

Harin P. Raval, Sr. Adv., Ms. Monalisa Kosaria, B. Shravanth Shanker, B. Yeshwanth Raj, Srinivas Rao, N. Manohar, Advs. for the Respondents.

- C The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

1. The applications seeking exemption from filing the impugned order dated 15.06.2022 and filing the petition without the impugned order

- D (I.A. No. 136063 of 2022 and I.A. No. 136061 of 2021) are allowed.

2. Leave granted.

3. In this appeal, essentially the grievance projected before us is that an application under Order VII Rule 11 of the Code of Civil

- E Procedure, 1908 ('CPC') moved in the Election Petition filed by the present appellant in the High Court for Telangana at Hyderabad, was taken up for consideration after a considerable delay and, after a prolonged hearing, ultimately, the order was pronounced on 15.06.2022, purportedly allowing the application and rejecting the election petition filed by the present appellant but then, the reasoned order allowing the F application is not available as yet.

4. On the matter being taken up for consideration, learned senior counsel has appeared for the contesting respondent i.e. respondent No. 1 in caveat.

- G 5. It is pointed out by the learned counsel appearing for the contesting respondent that respondent Nos. 15 and 16 arrayed in this appeal were ordered to be deleted from the array of parties by order passed by the High Court on 17.02.2020. The submissions are taken note of. Even otherwise, looking to the subject matter of this appeal, service of notice on other respondents does not appear necessary and H stands dispensed with.

6. With the consent of the learned counsel for the parties, we A have heard the matter finally at this stage itself.

7. Dr. Singhvi, learned senior counsel appearing for the appellant has referred to the background aspects relating to the proceedings in the election petition and has also referred to the fact that in view of the delay caused, the appellant had earlier approached this Court in SLP(C) No. 4518 of 2021, where this Court granted liberty to the appellant to make a request before the Chief Justice of the High Court in its order dated 26.03.2021. B

8. It has been pointed out that, after the said order dated 26.03.2021 and a request having been made to Hon'ble the Chief Justice of the High Court, the matter was placed before another Hon'ble Judge and was proceeded further but then, hearing on the application moved under Order VII Rule 11 CPC itself took a long time with several dates of hearing; the order was reserved on 22.12.2021; the parties filed written submissions in the first week of January, 2022; and then, the matter was listed again on 01.04.2022 and was re-reserved. It is pointed out that ultimately, the order was orally pronounced by the Hon'ble Judge on 15.06.2022 but, that had only been the pronouncement of the result and no reasoned order was supplied to the parties. It has also been submitted that even after more than three months, the reasoned order is still not available to the parties. C

9. Dr. Singhvi, learned senior counsel has particularly referred to paragraph 10(v) of decision of this Court in the case of "*Anil Rai v. State of Bihar*" reported in (2001) 7 SCC 318; and paragraphs 30 and 31 of the Constitution Bench decision of this Court in the case of "*State of Punjab and Others v. Jagdev Singh Talwandi*" reported in (1984) 1 SCC 596 while submitting that in the given set of facts and circumstances, the impugned order deserves to be interfered with for want of reasons. D

10. Mr. Raval, learned senior counsel appearing for the contesting respondents has, in the first place, submitted that in the scheme of the Representation of the People Act, 1951 ('the Act of 1951'), particularly Section 116A thereof, an appeal lies against an order passed by the High Court and a properly constituted appeal having not been preferred, the matter does not require consideration by way of an appeal by special leave. Learned senior counsel for the respondent has also referred to G

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- A the decisions aforesaid, and while relying on paragraph 2 in the case of *Anil Rai*(supra), has argued that on the fundamental maxim *actus curiae neminem gravabit*, an act of the Court ought not to prejudice anyone and hence, no interference is called for against the interest of the contesting respondent, when his application has been considered and allowed on merits. The learned senior counsel has also submitted with reference to paragraph 36 of the decision in *Anil Rai* (supra) that in any case, this Court did not alter the orders impugned therein despite certain observations referable to the facts and circumstances of that case.

11. As regards the Constitution Bench decision in *Jagdev Singh Talwandi* (supra), learned senior counsel for the respondents has submitted that the observations therein, essentially relating to the matters concerning violation of fundamental rights or other rights affecting human dignity cannot, as such, be applied to every case or every cause. The emphasis of the learned counsel has been that in any case, no interference at this juncture is called for when the High Court has devoted time in hearing the application and has indeed pronounced the order, even if reasons are awaited.

12. Upon our expressing reservations in view of the peculiar nature of the position obtaining at present that even after pronouncement of the result on 15.06.2022, the reasons for the verdict are not forthcoming even until this time when this matter is being heard on 26th September, 2022; and our *prima facie* view that the order impugned deserves to be set aside only for want of reasons, learned senior counsel for the respondent has submitted, after taking instructions, that in any case, the contesting respondent has a strong case to argue on the application under Order VII Rule 11 CPC and he would be willing to co-operate even if the application is set down for consideration afresh.

13. We have considered the submissions made by learned counsel for the parties and have taken note of the totality of circumstances of this case pertaining to election petition filed by the present appellant in relation to the elections held on 23.05.2019.

G 14. Apart from the statutory requirements under Section 86(7) of the Act of 1951, of expeditious proceedings and conclusion of trial of the election petition within six months from the date of presentation, it is even otherwise indisputable that this litigation, by its very nature, calls for expeditious proceedings while being assigned a specific priority by H the Court dealing with the same.

15. In the present matter, we do not find it necessary to refer to or dilate upon the previous proceedings, including the order passed by this Court on 21.03.2021 but, find it difficult to countenance the position that even after pronouncement of the result on the application under Order VII Rule 11 CPC on 15.06.2022, the reasoned order is not available to the parties until this date.

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16. In *Jagdev Singh Talwandi's* case (supra), the Constitution Bench of this Court has observed, while stating its expectation for appropriate compliance in the following expressions:

“30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the other, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.”

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17. In *Anil Rai's* case (supra), this Court provided a few basic guidelines regarding pronouncement of judgment/orders while expecting them to be adhered to by all the concerned. Therein, amongst others, in the referred paragraph 10(v), this Court said as under: -

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“(v). If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the

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- A High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.”

18. Though several other submissions are sought to be made by
B the learned senior counsel for the respondents seeking to either distinguish the aforesaid decisions or to suggest that the said decisions are not directly applicable as precedents for the fact situation of the present case but, we are of the view that the guidelines and observations therein remain fundamental to the course of dispensation of justice in any cause before the Court and the principle set out therein need to be applied with necessary variation, as may be necessary in the given fact situation of any particular case.

19. In the present case, as indicated above, the position obtaining at present is that even after more than three months from pronouncement of the order by the High Court, the reasons are not forthcoming and are not available with either of the parties. Looking to the nature of litigation and the overall circumstances, we find it difficult to countenance this position.

20. Even if we take into consideration the submissions made on behalf of the respondents about availability of the remedy of appeal to
E this Court, in our view, such an appeal, which could be preferred on the question/s of law or fact, would also remain an empty formality for the simple reason that neither determination of question of law nor determination of any question of fact by the High Court for the purpose of dealing with the application under Order VII Rule 11 CPC is available
F to the parties. In continuity to this, we are constrained to observe that a party to the litigation cannot be expected to wait indefinitely for availability of the reasons for the order of the Court. Moreover, when the matter relates to the election petition under the Act of 1951, which itself is a time-sensitive matter, we find no reason that the appellant be relegated to the statutory remedy of appeal under Section 116A of the Act of 1951
G in this case.

21. Having said so, we do not propose to dwell on the merits of the case for the fair stand taken on behalf of the contesting respondent by the learned senior counsel after taking instructions that the respondent is ready and prepared to argue the matter afresh before the High Court,
H if the order impugned is not approved by this Court.

22. For what has been observed and discussed hereinabove, we are clearly of the view that the order dated 15.06.2022, as said to have been passed by the High Court in disposal of the application under Order VII Rule 11 CPC, deserves to be disapproved only for the reason that even until this date, the reasons for the said order are not available with either of the parties nor are available on the website of the High Court nor the copy of the order has been supplied despite the parties having made the applications seeking certified copy of the order.

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23. In the aforesaid view of the matter and in the peculiar circumstances and rather unsavory situation of the present case, we deem it appropriate, rather necessary, that the impugned order be set aside and the matter be restored for re-consideration of the application I.A. No. 1 of 2020 in Election Petition No. 34 of 2019.

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24. Having regard to the peculiar circumstances, we also deem it appropriate that this order and the entire matter be placed for necessary orders before the Chief Justice of the High Court, who may issue appropriate assigning orders for dealing with the matter pursuant to this order and in accordance with law.

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25. The parties through their respective counsel shall stand at notice to appear before Hon'ble the Chief Justice of High Court on 10.10.2022.

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26. It goes without saying that we have not dealt with the merits of the matter either way and all the aspects remain open for consideration before the High Court in accordance with law.

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27. The appeal stands allowed in the manner and to the extent indicated above.

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28. All pending applications stand disposed of.

Ankit Gyan
(Assisted by: Rahul Rathi, LCRA)

Appeal allowed.