

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3840/2013

**Arising Out of Special Leave Petition (Civil) No. 38061 of
2012**

Smt. Neena Vikram Verma
Appellant

Versus

Balmukund Singh Gautam & Ors.
Respondent (s)

JUDGMENT
J U D G E M E N T

H.L. Gokhale J.

Leave Granted.

2. This petition for Special Leave seeks to challenge the order dated 5.12.2012 passed by a learned Single Judge of the

Madhya Pradesh High Court (Bench at Indore) allowing the application filed by the first respondent under Order 6 Rule 16 of Code of Civil Procedure (CPC) being I.A No. 7248/2012 for striking off certain pleadings from the Recrimination Petition filed by the Appellant herein.

Facts leading to this petition are this wise:-

3. The General Elections to the Madhya Pradesh Legislative Assembly were notified by the Election Commission of India on 14.10.2008 and were held on 27.11.2008. The appellant herein contested the election from 201-Dhar (General) Constituency. She was declared elected on 9.12.2008 defeating the first respondent by one vote.

4. The respondent No. 1 filed Election Petition bearing No. 11 of 2009 before the High Court of Madhya Pradesh (Bench at Indore), challenging the election of the appellant on the ground of improper reception, refusal and rejection of votes under the provisions of Representation of Peoples Act, 1951 (R.P. Act, 1951 in short). This was principally on the basis that the counting of the postal ballot was done in violation of Rule 63 of the Conduct of Elections Rules, 1961, to the benefit of the appellant.

5. The appellant in turn filed a Recrimination Petition under Section 97 of the R.P. Act, 1951 within the time provided therefor, principally raising two grounds:

(a) paragraph 3 of the Recrimination Petition claimed that there were several criminal cases pending against the 1st respondent which he had not disclosed, and therefore his nomination was void and he cannot be declared to be elected,

(b) paragraph 4 thereof contended that the first respondent had indulged into various corrupt practices.

6. Respondent No.1 thereafter filed an application under Order 7 Rule 11 of CPC being I.A No. 8166 of 2009 for rejection of the Recrimination Petition on the ground that it did not disclose any cause of action. This was apart from filing the reply on merits to the Recrimination Petition. The appellant opposed I.A No. 8166 of 2009 by filing her reply. The High Court by its order dated 14.7.2011 allowed the said application, consequently leading to the dismissal of the Recrimination Petition filed by the appellant.

7. The appellant challenged this order by filing SLP (C) No. 28031 of 2011 which was converted into Civil appeal No. 1554 of 2012. By a consent order dated 2.2.2012 passed by this Court on

that appeal, the said order dated 14.7.2011 passed by the High Court was set aside, and the Recrimination Petition was restored to the file of the Election Petition No. 11 of 2009.

8. It so transpired that subsequently the High Court by its judgment and order dated 19.10.2012 allowed the Election Petition No. 11 of 2009, and set aside the election of the petitioner herein. The High Court, therefore directed the Recrimination Petition to be heard.

9. We may note at this stage that the appellant has filed a statutory appeal against the judgment and order in the Election Petition No.11 of 2009 under section 116 A of the R.P. Act, 1951, which has been admitted by this Court on 8.11.2012. By virtue of an interim order passed therein, this Court has permitted the appellant to attend the Assembly, but without any right to cast vote and to receive any emoluments.

10. In the meanwhile, respondent No. 1 filed another application being I.A No. 7248 of 2012 on 1.11.2012 under Order 6 Rule 16 for striking off the pleadings in paragraph 3 and 4 of the Recrimination Petition. Appellant opposed this application by filing a

reply. This application has been allowed by the impugned order which has led to the present Civil Appeal.

11. We may mention one more development. The appellant has filed an application under Order 6 Rule 17 to incorporate some material facts in her Recrimination Petition. That has been rejected by the High Court by its order dated 23.11.2012, and the appellant has filed a separate SLP against that order.

Submissions on behalf of the appellant:-

12. Mr. Ranjit Kumar and Ms. Pinki Anand, senior counsel appearing for the appellant took us through the application under Order 6 Rule 16 filed by the respondent No.1, and compared it with the earlier application filed by him under Order 7 Rule 11. It was submitted by them that the contents of the present application under Order 6 Rule 16 were identical to those in the earlier application filed under Order 7 Rule 11. Thus, it was pointed out that paragraphs 1 to 9 of the application under Order 6 Rule 16 were identical to paragraphs 8 (d), 8 (e), 8(f), 8 (h), 8(i), 8 (j), 8 (k), 8(l) and 8 (m) respectively of the earlier application. These paragraphs of the two applications specifically dealt with paragraphs 3 (A) to 3

(G) and paragraphs

4 (A) to 4 (D) of the Recrimination Petition. Thus, if this application under Order 6 Rule 16 is allowed, all the pleadings from paragraph 3 and 4 of the Recrimination Petition will be struck off. These paras contained the main grounds of the Recrimination Petition, and if these were struck off nothing will remain in the Recrimination Petition. Mr. Ranjit Kumar, submitted that this new application is nothing but an attempt to reagitate under a new garb the earlier application under Order 7 Rule 11 which had been rejected. He pointed out that the High Court's order on the application under Order 7 Rule 11 dismissing the Recrimination Petition had been set-aside by this Court by consent, and the Recrimination Petition was set down for hearing. Paragraph 3 and 4 of the Order of this Court dated 2.2.2012 read as follows:-

“.....

3. In course of the hearing in light of the discussion that took place, learned senior counsel for the parties agreed for the following order:

(i) The order dated July 14, 2011 passed by the High Court of Madhya Pradesh, Bench at Indore, is set aside.

(ii) The Recrimination Petition filed by the present appellant (returned candidate) under Section 97 of the Representation of the People Act, 1951 is restored to the file of the Election Petition No. 11 of 2009.

(iii) *The High Court is requested to hear and conclude the trial with regard to the challenge to the election of the returned candidate in Election Petition No. 11 of 2009-Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma and others - as early as may be possible and in no case later than May 31, 2012.*

iv) *In case the High Court declares the election of the returned candidate to be void, the High Court shall then proceed with the consideration of the Recrimination Petition and conclude the enquiry in respect thereof expeditiously and positively by August 31, 2012.*

4. *The parties shall fully co-operate with the High Court in expeditious conclusion of the trial and shall not seek unnecessary adjournments.*

.....”

13. Mr. Ranjit Kumar, therefore submitted that since the Recrimination Petition has been restored to the file by an order of this Court, it was expected that the submissions therein had to be gone into and decided. This Hon'ble Court had passed its order on 2.2.2012 in terms of the agreement arrived at between the parties. The application under Order 6 Rule 16 was filed on 1.11.2012 which was 9 months after the said consent order. This was also in the teeth of the direction by this Court to dispose of the Recrimination Petition expeditiously, and in fact all parties had specifically agreed

before this Court to fully cooperate with the High Court in expeditious disposal.

Submissions on behalf of the respondent No.1:-

14. Mr. P.P. Rao and Mr. A.V. Savant, learned senior counsel appeared for the respondent No. 1. Mr. Rao submitted that the nature of an application under Order 6 Rule 16 was different from the one under Order 7 Rule 11. Order 6 Rule 16 was to strike out those pleadings which were unnecessary, scandalous, frivolous or vexatious. As against that, Order 7 Rule 11 dealt with a situation where a plaint did not disclose any cause of action. Mr. Rao submitted that the Supreme Court Order dated 2.2.2012 did not bar filing of the application under Order 6 Rule 16 CPC for striking off unnecessary or scandalous pleadings. In support of his submission that the scope of the two provisions was different, he relied upon paragraph 18 of the judgment of this Court in **Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.** reported in **2004 (3) SCC 137** which is to the following effect:-

“18. As noted supra, Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. Order 6 Rule 16 of the Code is relevant in this regard. It deals with “striking out pleadings”. It has three clauses permitting the court at any

stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the court."

15. Paragraph 3 of the Recrimination Petition was concerning the alleged criminal activities on the part of the respondent No.1. Appellant has contended in this paragraph that the respondent No.1 had not disclosed that he was accused of various offences, and this non-disclosure was contrary to the requirement under Section 33A of the R.P. Act, 1951. The appellant has therefore, submitted that if the respondent No.1 was to be elected, the election would be void. Mr. Rao, however, pointed out that this section requires the candidate to furnish the information as to whether he is accused of any offence which is punishable with imprisonment for two years or more in a pending case, and in which a charge has been framed by a competent court. The particulars given by the appellant did not indicate that any charge had been framed against the respondent in any of those cases.

16. With respect to the allegations of criminality it was submitted that the election petition cannot be entertained, merely

on the basis of general allegations of criminality unless a specific case as required by Section 33A was made out. The following observations of this Court from paragraph 8 in **Jyoti Basu and Ors. Vs. Debi Ghosal and Ors.** reported in **1982 (1) SCC 691** were pressed into service in that behalf:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down.....”

17. With respect to paragraph 4 (and its sub-paragraphs) of the Recrimination Petition, Mr. Rao, submitted that this paragraph was concerning the alleged corrupt practices on the part of the

respondent No.1. Corrupt practice is a ground available to set-aside the election under Section 100 (1) (d) (ii) of the R.P. Act, 1951. The Recrimination Petition is like an Election Petition, and Section 83 (1) (c) of the R.P. Act, 1951 requires that the Election Petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings. Over and above that, the proviso to Section 83 (1) (c) lays down that where the petitioner alleges any corrupt practice, the petition has to be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. This affidavit has to be as per form 25, as laid down in Rule 94A of the Conduct of Election Rules, 1961. Mr. Rao, pointed out that in the present matter the affidavit was not made as per these requirements. He further pointed out that this submission had been specifically raised in the affidavit of the respondent No. 1, and the same had not been controverted by the petitioner.

18. It was then submitted that for seeking a declaration that the election is void on the ground of corrupt practice under Section 100 (1) (d) (ii) of the Act, it was necessary to make out a prima facie case as required by Section 100 (1) (d) that the result of the

election, in so far as it concerns a returned candidate, has been materially affected by the corrupt practice. That has not been shown in the present matter. Paragraph 11 of the judgment of this Court in **Mangani Lal Mandal Vs. Bishnu Deo Bhandari** reported in **2012 (3) SCC 314** which is on sub-clause (iv) of Section 100 (1) (d) was pressed into service in this behalf. It reads as follows:-

“11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal [AIR 1964 SC 1200]; (2) L.R. Shivaramagowda v. T.M. Chandrashekar [1999 (1) SCC 666]; and (3) Uma Ballav Rath v. Maheshwar Mohanty [1999 (3) SCC 357]”.

19. The proposition that the verification of the petition or Recrimination Petition has to be in the prescribed form or else the matter cannot be gone into, was supported on the basis of the decision of a bench of two Judges of this Court in **P.A. Mohammed Riyas Vs. M.K. Raghavan & Ors.** reported in **2012 (5) SCC 511.**

Paragraph 47 of this judgment reads as follows:-

“47. In our view, the objections taken by Mr P.P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the 1951 Act come into play immediately in view of sub-section (1) which relates to trial of election petitions and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although Section 83 has not been mentioned in sub-section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the election petition remained incomplete. The petitioner had the opportunity of curing the defect, but it chose not to do so.”

20. Last but not the least, with respect to the argument that the decision on these objections can wait till the end of the trial, the following observations in paragraph 12 in **Azhar Hussain Vs. Rajiv**

Gandhi reported in **AIR 1986 SC 1253** were relied upon which read as follows:-

12. *Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose.”*

Rejoinder on behalf of the petitioner:-

21. The learned senior counsel Mr. Ranjit Kumar, pointed out in the Rejoinder that Section 83(1) of the R.P. Act, 1951, required that the Election Petition (and for that matter the Recrimination Petition), shall contain a concise statement of the material facts which are relied upon. In the instant case the grounds raised in the Recrimination Petition were two-fold. Firstly, the criminality of the

respondent, and secondly the corrupt practices in which the respondent had indulged. As far as the aspect of criminality is concerned, it was pointed that the Recrimination Petition is required to be filed within 14 days from the date of commencement of the trial as required under the proviso of Section 97 of the R.P. Act, 1951. Even so, within that period the petitioner has placed on record the material facts in paragraph 3 of the Recrimination Petition. In paragraph 3(B) thereof the particulars of the criminal cases registered against respondent were given in a table. The table contains the following details:-

SL No.	Police Station/Cas e No.	Section	Name of Accused	Challan No.
1.	Sadalpur/76 / 22-5-85	147, 148, 149, 323, 451 IPC	Balmukund s/o Ramdeosingh Gautam	48/2-6-1985
2.	Pithampur/3 59/ 26.9.89	341, 294, 323 IPC	Balmukund s/o Ramdeosingh Gautam alongwith one other accused	318/27-9-89
3.	Pithampur/ 129/23-5-90	294, 323, 506 IPC	Balmukund s/o Ramdeosingh Gautam	105/5-6-90
4.	Pithampur/ 109/24-3-96	34 Excise Act	Balmukund s/o Ramdeosingh Gautam alongwith two other accused	104/29-4-96
5.	Pithampur/4 06/24-12-97	307, 147, 148, 149 of IPC	Balmukund s/o Ramdeosingh Gautam alongwith five other accused	107/18-4-98
6.	Pithampur/	365/34 IPC	Balmukund s/o	1/18-3-2001

	70/12-3-01		Ramdeosingh Gautam alongwitho ne other accused	
7.	Pithampur/ 27/29-1- 2007	147/341 IPC	Balmukund s/o Ramdeosingh Gautam alognwith one other accused	101/9-5- 2007
8.	Pithampur/ 106/24-3-96	34 Excise Act	Balmukund s/o Ramdeosingh Gautam alongwith two other accused	104/29-4-96
9.	Sadalpur/ 32/2-3-96	34,36 Excise Act	Balmukund s/o Ramdeosingh Gautam	92/27-6-96
10	Badnawar/ 258/21-8-96	34, 49 Excise Act	Balmukund s/o Ramdeosingh Gautam	282/31-10- 96
11	Badnawar/ 259/21-8-96	34,49 Excise Act	Balmukund s/o Ramdeosingh Gautam	283/31-10- 96
12	Indore Police Criminal Case No. 1241/01	34 (1) (2) Excise Act	Balmukund s/o Ramdeosingh Gautam	2001
13	Sadalpur/ 122/2-8- 1985	379 IPC, 247(7) Land Revenue Court	Balmukund s/o Ramdeosingh Gautam	118/1-10- 1986
14	Sadalpur/ 199/13-10- 86	147, 148, 452, 506 IPC	Balmukund s/o Ramdeosingh Gautam alongwith seven other accused	124/26-10- 1986

22. In paragraph 3(E), it was placed on record that the respondent was declared as an absconded person in a criminal proceeding by C.J.M Dhar in a Criminal Case No. 968/96. In paragraph 3(F) it was pointed out that the petitioner's name was

registered as a listed Gunda in the year 2004, and the letter dated 12.1.2004 issued by S.P. Dhar to the Police Station Pithampur in that behalf was enclosed. It was further pointed out that on 22.11.2012, the petitioner had served a notice on the respondent under Order 12 Rule 4 of CPC to admit the facts. In the said notice, it was specifically stated that the following criminal cases are registered against him, in which charges have been framed, and the same are punishable with more than 2 years imprisonment. This table reads as follows:-

SL No	Crime No.	Section	Name of Accused	Police Station
1.	76/22.5.85	147, 148, 149, 323, 451, IPC	Balmukund S/o Ramdeosingh Gautam	Sadalpur
2.	359/29.9.89	341, 394, 323 IPC	Balmukund s/o Ramdeosingh Gautam	Pithampur
3.	129/23.5.90	293, 323, 506 IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur
4.	109/24.3.96	34 Excise Act	Balmukund S/o Ramdeosingh Gautam	Pithampur
5.	406/24.12.97	307, 147, 148, IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur
6.	70/12.3.2001	365, 34 IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur
7.	27/29.1.07	341, 147 IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur
8.	106/24.3.96	34 Excise Act	Balmukund S/o	Pithampur

			Ramdeosingh Gautam	
9.	32/2.3.96	34, 36 Excise Act	Balmukund S/o Ramdeosingh Gautam	Sadalpur
10	258/21.8.96	34, 49 Excise Act	Balmukund S/o Ramdeosingh Gautam	Badnawar
11	259/21.8.96	34, 49 Excise Act	Balmukund S/o Ramdeosingh Gautam	Badnawar
12	Indore Police Criminal Case No. 1241/01	31 (1) (2) Excise Act	Balmukund S/o Ramdeosingh Gautam	Indore Police Station
13	358/7.10.05	294, 323, 506 IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur
14	122/2.8.85	379 IPC and 247(7) MPLR Code	Balmukund S/o Ramdeosingh Gautam	Sadalpur
15	199/13.10.8 6	147, 148, 452, 506 IPC	Balmukund S/o Ramdeosingh Gautam	Sadalpur
16	358/7.10.05	294, 323, 506 IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur Distt. Dhar
17	38/03/	Excise Act Gujarat	Balmukund S/o Ramdeosingh Gautam Declared Absconded	Dhanpur Distt. Dahopd Gujarat
18	358/7.10.05	294, 323, 506, IPC	Balmukund S/o Ramdeosingh Gautam	Pithampur Distt. Dhar
19	38/03/	Excise Act Gujarat	Balmukund S/o Ramdeosingh Gautam Declared Absconded	Dhanpur Distt. Dahod Gujarat
20	239/03	19, 1/54, 19/54- 65, 19/54(a) Excise Act Rajasthan	Balmukund S/o Ramdeosingh Gautam Declared Absconded	Bhilwara Rajasthan

21	19/10	420, 181, 200 of IPC	Balmukund S/o Ramdeosingh Gautam	Plice Raoji Bazar, Indore
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23. It was then pointed out that on 23.11.2013 the respondent sought time before the learned Single Judge to file reply to this notice to admit facts. On 4.12.2013, the learned Judge recorded that even though the respondent had stated on 23.11.2012 that he wished to file a reply, now he had decided to wait for the outcome of the application under Order 6 Rule 16 of CPC and, if required, to file a reply thereafter. Mr. Ranjit Kumar pointed out that this kind of reply will mean that the documents are deemed to be admitted, in view of the provision of Order 12 Rule 2-A of CPC. It was therefore, submitted that the High Court could not have held that the petitioner had not given the particulars in support of the allegations of criminality, as required by Section 33A of the R.P. Act, 1951.

24. The second limb of the argument of Mr. Rao was that for raising the ground of corrupt practice, full particulars of the corrupt practice are required to be given under Section 83 (1) (b) of the R.P. Act, 1951. Mr. Ranjit Kumar, pointed out that Section 83 (1) (b) requires one to set forth full particulars of any corrupt practice,

including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice. It was therefore pointed out that in paragraph 4(A) of the Recrimination Petition it was specifically pleaded that on 11.11.2008, at the instance of the respondent his younger brother Rakesh Singh had threatened the candidate of BSP namely Shri G.P. Saket, that if his nomination form was not withdrawn he shall have to face dire consequences. It was further pointed out that similar type of threat was given to the election agent of the said candidate namely Shri Munnalal Diwan. A letter dated 11.11.2008 sent to the Police Thana Pitampur was also enclosed with the Recrimination Petition. In paragraph 4(C) it was specifically pointed out that respondent was a liquor contractor, and during the election period several cases were registered against him and his associates/servants details of which were enclosed in an Annexure. A news report in Dainik Agniban dated 5.11.2008 was also enclosed, which stated that 700 boxes of illegal beer were seized by the Alirajpur Police, and in that case respondent was involved. It was alleged that he was distributing the beer bottles in the constituency, and it could amount to bribery and a corrupt

practice under Section 123 of the R.P. Act, 1951. In para 4 (D) it was alleged that his agents /associates were found to indulge in digging bore-well without proper permission in the constituency, which would amount to a corrupt practice and bribery, and a copy of the information given by T.I. Police Station dated 14.1.2009 was enclosed. Mr. Ranjit Kumar pointed out that Section 83 (1) (b) requires one to give full particulars of the corrupt practices as possible, and that had been done. In the facts of the present case, the propositions from the judgments in the cases of **Jyoti Basu**, **Mangani Lal Mandal** and **Azhar Hussain (all supra)** relied on behalf of the respondent have no application.

25. The other submission on behalf of the respondent No.1 was that the petitioner ought to prima-facie show that because of the corrupt practice his election was materially affected. In the instant case the appellant had won the election by just one vote, and obviously such corrupt practice would tilt the balance one way or the other and materially affect the result of the election.

26. The last submission of Mr. Rao was that when corrupt practices are alleged, an affidavit is to be sworn in the prescribed form, which is Form No. 25, and reliance was placed on paragraph

47 of the judgment of this Court in **P.A. Mohammed Riyas (supra)**, which stated that in the absence of proper verification, the High Court has to dismiss the Election Petition. Mr. Ranjit Kumar, however, pointed out from paragraph 47 quoted above, that the petitioner in that matter had the opportunity of curing the defects, but he had chosen not to do so, and that made the difference. He pointed out that the absence of this affidavit is not laid down as a ground for dismissal of the Election Petition under Section 86 of the Act, and that has been the consistent view taken by this Court in various judgments.

27. Last but not the least, the principal submission of Mr. Ranjit Kumar was that at the time when the Recrimination Petition was restored by consent, nothing prevented the respondent from pointing out to this Court that the pleadings in the Recrimination Petition were in any way defective, unnecessary or scandalous. The respondent agreed to the Recrimination Petition being restored, and is now trying to reagitate the very cause under Order 6 Rule 16 of CPC which was undoubtedly impermissible as held by this Court in **K.K. Modi Vs. K.N. Modi & Ors.** reported in **1998 (3) SCC 573**. He submitted that this would amount to abuse of process of court.

Consideration of the submissions:-

28. We have noted the submissions of both the counsel. As can be seen, the application under Order 7 Rule 11 is required to be decided on the face of the plaint or the petition, whether any cause of action is made out or not. Once it is accepted by a party by consent that a particular petition (in the instant case the Recrimination Petition) is to be heard by the Court, by giving up the objection under Order 7 Rule 11, the very party cannot be subsequently permitted to seek the striking off the pleadings containing the cause of action under the garb that the pleadings containing the cause of action are unnecessary, vexatious or scandalous. One is expected to take all necessary pleas at the same time. The party concerned is expected to raise such a contention at the time of passing of the Court order (consent order in the present case) or seek the liberty to raise it at a later point of time that some of the pleadings are unnecessary or vexatious or scandalous. No Court is expected to permit any matter to be raised which might and ought to have been made ground of defence or attack, once the same is relinquished by the party concerned. The learned Single Judge ought to have noted this basic principle of any litigation.

Reliance on the judgment in the case of **K.K. Modi (supra)** is quite apt in this behalf.

29. That apart, even when we look to the objections raised in the present matter under Order 6 Rule 16, the same is based on the requirement of Section 83 of the R.P. Act, 1951 that the applicant is required to place material facts before the Court. As far as the allegation of criminality is concerned, in our view sufficient material facts were placed on record alongwith the Recrimination Petition. Subsequently, a notice to admit facts was given, wherein, particulars of specific cases were given, wherein, the charge-sheets were filed for the charges which would result into imprisonment of 2 years or more, as required by section 33A of the R.P. Act, 1951. The respondent chose not to reply to this notice. In fact the learned Judge ought to have drawn an adverse inference, but he failed in doing so. As far as the ground of corrupt practice is concerned, as can be seen from the pleadings quoted above, on that aspect also material facts were placed on record as rightly pointed out by Mr. Ranjit Kumar.

30. With reference to the observations in paragraph 47 of the judgment in the case of **P.A. Mohammed Riyas (supra)**, we may

note that way back in the case of **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Anr.** reported in **AIR 1964 SC 1545** a Constitution Bench of this Court has in terms held that a defect in the verification in the matter of Election Petition can be removed in accordance with the principles of CPC, and that it is not fatal to the Election Petition. This decision has been referred and followed by this Court time and again. Thus in **H.D. Revanna Vs. G. Puttaswamy Gowda and Ors.** reported in **1999 (2) SCC 217**, this Court observed as follows in paragraph 15:-

“15. In Murarka Radhey Shyam Ram Kumar V. Roop Singh Rathore a Constitution Bench has held in unmistakable terms that a defect in the verification of an election petition as required by Section 83(1)(c) of the Act was not fatal to the maintainability of the petition and that a defect in the affidavit was not a sufficient ground for dismissal of the petition. Another Constitution Bench held in Ch Subbarao V. Member, Election Tribunal Hyderabad that even with regard to Section 81(3), substantial compliance with the requirement thereof was sufficient and only in cases of total or complete non-compliance with the provisions of Section 81(3), it could be said that the election petition was not one presented in accordance with the provisions of that part of the Act.”

This Court has in **Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Ors.** reported in **2012 (7) SCC 788**, reiterated the law

in **Murarka Radhey Shyam (supra)**. Paragraph 26 of this judgment reads as follows:-

“26. We may also refer to a Constitution Bench decision of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore where this Court held that a defective affidavit is not a sufficient ground for summary dismissal of an election petition as the provisions of Section 83 of the Act are not mandatorily to be complied with nor did the same make a petition invalid as an affidavit can be allowed to be filed at a later stage or so. Relying upon the decision of a three-Judge Bench of this Court, in T. Phungzathang v. Hangkhanlian [2001 (8) SCC 358] this Court held that non-compliance with Section 83 is not a ground for dismissal of an election petition under Section 86 and the defect, if any, is curable as has been held by a three-Judge Bench of this Court in Manohar Joshi v. Nitin Bhaurao Patil [1996 (1) SCC 169] and H.D. Revanna v. G. Puttaswamy Gowda [1999 (2) SCC 217].”

31. In view of what is stated above, the order passed by the learned Single Judge in allowing the application of the first respondent under Order 6 Rule 16 of CPC was clearly untenable and bad in law. The learned Single Judge of the High Court could not have entertained the application under Order 6 Rule 16 when this Court had restored the Recrimination Petition to the file of that Court by consent in order to decide it expeditiously. The learned Judge

has erred in holding that the pleadings in paragraph 3 and 4 of the Recrimination Petition were vague, vexatious, non-specific and without any material facts. The appeal is therefore allowed. The impugned order is set-aside. The learned Judge of the High Court will now proceed to decide the Recrimination Petition as filed by the petitioner expeditiously. The parties will bear their own cost of litigation.



.....J.
(H.L. Gokhale)

.....J.
(Madan B. Lokur)

New Delhi
Dated: April 12, 2013

JUDGMENT