HC-KAR

NC: 2026:KHC:64511
EP No. 17 of 2023

R

CNR: KAHC010325652023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

ELECTION PETITION NO. 17 OF 2023

BETWEEN:

UMAPATHY SRINIVASA GOWDA
AGED ABOUT 35 YEARS
S/O LATE M SRINIVASA
PRESENTLY R/A NO.2/7,
15TH MAIN ROAD, 22ND CROSS,
HSR LAYOUT, 3RD SECTOR,
HSR CLUB ROAD, HSR LAYOUT,
BANGALORE - 560 102.

...PETITIONER

[BY SRI DAMA SESHADRI NAIDU, SR.COUNSEL FOR
SRI SRINIVASA C., ADVOCATE
SRI BARANI BHARATHI B., ADVOCATE
SRI SUNIL KUMAR PATEL, ADVOCATE]

Digitally signed by ANUSHA V
Location: High Court of Karnataka

AND:

1. SATHISH REDDY. M
AGED ABOUT 51 YEARS,
S/O LATE MUNI REDDY
PRESENTLY RESIDING AT
NO.123, HONGASANDRA
BEGUR MAIN ROAD,
BENGALURU - 560 068.

2. ABDUL KHADAR G S Y
S/O SYED YAKUB
AGED ABOUT 44 YEARS
NO 13, 6TH CROSS ROAD,
MARUTHINAGAR
BEHIND FATIMA SCHOOL

MADIWALA,
BENGALURU- 560068.

3 . ADIL PASHA S
PARTY: INDEPENDENT
S/O LATE SHEIK HUSSAIN
AGED ABOUT 46 YEARS
R/AT SITE NO 352,
5TH MAIN ROAD,
4TH CROSS, NGR LAYOUT,
BEGUR HOBLI,
BANGALORE SOUTH TALUK - 560068.

4 . ANTHONY RAJ J
S/O JOSEPH
AGED ABOUT 49 YEARS,
HOUSE IN SHANUBHOGANAHALLI VILLAGE
KATHA NO.165/17/171/125/8
JOSEPH LAYOUT, DORESANIPALYA
BANNERUGHATTA MAIN ROAD
BANGALORE - 560096.

5 . K NARAYAN RAJU
S/O LATE K KRISHNAM RAJU
AGED ABOUT 58 YARS
164/4, 4TH PHASE, J.P.NAGAR
DORESANIPALYA
NEAR KALYAN MAGNUM TECH PARK,
BANGALORE- 560078.

6 . MAMTHA R
W/O RAMANA
AGED ABOUT 38 YEARS
R/AT VANDANA,
SS LAKE VIEW APARTMENT
FLAT NO.208, 2ND FLOOR,
KODICHIKKANAHALLI VILLAGE,
BEGUR HOBLI,
BANGALORE SOUTH TALUK - 560076.

7 . NANDA REDDY
S/O V SOAMSHEKAR
AGED ABOUT 58 YEARS,
R/AT 81/82 2ND CROSS ROAD,

RENUKA YELLAMMA LAYOUT
MYLASANDRA DINNE, BEGUR HOBLI,
BANGALORE SOUTH TALUK
BANGALORE - 560068.

8 . NIZAMUDDIAN
S/O NIZAM AHMED
AGED ABOUT 29 YEARS
R/AT 3/C, 1ST CROSS
2ND MAIN ROAD,
SARAKKI GATE,
GANGADHARANAGAR,
BANGALORE - 560078.

9 . SATHISH REDDY
S/O MUNI REDDY,
AGED ABOUT 37 YEARS
R/ATNO 558, 5TH CROSS
CENTRAL JAIL ROAD
CHENNAKESHAVA NAGAR,
BANGALORE SOUTH
BANGALORE - 560100.

10 . SATISH REDDY M
S/O MUNI REDDY
AGED ABOUT 33 YEARS
R/AT 390/2, 4TH MAIN ROAD
ANJANEYA SWAMY TEMPLE ROAD,
BALAJI LAYOUT, HONGASANDRA
BANGALORE - 560068.

11 . SITARAM GUNDAPPA
S/O LATE GUNDAPPA
AGED ABOUT 63 YEARS
NO 144, 4TH CROSS ROAD,
1ST PHASE, NEHRU ROAD,
GIRINAGAR,
BANGALORE - 560085.

12 . SIVARAMA KOTEGOWDA
S/O LATE CAPT. S.K. KOTEGOWDA,
AGED ABOUT 43 YEARS
NO.2000, 22ND B MAIN ROAD,
14TH CROSS, HSR LAYOUT,

SECTOR-1, BANGALORE 560102.

13 . UMAPATHY BABU N.,
S/O UMAPATHI
AGED ABOUT 48 YEARS
R/AT NO 264, 18TH MAIN ROAD,
ITI LAYOUT
MANGAMMANAPALYA,
SHANKAR SPORTS OPPOSITE
BOMMANAHALLI
BANGALORE - 560 068.

…RESPONDENTS

[BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
SRI MANU PRABHAKAR KULKARNI, ADV.
SMT. SANJANTHI SAJAN POOVAYYA, ADV. AND
SRI SUMUKH B. RAM, ADVOCATES, FOR R1;
SRI M.S.SHYAM SUNDAR, SR. COUNSEL FOR
SRI G.R.VENKATESH, ADV.
SRI A.P.PULAKESHI, ADV. FOR R8;
SRI PRASANNA B.R., ADV. FOR R2;
SRI H.LOHITH KUMAR, ADV. FOR R11;
V/O DTD 04.12.2023 R5, R6, R8, R10 & R12
ARE PLACED EX-PARTE;
V/O DTD 08.01.2024 R3, R4, R7 & R9
ARE PLACED EX-PARTE;
R-13 DECEASED.]

THIS ELECTION PETITION IS PRESENTED UNDER SECTIONS 81 OF THE REPRESENTATION OF PEOPLES ACT, 1951, AND RULE 4 OF THE KARNATAKA ELECTION PETITION RULES PRAYING TO DECLARE THAT DECLARATION OF THE ELECTION OF THE 1ST RESPONDENT AS CONTAINED IN ANNEXURE-C DECLARING THE 1ST RESPONDENT AS RETURNING CANDIDATE FROM 175 - BOMMANAHALLI ASSEMBLY CONSTITUENCY IN BENGALURU AS VOID AS PER SECTION 100(d)(iv) OF THE REPRESENTATION OF PEOPLES ACT, 1951 AND DECLARE THE PETITIONER AS RETURNED CANDIDATE IN RESPECT OF 175 BOMMANAHALLI ASSEMBLY

CONSTITUENCY IN BENGALURU AS PER SECTION 101 (b) OF THE REPRESENTATION OF PEOPLE ACT, 1951 AND ETC.,

THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.08.2026, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Seeking for declaration of respondent no.1 as returned candidate from 175 - Bommanahalli Assembly Constituency as void under Section 100 (d) (iv) of The Representation of the People Act, 1951, ('**RoPA**'), this petition is filed.

2. Sri Sajan Poovayya, learned Senior Counsel appearing for Sri Manu Prabhakar Kulkarni, Smt.Sanjanti Sajan and Sri Sumukh B Ram, learned counsel for respondent no.1 submitted that requirement of deposit of security for costs at time of filing of an election petition (‘**EP**’) prescribed under Section 117 of RoPA was mandatory. Even Rule 22 of the Karnataka Election Petition Procedure Rules (‘**Rules’**) also mandates that every EP shall be accompanied by a memorandum with a certificate from Accounts Branch of High Court that Rs.2,000/- has been deposited as security. It was

submitted that instant EP filed on 27.06.2023 was without such certificate. And presentation of petition and furnishing of certificate cannot be segregated as two distinct events. It was submitted, Three Judges Bench of Hon'ble Supreme Court in **Sitaram v. Radhey Shyam Vishnav**, reported in **(2018) 4 SCC 507** has held:

> *"39. The discussion hereinabove can be categorised into three compartments. **First, the deposit is mandatory,** and the mode of deposit is directory ....*
>
> *... **The word used in the Rule is "accompanied" and the term "accompany" means to co-exist or go along. There cannot be a separation or segregation** ....*
>
> *.... Once the election petition is presented without the treasury challan, the decisions of this Court in Charan Lal Sahu [Charan Lal Sahu v. Nandkishore Bhatt, (1973) 2 SCC 530] and Aeltemesh Rein [Aeltemesh Rein v. Chandulal Chandrakar, (1981) 2 SCC 689] **pertaining to non-deposit will have full applicability ...**"*
>
> *(Emphasis supplied)*

3. It was submitted, Section 86 of RoPA read:

> *"**86. Trial of Election Petitions**.- (1) The High Court shall dismiss an Election Petition which does not comply with the provisions of **Section 81 or Section 82 or Section 117**."*

4. It was submitted that non-compliance with Sections 81 and 117 of RoPA was incurable and Hon'ble Supreme Court in **Charan Lal Sahu v. Nandkishore Bhatt & Ors.** reported in **(1973) 2 SCC 530** held:

> "*6. We are clearly of the view that the non-deposit of the security along with election petition as required under Section 117 of the Act leaves **no option to the court but to reject it**. The appeal is accordingly dismissed with costs."*
>
> *(Emphasis supplied)*

Thus, this Court was left with no option but to dismiss petition.

5. It was submitted that though on an earlier occasion respondent no.1 had filed IA no.7/2024 on 16.02.2024 under Order VII Rule 11 of Code of Civil Procedure, 1908 ('**CPC**') read with Section 86 of RoPA for rejection of EP, this Court by order dated 09.05.2024 dismissed application. Challenge of said order before Hon’ble Supreme Court though ended in refusal to interfere, same was by holding that observations in paras-49, 54 and 55 of order dated 09.05.2024 were obiter and observations in paras-64 and 65 were clarified to be open for determination after framing specific issue whether or not Accounts Branch was closed on date of presentation of EP,

directing this Court to determine whether or not petitioner could not deposit amount towards security for costs for reasons beyond his control.

6. Thereafter, preliminary issue was framed on 07.03.2025 and matter proceeded to trial. In course of deposition, petitioner as PW.1 admitted failure to deposit security for costs of Rs.2,000/- in Accounts Branch of High Court prior to filing of EP on 27.06.2023. In examination-in-chief by way of affidavit, there was admission as follows:

> *"15. ... I further state, upon receipt of my Election Petition the Filing Registration No.17/2023 was assigned. Thereafter, my counsel on record approached the Accounts Branch of this Hon'ble Court to deposit the Security for Costs of Rs.2000/- as per law.* ***At that time, the concerned officer of the Accounts Branch of this Hon'ble Court, intimated my counsel that, the Accounts Branch was closed for that day. Thus, the Security Costs of Rs.2000/- was deposited on 28.06.2023, before this Hon'ble Court as per law****.*
>
> *(Emphasis supplied)*

7. And in cross-examination on 17.12.2025 and 13.01.2026, following admissions were elicited:

> *"... It is true to suggest that I had not paid Rs.2,000/- fees prior to filing of petition ...*

> ... *It is true to suggest that as per Ex.P.7 security cost was paid on 28.06.2023 ...*
>
> ... *Ex.P7 was collected by my Counsel on the morning of 28.06.2023 near Court ..."*

8. It was submitted, in view of non-compliance with mandatory requirement in law about EP to be accompanied with certificate of deposit of security for costs, closure of Accounts Branch on 27.06.2023 at 3:55 pm would be immaterial. It was submitted, period of limitation prescribed under Section 81 of RoPA for filing EP was 45 days from date of declaration of election results. Since Election results were declared on 13.05.2023, EP ought to have been filed on or before 27.06.2023 accompanied with certificate of deposit of security for costs. Mere filing on 27.06.2023 and depositing security for costs on 28.06.2023 which would be 46th day, would amount to extension of period of limitation.

9. It was submitted that even if security for costs were paid within period of limitation, if certificate did not accompany EP at time of its filing, defect would be incurable. Apart from above, as per direction of Hon'ble Supreme Court, preliminary issue, *'whether Accounts Branch was closed at 3:55 pm on date*

of presentation of EP and whether petitioner was prevented by reason beyond his control from depositing security for costs', was framed. But, petitioner did not produce any material to show closure of Accounts Branch of High Court at 3:55 pm on 27.06.2023 or about him being prevented from reasons beyond his control to pay security for costs. Mere statement in affidavit dated 28.10.2025 that 'concerned officer of Accounts Branch intimated petitioner's advocate that Accounts Branch was closed for day would not suffice, when as per website of High Court of Karnataka, Registry is open/working between 10:00 am and 5:15 pm. There is also admission elicited in cross examination on 17.12.2025 as follows:

> *"... I do not remember whether any documents are produced to show timing during which accounts branch was open on 27.06.2023. ..."*

10. It was alternatively submitted, whether Accounts Branch of High Court was closed at 3:55 pm on 27.06.2023 as alleged would be irrelevant. Therefore, prayed that this Court exercise powers under Order XII Rule 6 of CPC and pass judgment on admission. It was submitted that Order XII Rule 6 of CPC gave wide discretion to Court to render speedy judgment on basis of admissions in pleadings or otherwise.

[**Alo Rani Sarkar v. Swapan Majumdar** reported in **2022 SCC OnLine Cal 1325** and **ITDC Ltd. v. Chander Pal Sood & Son** reported in **2000 SCC OnLine Del 114**].

11. Insofar as order dated 09.05.2024, it was submitted that order dated 09.05.2024 passed by this Court on IA no.7/2024 would not enure to petitioner because larger Bench Decision of Hon'ble Supreme Court's in **Sitaram**'s case (supra) was not considered or relied upon and exposition of law therein being categorical that certificate for security for costs must accompany EP and cannot be separated/segregated.

12. It was submitted that High Court of Bombay in **Sadanand Sarvankar v. Mahesh Baliram Sawant** reported in **2026 SCC OnLine Bom 2429** as well as High Court of Telangana in **Raghavendra Raju Chaluvagali v. K. Narasimhulu** reported in **2024 SCC OnLine TS 41** had followed ratio in **Sitaram**'s case (supra) and held that Certificate/Challan demonstrating deposit of security for costs was mandatory at time of presentation of EP.

13. It was also contended that petition was barred by law and liable for rejection under Order VII Rule 11 (d) of CPC

due to non-compliance with mandatory requirement of deposit and production of challan at time of filing EP. It was submitted that this Hon'ble Court can consider question of maintainability of petition *suo moto* and exercise power under Order VII Rule 11 (d) read with Section 151 of CPC without need for formal application.

14. On other hand, Sri Dama Seshadri Naidu, learned Senior Counsel appearing for Sriyuths Srinivasa C., Barani Bharathi B and Sunil Kumar Patel, advocates for petitioner, opposed submission. It was submitted that petitioner, a contestant in Election to Legislative Assembly in 2023 filed this EP on 45th i.e. last day of limitation. It was submitted, EPs were accepted by Registry on any working days up to 4:00 pm. On 27.06.2023, petitioner reached Court at 3:00 pm. As Registrar (Judicial) was on leave and Registrar (Protocol), officiating in his place arrived only at 3:50 pm. Thus, petitioner presented EP before him at 3:55 pm.

15. It was submitted, though Section 117 of RoPA required annexing proof of remittance of Rs.2,000/- as security for costs, to EP, by time petitioner reached Registry, Accounts

Branch was already closed (i.e. stopped accepting remittances) for day. Therefore, he had no occasion, let alone means to deposit security or attach proof of it to EP. Therefore, he made deposit next day and appended proof of it to EP. Therefore, questions for consideration would be:

i) Was Accounts Branch of this Court closed at 3:55 pm on 27.06.2023?

ii) Does remitting security for costs a day after presentation of Election Petition under circumstances beyond petitioner's control violate legislative mandate under Section 117 of RoPA?

iii) And if so, is defect fatal?

16. It was submitted that respondent no.1 had earlier filed application under Order VII Rule 11 of CPC for rejection of EP and when it was dismissed on 09.05.2024, respondent no.1 filed SLP before Apex Court and urged very same contention that petitioner did not deposit Rs.2,000/- towards security for costs prior to presenting EP and therefore, it was not maintainable. Petitioner, on other hand contended that he presented EP on 27.06.2023 at 3:55 pm and could not deposit security for costs as Accounts Branch was closed by then. It was submitted, quoting with approval paras 64 and 65 of order

dated 09.05.2024, Apex Court observed, '*whether Accounts Branch was closed at 3:55 pm on 27.06.2023'* would essentially be a question of fact and can be determined only on evidence. It observed '*whether petitioner could not deposit security for costs for reasons beyond his control*' was to be determined by this Court. It set-aside observations of this Court in paras 49, 55, and 56 in order dated 09.05.2024 about power to extend time for deposit under Section 148 of CPC as '*obiter dicta* and not germane to controversy involved'. Eventually, this Court was to:

> *"Formulate a specific issue as to whether or not the Accounts Branch was closed at 3:55 p.m. on the date of presentation of the election petition. The parties shall be at liberty to lead their respective evidence in this regard, and the High Court will then determine whether or not the election-petitioner could not deposit the amount of security for costs of petition for reasons beyond his control."*

17. It was submitted that Hon'ble Supreme Court had also clarified that framing of preliminary issue *did not mean, High Court would not examine other issues that may arise for consideration based on pleadings* and without reversing or setting aside impugned order in entirety, there was direction to try preliminary and other issues arising.

18. Insofar as first question, whether Accounts Branch of High Court was closed at 3:55 pm on 27.06.2023, it was submitted that counter for filing of EPs were open till 4:00 pm, closure of Accounts Branch earlier rendered remittance of security for costs in EP impossible. In view of above, even though there was no dispute that results of Election were declared on 13.05.2023, EP was filed on 27.06.2023 i.e. 45th day after declaration of results but within time prescribed under Section 81 (1) of RoPA without attaching proof of deposit of Rs.2,000/- towards security of costs, invocation of Section 117 of RoPA read with Rules 5 and 22 of Election Petitions Procedure Rules, Karnataka, 1967 (‘**EP Rules’**) would not be justified at this stage. Section 117 (1) of RoPA reads as follows:

> *"117. Security for costs (1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition."*

19. It was submitted that Karnataka High Court Rules, 1959 (**HC Rules**) framed under Article 225 of Constitution of India (**CoI**) governs practice and procedure of this Court. Rule 5 of Chapter XII (Presentation and Examination of Papers) of HC Rules provides:

> *"5. All papers in judicial matters shall be presented at the office of the Registrar at the High Court on working days between the hours 11:00 a.m. and 4:00 p.m. The Registrar may in special cases receive or direct the same to be received by the office after 4:00 p.m. on any day. In very urgent matters, the Registrar may, if satisfied about the urgency, receive any papers at his residence on holidays and take the directions of the Chief Justice or, in his absence, of the senior most Judge present in Bangalore as to the further action to be taken on papers so received."*

20. Thus, though EP may be filed up to 4:00 pm on last day of limitation and in special or urgent cases, even later, Rule 22 of EP Rules requires security to be paid in cash and every EP to accompany certificate from Accounts Branch about such deposit.

21. It was submitted, Rule 4 of Karnataka High Court Accounts Rules, 1965 (‘**Accounts Rules**’) framed under Karnataka High Court Act, 1961, prescribes:

> *"4. Office Hours for Money Transactions Cash transactions shall be commenced at 11 a.m. and closed half an hour before the closing hour of the treasury, so that the cash amount due to be remitted to the Treasury/Bank may be remitted in time, provided that the Registrar may permit any transaction to be effected beyond the prescribed closing hour in exceptional circumstances."*

22. But Rule 18 (a) of Treasury Code for State of Karnataka fixes operating hours of treasury as follows:

> *"18. (a) All the treasuries in the State will be kept open to the public from 10:30 a.m. to 12:00 noon on Saturdays and from 10:30 a.m. to 2:30 p.m. on other days, excluding Sundays and other authorised holidays. Ordinarily, no work should be done in the treasury after sunset. If, in cases of urgency, any ordinary work is required to be done after sunset, such work should on no account be done without sufficient light."*

23. Read together, above provisions would imply that Accounts Branch of High Court closed well before 3:55 pm, half an hour ahead of Treasury's own closing time. Thus, while Rule 5 of HC Rules permitted filing EP till 4:00 pm; Accounts Rules would not permit payment of security for costs upto that time. On equitable principle *actus curiae neminem grava bi* - an act of Court shall prejudice no one - petitioner cannot be penalised for failing to do what Registry's own working hours made impossible. Unless working hours of Accounts Branch are aligned with EP Rules consequences cannot be imposed on petitioner.

24. In reply to contention that deposit made after filing of EP would violate Section 117 of RoPA, it was submitted that

instant case was different as petitioner did not choose to defer making of deposit, but it was case where he could not make it.

25. Without prejudice to above contention, it was alternatively submitted that even if non-deposit were treated as a lapse, same was curable under Rule 9 of EP Rules. Rules 8 to 10 read:

> *"Rule 8 - After the petition is presented, the party or his advocate shall be asked to attend the office of the High Court on the third day from the date of presentation to remove objections, if any. ...*
>
> *Rule 9 - The office of the High Court shall examine the petition and, if it is not in conformity with the requirements of law and the rules applicable to it, raise objections specifying the nature or particulars of the defect or error.... such objections shall be removed within three days thereafter, or within such further time as the Judge may allow.*
>
> *Rule 10 - Immediately after the time fixed for removal of objections, the petition shall be placed before the Judge for such orders as may be required under Section 86 of the Act. If the petition is not dismissed under Section 86(1), a summons shall be issued to the respondents..."*

26. It was submitted that Rules 8 to 10 were unique to High Court of Karnataka. No other High Court i.e. Rajasthan, Tamil Nadu, Andhra Pradesh, Telangana and Madhya Pradesh

provided opportunity to cure defects. Hence, judgments arising from dissimilar statutory scheme has to be taken into account.

27. About rejection based on admissions, it was submitted on 17.12.2025, PW.1 stated that he reached High Court at 3:00 pm and filed EP at 3:55 pm and by then Accounts Branch was closed. It was submitted, Hon'ble Supreme Court in **Raj Kumar Yadav v. Samir Kumar Mahaseth & Ors.,** reported in **(2005) 3 SCC 601**, and **Chandra Kishore Jha v. Mahavir Prasad & Ors.** reported in **(1999) 8 SCC 266,** held that where statute fixes a day as last day for an act, that act may be done as late as midnight preceding next day and that a litigant cannot be faulted for failing to perform an act, which Court's own functioning rendered impossible up to that last day. In view of above ratio, contention about failure to deposit security for costs and paying it next day would be untenable.

28. Further, to establish closure of Accounts Branch before 3:55 pm on 27.06.2023 and rendering it beyond control of petitioner to deposit security for costs, PW.1 stated in cross-examination on 17.12.2025:

> *"I state that petition was filed on 27.07.2023. I came to High Court at about 3:00 pm. After I*

> *came to High Court, I went to the office of Registrar General. I filed petition at 3:55 pm. After filing petition, I was awaiting there itself. While I was waiting my counsel went away to pay fees, came back and informed me that time for payment of fees was over and asked me to come on next day."*

29. Having stated about closure of Accounts Branch prior to filing EP, petitioner intended to examine Deputy Registrar of HC Accounts-I Branch, who was also summoned as official witness no.1 and who was also present in Court on 23.02.2026 but without relevant records (for reasons that remain unexplained) and directed to return on next date with relevant records. His evidence about working hours of Accounts Branch and whether it could still have received security for costs at 3:55 pm on 27.06.2023 was indispensable to preliminary issue.

30. That apart, PW.1 specifically stated about his arrival to High Court at 3:00 pm and about having to wait until 3:55 pm as Registrar (Judicial) was on leave and Registrar (Protocol) officiating in his stead was unavailable until 3:50 pm. Therefore, even administrative adjustment of High Court had also rendered it beyond control of petitioner to deposit security for costs. It was submitted that Courts would always be loath to

make a suitor suffer so long as he could not be blamed for any shortcomings of any statutory compliance.

31. It was submitted, in view of above facts and circumstances, neither Order VII Rule 11 or Order XII Rule 6 of CPC would apply. It was submitted, petitioner had not made clear, unequivocal admission about failure to remit security for costs, but same was an act of impossibility and which would be matter for evidence and trial. It was submitted, Order VII Rule 11 of CPC applies only where on a plain reading reliefs sought in suit are *ex-facie* barred by law or plaint suffers from non-disclosure of cause of action. It was submitted, since it was held that a disputed question of fact requires evidence, time and stage for exercise of said power had passed. And as there was direction to frame preliminary issue (without foreclosing right of Court to examine other issues), contention now urged would run counter to direction.

32. It was submitted that in **Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao & Ors**. reported in **(2023) 18 SCC 231**, following **Karam Kapahi v. Lal Chand Public Charitable Trust**, reported in **(2010) 4 SCC 753**, Hon'ble

Supreme Court held that power under Order XII Rule 6 - no less than under Order VII Rule 11 - must be exercised sparingly and only where admission is clear and unambiguous:

> *"29. ... … The alleged non-compliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations... are ultimately true, the effect of such allegations... has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial ... …"*

33. It was submitted, EP Rules of this Court contrasted with Rules of other Courts and contained built-in mechanism to cure defects before EP is placed before Court for adjudication. Though taking cognizance or dismissal of *lis* was in judicial realm, curing of defects before said stage defects within time would relate back to date of presentation. As at initial stage, EP was found to be in order, while Rules 8 to 10 of EP Rules permitted subsequent compliance, to treat absence of proof as incurable defect, without examining whether it was beyond control of petitioner would strip Rules 8 to 10 of any purpose.

34. Further, Section 86 (1) of RoPA, lays down substantive statutory framework governing trial of EPs, while Rules 8 to 10 of EP Rules prescribe detailed procedure for their presentation and compliance. High Courts, being Courts of record and Constitutional Courts, possess authority to regulate their own procedure, besides rule-making power under Article 225 of CoI. Even otherwise, Entry 3 of List II confers on State Legislature, power to enact law or frame rules in relation to administration of justice, including procedure of High Court. In absence of any state legislation, EP Rules prevail. Therefore, it is State Legislation or in its absence, EP Rules that occupy procedural field. And there was no inconsistency between Section 86 (1) of RoPA and Rules 8 to 10 of EP Rules; they must be construed harmoniously. While Section 86 (1) of RoPA broadly contemplates dismissal for statutory non-compliance, Rules 9 and 10 prescribe how compliance ought to be made. Thus, a judicial order of rejection under Section 86 (1) of RoPA arises only after petitioner has had procedural opportunity contemplated by Rules 8 to 10 of EP Rules to rectify or comply with presentation requirements. More so, when *vires* or validity of EP Rules was not under challenge.

35. In above factual and statutory backdrop, remitting security for costs and filing proof of it a day after presentation of EP was within statutory scheme and there was no defect in EP, in first place and alternatively defect, if any, stands cured. In sum and substance, deposit of security for costs on immediate succeeding day was not fatal to EP.

36. In reply to petitioner's contentions, learned counsel for respondents submitted as per petitioner, Accounts Branch of High Court closed at 2:00 pm on 27.06.2023 and therefore, non-deposit was due to reason beyond his control and as security for costs was deposited next day, EP was maintainable. It was submitted, ignorance of law was inexcusable. It was submitted, even assuming Accounts Branch closed at 2:00 pm, it was incumbent on petitioner to deposit security for costs prior to presenting EP. Further, petitioner admitted (in cross-examination on 13.01.2026) that he was informed about closure of Accounts Branch at 3:55 pm and further admits (in cross-examination on 17.12.2025) that he was informed to deposit security for costs on next day. These admissions demolish petitioner's argument that it was impossible for him to

deposit security for costs on 27.06.2023, as they demonstrate that petitioner never attempted to deposit security for costs prior to presentation of EP because he reached High Court only at 3:00 pm and not earlier. Therefore, decisions of Hon'ble Supreme Court in **Chandra Kishor Jha** or **Raj Kumar Yadav**'s cases (supra) would not benefit him.

37. Further, impossibility was neither pleaded nor substantiated. Even documents about timings of Accounts Branch of High Court were not summoned. Therefore, [as held in **Anil P. Menasinakai v. Hanumantha Gouda & Ors. [2018:KHC-D:5732]**] petitioner cannot claim reprieve or curability of defect contrary to statutory prescriptions. Petitioner admitted security for costs was deposited only on 28.06.2023 and in cross-examination on 13.01.2026, he admitted:

> ***"... I am not aware of closing time of treasury ...***
>
> ***... I am not aware until what time Accounts branch was open on 27.06.2023 ... "***
>
> (Emphasis supplied)

38. Further, proviso to Rule 4 of Accounts Rules stipulate that Registrar may permit transaction to be effected

beyond prescribed closing hour in exceptional circumstances. No material was produced to show that petitioner even attempted to obtain permission from Registrar to deposit security for costs beyond prescribed closing hour. Thus, petitioner cannot rely on principle of *Impossibilum nulla obligatio est*. It was submitted Hon'ble Supreme Court in **Sharif-ud-din v. Abdul Gani Lone** reported in **(1980) 1 SCC 403,** held that where a provision of law prescribes a certain act to be done in a particular manner, then prescription must be viewed as mandatory.

39. It was submitted, Rule 7 of EP Rules prescribe EP to be complete in all respects before presentation. Therefore, payment of security for costs after presentation of EP and insertion of certificate number by handwriting in para 15 of EP and raising of office objections dated 27.06.2023 by Registry denote petition was not complete at time of presentation and must be dismissed under Section 86 (1) of RoPA due to non-compliance of Sections 81 and 117 of RoPA and ratio in **Khanagoudar Shivagoudappa Balappa v. The Chief**

Election Commissioner of India & Ors. [2015:KHC-D:3958].

40. In surrejoinder, it was submitted that mandatory nature of Section 117 of RoPA was not disputed, but ground urged that petitioner was prevented from complying with it, due to closure of Accounts Branch of High Court on date and time of presentation of EP rendering circumstances beyond his control. Reliance on **Sharif-ud-din**'s case (supra) was not justified and it was distinguishable on facts. Question before Hon'ble Supreme Court in that case was whether requirement under Section 89 (3) of Jammu and Kashmir Representation of People Act, 1957, that every copy of EP intended to be served on respondents must be attested by petitioner under his own signature as true copy, was mandatory and whether failure to comply was fatal and as copies accompanying EP were attested by petitioner's counsel and not petitioner, mandatory requirement was not met and dismissed EP. Further, in **Sitaram**'s case (supra), Hon'ble Supreme Court was dealing with EP challenging election to a Municipal Corporation in Rajasthan governed by Rajasthan Municipalities Election

Petition Rules, 2009 framed under Rajasthan Municipalities Act, 2009, which did not contain provision for curing of defects after presentation of EP. Similarly, **Charan Lal Sahu**'s case (supra) and **Aeltemesh Rein v. Chandulal Chandrakar & Ors.** reported in **(1981) 2 SCC 689** were distinguishable as Rules applicable to EPs in Madhya Pradesh also did not contain provision for curing of defects. Further, as petitioner did not seek comfort under provisions of Limitation Act, ratio in **Hukumdev Narain Yadav v. Lalit Narain Mishra** reported in **(1974) 2 SCC 133** would not apply.

41. Heard learned Counsel, perused entire material on record.

42. In course of trial, respondents in this EP contended that EP was liable for dismissal on admissions under Order XII Rule 6 as well as under Order VII Rule 11 of CPC.

43. Sum and substance of their contentions are that Section 117 of RoPA and Rule 22 of EP Rules mandate every EP to be accompanied by a certificate from Accounts Branch about deposit of Rs.2,000/- as security for costs. And as Hon'ble

Supreme Court in **Sitaram**'s case (supra) held meaning of word 'accompanied' meant 'prior' and there was admission about deposit of security for costs *after* filing of EP, there was non-compliance with mandatory requirement and as per decision in **Charan Lal Sahu**'s case (supra), Section 86 read with Section 117 of RoPA, this Court was left with no other option but to reject EP.

44. For invoking Order XII Rule 6 of CPC, respondents rely on statement in para-15 of affidavit examination-in-chief and admission elicited from petitioner (PW.1) that he had not paid security for costs prior to filing of EP and about depositing same on 28.06.2023 as per Ex.P7, by relying on ratio laid down in **Alo Rani Sarkar** and **ITDC Ltd.**'s cases (supra). For stipulation about affixture of challan for deposit of security of costs to EP to be mandatory, they rely on **Sadanand Sarvankar** and **Raghavendra Raju Cheluvagali**'s cases (supra) and drawing attention to office objection raised about non-affixture of certificate.

45. In reply, petitioner relies on ratio in **Ram Kumar Yadav** and **Chandra Kishore Jha**'s cases (supra) to contend

that if statute fixes a day as last day for an act, that act can be done up to midnight preceding next day. Further, though EP Rules permit filing up to 4:00 p.m., Account Rules of High Court prescribe closure of money transactions in its Accounts Branch, half an hour before closing time of treasury, which as prescribed is between 10:30 a.m. and 2:30 p.m. on weekdays and up to 12:30 p.m. on Saturday. Petitioner contends that on 27.06.2023, Accounts Branch would have closed at 2:00 p.m. much earlier to closing time of filing of EP i.e. 4:00 p.m., in normal course and up to midnight as per law.

46. Alternatively, it is contended that when petitioner intends to establish closure of Accounts Branch of High Court prior to filing of EP by examination of official of Accounts Branch and got witness summons issued to Deputy Registrar of High Court, Accounts-I, dismissal of EP before such examination would not be justified.

47. Another alternative contention is that Rule 8 of EP Rules peculiar to this Court provided for curing of defects in EP even before EP is placed before Court. That office objection about non-deposit was not raised and matter set for trial. And

as Hon'ble Supreme Court directed framing of issue about whether petitioner was prevented on reasons beyond control in depositing amount and recording evidence on same, rejection of EP would be in teeth of said directions. And lastly, relying on decisions in **Bhim Rao** and **Karam Kapahi**'s cases (supra) contending that power under Order XII Rule 6 was to be used sparingly only when admission was clear and unambiguous.

48. Firstly, whether invocation of Order VII Rule 11 of CPC would be justified at this stage, it is seen that Hon'ble Supreme Court in **Azhar Hussain v. Rajiv Gandhi** reported in **1986 SCC OnLine SC 394,** while considering contention that in EPs only after conclusion of trial powers under CPC dealing with defective petition should be exercised, held:

> *"12. … … … … The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. … … … … … … ….."*

49. It was held that in absence of pleadings, parties cannot be permitted to lead evidence and power under Order VII Rule 11 of CPC was meant to be exercised to put an end to futile litigation. In instant case, opposition to invocation of said power is on two grounds, firstly that an earlier application filed by respondent no.1 on virtually same ground was rejected and secondly, in challenge of said order, Hon'ble Supreme Court directed framing of issue and recording of evidence.

50. Hon'ble Supreme Court in **Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner & Ors.** reported in **(2004) 3 SCC 137** and **Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited** reported in **(2022) 10 SCC 1**, held that power under Order VII Rule 11 of CPC could be exercised without need for filing of application. It is also held that duty is cast on Court to ensure that frivolous suits are nipped at bud.

51. Likewise, Hon'ble Supreme Court in **Rajiv Ghosh v. Satya Narayan Jaiswal** reported in **2025 SCC OnLine SC 751** held, Order XII Rule 6 of CPC vested wide discretion to Court that it may at any stage of suit, either on application or

suo motu to pass judgment as it may think fit based on admission of a fact, without need for determination of other questions, where admission was clear, unambiguous, unequivocal and unconditional.

52. For determining whether there exist sufficient grounds or justification for invocation of either of provisions, reference has to commence with pleadings. Only pleadings in EP about deposit of security for costs contained in para 15 is as follows:

> *"Petitioner has deposited a sum of Rs.2,000/- as security towards cost of this petition as required under Section 117 of RoPA. Certificate bearing no.HCA-I(JD)/EP/2023 dated 28th June, 2023 issued by this Court for having deposited the same is produced herewith at Annexure–G."*

53. Indisputably, it does not reveal plea about petitioner being prevented by reasons beyond his control from depositing security for costs prior to filing of EP i.e., either to come to Court prior to closure of Accounts Branch. Apart from above, even if Accounts Branch of High Court were closed for that day, there is no pleading about petitioner requesting Registrar to permit him to deposit security for costs, which

alternative is clearly contemplated both in Rule 4 of Account Rules and Rule 18 (a) of Treasury Code as follows:

Rule 4 of Account Rules:	Rule 18 of Treasury Code:
"4. Office Hours for Money Transactions Cash transactions shall be commenced at 11 a.m. and closed half an hour before the closing hour of the treasury, so that the cash amount due to be remitted to the Treasury/Bank may be remitted in time, provided that the ***Registrar may permit any transaction to be effected beyond the prescribed closing hour in exceptional circumstances."***	*"18. (a) All the treasuries in the State will be kept open to the public from 10:30 a.m. to 12:00 noon on Saturdays and from 10:30 a.m. to 2:30 p.m. on other days, excluding Sundays and other authorised holidays. Ordinarily, no work should be done in the treasury after sunset.* ***If, in cases of urgency, any ordinary work is required to be done after sunset, such work should on no account be done without sufficient light.****"*

54. There cannot be any cavil that plea of impossibility can take birth only from pleading. And when there are several modes contemplated to do certain act, any party pleading impossibility to do such act would succeed in establishing impossibility only if he has availed/exhausted all modes for performance of that act and establishes how he was prevented from doing that act under each of modes provided.

55. In context of present case, where extant Rules contemplate payment of security for costs with Accounts Branch of High Court up to half an hour within closing time of Government Treasury and both Treasury Code as well as

Accounts Rules governing receipts contemplate receipt beyond normal closing time and when petitioner has not stated about availing such option by approaching Registrar, his plea about impossibility or prevention beyond his control would have to be turned down.

56. In instant case, petitioner has not contested submission that provision requiring deposit of security for costs is mandatory as held in **M. Karunanidhi v. HV Hande & Ors.** reported in **(1983) 2 SCC 473** and reiterated in many later decisions. In **MY Ghorpade v. Shivaji Rao M Poal & Ors.** reported in **(2002) 7 SCC 289**, it is held that while mode of depositing security for costs was flexible to prevent technical dismissals, core obligation of ensuring deposit of money within time was strict and non-negotiable. Further, in **Aeltemesh Rein**'s case (supra), Hon'ble Supreme Court affirmed that failure to deposit security for costs mandated under Section 117 of RoPA, left Court with no option but to dismiss EP under Section 86 (1) of RoPA rejecting pleas to bypass statutory requirement. As rightly submitted, in **Charan Lal Sahu**'s case (supra), Hon'ble Supreme Court held that High Court has no

jurisdiction or inherent power to waive, reduce or condone non-deposit of security for costs, even when petitioner pleads financial inability or hardship.

57. In light of same, since there is clear admission regarding failure to deposit security for costs prior to filing of EP and its payment on subsequent day, which incidentally would be 46th day from date of declaration of Election results, threshold requirement for invocation of Order XII Rule 6 of CPC is met rendering futile, without a hint of doubt, need for continuation with trial.

58. In view of above, following:

ORDER

Petition is ***dismissed***.

No order as to costs.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,AV,GRD
List No.: 1 Sl No.: 2