

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3428 of 2001@@
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Satwant Kaur ...Appellant (s)

Versus~

Sohan Singh (D) & Ors.Respondent (s)

With Civil Appeal No. 1040 of 2001@@
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The appellant was declared the successful candidate in the election to the Legislative Assembly of Punjab held on 7th February, 1997 from the 67 (Reserve) Assembly constituency. The election of the appellant was challenged by Sohan Singh, who had also contested the election. The arguments in the election petition were heard on 14th December, 1999 by a learned Single Judge of the High Court at Chandigarh and judgment was reserved. The election petition was listed for re-hearing on 30th May, 2000 and again on 1st June, 2000. An issue in the election petition was then re-framed and counsel were given the opportunity of leading further evidence and addressing the court, which opportunity was declined. On 23rd November, 2000 the judgment was delivered, the appellant was unseated and Sohan Singh was declared elected.

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On 25th November, 2000, applications were filed by the appellant in the election petition which stated that the appellant had come to know that Sohan Singh had, in fact, died on 27th December, 1999. The applications sought stay of the order in the election petition and a declaration that the election petition stood abated with effect from 27th December, 1999 and, consequently, the initiation of further proceedings under Section 112 of the Representation of the People Act, 1951. The High Court applied to the facts afore-stated the provisions of Order XXII Rule 6 of the Code of Civil Procedure and dismissed the applications.

The appellant is in appeal against the judgment and order on the election petition and against the orders dismissing her interim applications.

That Sohan Singh, the election petitioner, died on 27th

December, 1999, is not in dispute. On that date, arguments had been concluded in the election petition and judgment had been reserved. However, at the instance of the High Court, the election petition was re-listed for further arguments, an issue was re-framed and counsel were invited to lead evidence and address the court, if they so chose. Clearly, therefore, on 27th December, 1999, being the date upon which the election petitioner died, the hearing of the election petition had not
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- 3 -

been concluded.

Order XXII Rule 6 says that "there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death.....". Clearly, therefore, the hearing not having concluded on the date of the death of the election petitioner, the provisions of Order XXII Rule 6 had no application.

Secondly, the provisions of Order XXII Rule 6 give to the court the discretion to pronounce judgment in circumstances where the death of either party has occurred between the conclusion of the hearing and the pronouncing of the judgment. In this case, not only was the election of the appellant set aside but Sohan Singh was declared elected. Given the fact that Sohan Singh had died in the interregum, the discretion should, in any event, not have been exercised and judgment ought not to have been delivered.

Our attention has been drawn by learned counsel for the appellant to the judgment of this Court in Sheo Sadan Singh@ CCCCCCCCCCCCCCCCCC vs. Mohan Lal Gautam (1969 (1) S.C.C. 408) in support of the@ CCCCCCCCCCCCCCCCCC contention that for the purposes of an election petition, Order XXII Rule 6 has no application and that the Representation of the People Act provides a complete code. We see no reason, on the facts of this case, to go into that
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wider question. We are satisfied that, even if we proceed upon the basis that Order XXII Rule 6 applies to an election petition, this was not a case where it was apposite.

In the result, the civil appeals are allowed. The judgment and order of the High Court on the election petition is set aside. Also set aside is the order of the High Court dismissing the applications filed by the appellant. The applications are allowed. It is declared that the election petition abated with effect from 27th December, 1999 and that, as a result, proceedings under Section 112 of the Representation of the People Act are required to be taken. The matter is remanded to the High Court for the purpose.

We cannot, in this matter, permit the legal representatives of the deceased election petitioner to be brought on record but we have, so as to gain assistance, heard learned counsel appearing for them.

No order as to costs.

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.....J.
(S.P. Bharucha)@
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.....J.

(Y.K. Sabharwal)@@
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.....J.
(Brijesh Kumar)@@
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New Delhi,
October 30, 2001.