

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).19371/2008

(From the judgement and order dated 09/04 / 2008 in E P No. 5/2007
of The H I G H COU R T OF JUD I C A T U R E AT ALL A H A B A D)

LOU I S E K H U R S H I D

Petitioner(s)

VE R S U S

KU L D E E P G A N G W A R

Respondent(s)

(With appln.(s) for permission to file rejoinder affidavit and
condonation of delay in filing appeal and to convert the
SL P(C) 19371/2008 as appeal and with prayer for interim relief)

Date: 16/04 /2009 This Petition was called on for hearing today.

COR A M :

HON' B L E M R. JUST I C E L O K E S H W A R S I N G H P A N T A
HON' B L E M R. JUST I C E B. S U D E R S H A N R E D D Y

For Petitioner(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Imtiaz Ahmed, Adv.
Mrs. Naghma Imtiaz, Adv.
Ms. Ambika Radhakrishnan, Adv.
for M / S. Equity Lex Associates, Adv.

For Respondent(s)

Mr. S.B. Sanyal, Sr. adv.
Mr. T.S.Upadhyay, Adv.
Ms. Asha Upadhyay, Adv.
Mr. R.D. Upadhyay, Adv.

UPON hearing counsel the Court made the following

O R D E R

The applications for condonation of delay in filing appeal
and for conversion of the special leave petition as appeal are
dismissed as withdrawn.

Leave granted.

The appeal is allowed in terms of the signed order. Parties
to bear their own costs.

(Ajay Kr. Jain)
Court Master

(Vinod Kulvi)
Court Master

(Signed order is placed on the file)

I N T H E S U P R E M E C O U R T O F I N D I A
C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O. 2612 OF 2009

(Arising out of SL P(C)NO. 19371 OF 2008)

Louise Khurshid

.... Appellant

Versus

Kuldeep Gangwar

.... Respondent

O R D E R

1. Heard learned counsel for the parties.

2. Leave granted.

3. This appeal arises out of the interlocutory order dated 9.4.2008 passed by a learned Single Judge of the High Court of Judicature at Allahabad in Civil Misc. Application No. 238076 (Paper No. A- 7) in Election Petition No. 5/2007 filed by the present respondent, the returned candidate in the election. By the said order the Election Petition filed by the appellant herein challenging the election of the respondent from Vidhan Sabha No. 297, Kaimganj constituency in the State of Uttar Pradesh has been dismissed on the ground that material facts regarding ground Nos. (iii) and (iv) of Section 100 (1)(d) of the Representation of People Act, 1951 have not been pleaded in the Election Petition. The High Court accordingly allowed the application filed by the respondent under Order VI I Rule 11(A) CPC on the ground that the Election Petition does not disclose any cause of action.

4. We have heard learned counsel for the parties.

5. From a bare perusal of the impugned order of the learned Single Judge, we find that he has only referred to various judgments of the High Courts and of this Court on the subject and without any analysis of the pleadings as to what are those pleadings which lack the material particulars. The High Court did not assign any reasons whatsoever as to on what ground it had arrived at the conclusion that the Election Petition filed by the appellant herein does not reveal any cause of action.

6. The Election Petition has been dismissed simply by allowing the application (Paper No. A-7) filed by the respondent under Order VI I Rule 11(A) CPC whereas on the second application under Order VI Rule 16 CPC (Paper No. A-6) for striking out paragraphs 5 to 21 of the Election Petition, no order has been passed.

7. We find it difficult to sustain the order of the High Court as what was least expected of the High Court was that before dismissing the Election Petition on merits, the vagueness and uncertainty of the pleadings averred by the appellant in the Election Petition has to be analyzed in proper perspective and thereafter detailed reasons are to be recorded for dismissing the Election Petition at preliminary stage.

8. In these circumstances, the impugned order is set aside. However, we remit the matter to the High Court to reconsider the application (Paper No. A-7) filed by the respondent under Order VI I Rule 11(A) of the CPC on its own merits and in accordance with law and dispose of the same by recording detailed reasons, if practicable within a period of three months from the date of receipt of copy of this order. We make it clear that we have not expressed any opinion on the merits of the case.

9. The appeal is allowed. Parties to bear their own costs.
.....J.
(LO K E S H W A R S I N G H P A N T A)

.....J.
(B. SUD E R S H A N R E D D Y)

New Delhi
April 16, 2009