

**Veena Agrawal Vs. Additional District Judge, Court No. 2 and ors.**

**Veena Agrawal Vs. Additional District Judge, Court No. 2 and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/486803](http://sooperkanoon.com/486803)

**Court :** Allahabad

**Decided On :** Dec-10-2002

**Reported in :** (2003)1UPLBEC402

**Judge :** Sunil Ambwani, J.

**Acts :** [Uttar Pradesh Nagar Nigam Adhiniyam, 1959](#) - Sections 61; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 10, Rules 2 and 10

**Appeal No. :** C.M.W.P. No. 21978 of 2002

**Appellant :** Veena Agrawal

**Respondent :** Additional District Judge, Court No. 2 and ors.

**Advocate for Def. :** S.P. Shukla, ;R.K. Khanna and ;S.P. Srivastava, Advs.

**Advocate for Pet/Ap. :** Prakash Krishna and ;Kshitij Shailendra, Advs.

**Disposition :** Petition dismissed

**Judgement :**

**Sunil Ambwani, J.**

1. Petitioner---Smt. Veena Agarwal has been elected to the post of Nagar Pramukh, Nagar Nigam, Moradabad City. The polling, counting and declaration took place on 20.11.2000, 25.11.2000 and 26.11.2000 respectively. By an Election

Petition No. 14 of 2000, Smt. Asma Aslam, respondent No. 2 has challenged the elections under Section 61 of the U. P. Nagar Nigam Adhiniyam, 1959, as amended by U. P. Act Nos. 12 of 2000, 26 of 1995, 8 of 1998, 17 of 1999 and 7 of 2000, for declaring of elections dated 26.11.2000 as illegal and void. The election has been challenged on the ground of corrupt practice adopted by petitioner in the elections, irregularities in procedure of counting, and exercise of undue influence by senior political leaders, as well as illegality in counting and illegal exclusion of the polling agents of petitioner. Various other allegations have also been made with regard to counting and declaration of result. Upon service of notice, petitioner filed an application under Sections 63, 71, 72 and 78 of Municipal Corporation Act, 1959. Order VII. Rule 11, C.P.C., Order VI, Rule 5, C.P.C. and Section 115, C.P.C. (39-Ga) and that by application dated 18.1.2001, petitioner prayed that she may be permitted to file her written statement, if required after the disposal of the aforesaid application (39-Ga), and if the first two prayers are rejected, the alternative prayer be allowed. An objection was filed by election petitioner on 24.2.2001.

2. On 6.2.2002, election petitioner respondent No. 2 filed an application (67-Ga) stating that she is prepared to record her statement under Order X, Rule 2, C.P.C. for which a date may be fixed. On 19.2.2002, she gave a statement under Order X, Rule 2 and signed the same. The statement is quoted as below :

^feys er i=ksa dh x.kuk lxxM+cM+h gqbZ gS A okLro esa eq>s tks er feys gSa] mUgSa x.kuk esa de n'kkZ;sx;s gSa A iquZx.kuk gksus ij eSa fot;kh gksxh A pquko ;kfpdk isij ua- 3@x nsrh gw A dsoy lgh erx.kuk ej iwjk dsl vk/kkfjr j[krh gw A x.kuk esa fdlizdkj gsjkQsjh dh] fdlus dh] bl fcUnq dks izsl ugh djrh gw A

i<+djrLnhd djrh gw A

g- vLi'V vklek vLye\*\*

3. On the same day, an application was filed by petitioner regarding statement under Order X, Rule 2, C.P.C. suggesting the following questions to be put to elucidate the matter in controversy :

(1) in what manner and what were the illegalities or irregularities committed in counting the votes?

(2) if any illegalities were committed, who committed them?

(3) How many ballot papers were illegally counted?

4. In view of the aforequoted statement, the Court found that there is no necessity of asking the election petitioner to answer these questions and disposed of the application accordingly. On 6.3.2002, counsel for petitioner made an application to reject the petition on the ground that election petitioner's statement under Order X, Rule 2 has destroyed her allegation made by her in her petition, with regard to corrupt practices in paragraphs 4 to 7 of the election petition and that in the circumstances, there is no need to file written statement. Applications 70C, 70D were also filed on 25.2.2002 to reject the election petition under Section 69 of the U. P. Municipal Corporation Act, 1959, read with Order VII, Rule 11, C.P.C. By the impugned order, the Election Tribunal/Additional District and Sessions Judge (Court No. 2), Moradabad, had rejected application under Order VII, Rule 11, C.P.C. and has directed petitioner to file written statement. He has also rejected applications for deleting paragraphs 4 to 17 and has observed that the issues will be framed only after filing written statement.

5. I have heard Sri Prakash Krishna for petitioner and Sri 5. P. Shukla, for contesting respondent No. 2.

6. Counsel for petitioner submits that the statement of election petitioner under Order X, Rule 2 made by her voluntarily on her own application has taken away the effect of allegations of corrupt practice, made in paragraphs 4 to 17 of the election petition, and that she has not pressed these allegations upon which rest of allegations to challenge the election do not survive. He submits that application under Order VII, Rule 11 can be decided even before written statement is filed if the election petition does not disclose cause of action, and lacks material particulars with regard to allegation of corrupt practice. According to him, nothing survives to decide election petition and that the order of recount cannot be made after the election petitioner voluntarily made a statement not to press the

allegations of manipulations in the election which includes corrupt practice.

7. Counsel for respondents, on the other hand, states that the purpose of statement under Order X, Rule 2 is only to ascertain the issues which may be decided in the suit. At the first hearing of the suit, the Court with a view to elucidate the matters in controversy in the suit can examine orally the parties appearing in person or present in Court or may require any person able to answer any material questions relating to the suit, by whom any party appearing in person or present in Court, or is pleaded is accompanied. The statement under Order X, Rule 2 cannot destroy the allegations in the plaint and on that basis the plaint cannot be rejected.

8. He submits that petitioner had disclosed material particulars with regard to corrupt practices, in the plaint and that unless a written statement was filed, the provisions of Order VI, Rule 5 and Order VII. Rule 11, C.P.C. cannot be pressed into service.

9. The effect of statement under Order X, Rule 2. C.P.C. has been considered by this Court in *Amrita Devi v. Sripat Rai*, AIR 1962 All 111, where the trial court trying action for infringement of copyright found that the plaintiff's counsel made a statement under Order X, Rule 2. C.P.C. that the book styled 'Nirmala' was written by author Prem Chandji while he was in the employment of R. Saigal of the Chand Press, Allahabad, under a contract of service. Admission made by a party under Order X, Rule 2, C.P.C. was held to be conclusive against him. A party cannot be allowed to deviate from his pleadings. The plaintiffs, it was held, could not, therefore, be allowed to adduce evidence in support of the alleged assignment of copyright by Sri Prem Chandji. In *Smt. Kaniz Fatima Shah v. Nairn Ashraf*, AIR 1983 All 450, a Division Bench of this Court held that it is primary duty of the Court under Civil Procedure Code to see that proper issues, necessary for decision of the case, are framed. Even if the parties fail to point out relevant issues to be framed in the case or render no assistance to Court in the matter of framing issues, it would not absolve the Court from discharging primary duty cast on it for framing proper issues on all the material points arising out of the pleadings. If the plaintiff in his statement under Order X, Rule 2 of the Court has specifically given up a plea, it cannot be shut down from being placed and pressed during the

course of trial or in appeal, if it relates to a crucial and material question of fact or law. The matter was remanded with the direction to the court below to proceed and to frame issues which arose out of the pleadings of the parties and the statement recorded under Order X, Rule 2 of the Code. In *Rasheed Ahmad v. Smt. Kariman Khatoon*, 2002 (1) AWC 346 (LB) : 2001 (45) ALR 527, it was held that the statements under Order X, Rule 2 are for clarification of pleadings. The value of statements under Order X, Rule 2 cannot be set at naught by any subsequent tutored statement given in evidence. In *Ram Pal Singh v. V1th Additional District Judge, Meerut and Ors.*, 1983 UPLBEC 672, this Court found that where election petitioner gave up all other pleas but continued his case to counting of the votes, the order of recount was illegal. There is consistency of view in decided cases about the stage in which the application under Order VII, Rule 11 can be filed. In *Samar Singh v. Kedar Nath and Ors.*, AIR 1997 SC 1926 ; *Jamuna Prasad Mukhariya v. Lachhi Ram and Ors.*, AIR 1954 SC 686 ; *Mohan Rawale v. Damodar Taryaba*, 1994 ACJ 570 (SC) and *P.R. Sakeshwala and Anr. v. Dr. Devadatta V. S. Kerkar*, AIR 1995 Bom 227, it has been held that the trial court is always free to entertain an application under Order VII, Rule 11, C.P.C. even before the defendant files written statement, if the plaint does not disclose cause of action, or right of defendant to challenge the maintainability of the suit, irrespective of his rights to contest the same on its merits. The defendant is bound to file written statement only when an application under Order VII, Rule 11, C.P.C. is not allowed by the trial court. In *Dhartipakar Modern Lal Agarwal v. Shri Rqjiv Gandhi*, AIR 1987 SC 1577, it was held that where election petitioner does not disclose any cause of action, it is liable to be struck off under Order Vi, Rule 16, C.P.C. as the Court is empowered at any stage of the proceedings to strike out or delete pleadings which are unnecessary, scandalous, frivolous or vexatious. If after striking out pleadings, the Court found that no triable issues remain to be considered, it has power to reject the election petition under Order VI, Rule 17.

10. In the present case, the Court has to find out effect of the statement of election petitioner under Order X, Rule 2, C.P.C. recorded on her request on 19.2.2002. In case the entire statement is taken into account, as quoted above, it is found that the petitioner in the first sentence stressed the fact that there were irregularities in counting the votes. In the second sentence, she stated that, in fact the number of

votes polled in her favour have been shown to be less in the counting, and in case of recounting, she would be declared winner. Thereafter, she stated that she is presenting paper (3-Ga) which is the election petition. After this statement, she proceeded to state that the entire foundation of her case is correct counting of votes, and that she does not want to press the point of manipulation in counting and the persons who committed it. The cumulative effect of her entire statement is that she pressed the election petition and claimed that actual number of votes polled in her favour have not been reflected in the counting. She has founded her entire claim on correct counting of votes and not with regard to manipulation in the counting and the persons who did it. It cannot be said that by this statement, she has given up the pleas of corrupt practices in the election. The last part of her statement may have been given in an anxiety of recounting without specifying the particulars or allegations and naming the persons. The statement, however, cannot be taken to mean that she has given up the pleas in the election petition with regard to corrupt practices. A close reading of the election petition shows that material particulars have been given, both with regard to booth capturing, procedure in counting, manipulations made during process of counting of votes in favour of the winning candidate. These material particulars are still to be proved by evidence to be adduced by her.

11. Without expressing any opinion, whether the statement given by her does or does not entitle her for recount of votes, it cannot be said that the statement destroys or takes away the effect of allegations or irregularities made in her statement. A misplaced anxiety of the election petitioner to press her claim and expediency of recount, will not take away, abridge or destroy the effect of pleadings giving her cause of action to file, and pursue the election petition. A statement given under Order X, Rule 2 has to be read as a whole. A part of it cannot be torn out of context to be used against her. The petitioner may have a right to file an application under Order VII, Rule 11, C.P.C. before filing a written statement, but that her statement under Order X, Rule 2, C.P.C. could not have been taken into account to make the entire pleadings in election petition ineffective. The petitioner has a right to challenge the same on all grounds available to her, and that her challenge cannot be thrown on technical grounds, before she is given an opportunity to substantiate the same on record.

12. In the facts and circumstances of the case, the writ petition is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**