



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ELECTION PETITION NO. 36 OF 2025

Mr. Ganesh Kumar Yadav

.. Petitioner

Versus

Capt. R. Tamil Selvan and Ors.

.. Respondents

WITH

APPLICATION NO. 10 OF 2025

IN

ELECTION PETITION NO. 36 OF 2025

Capt. R. Tamil Selvan

Applicant

.. (Orig. Respondent No.1)

IN THE MATTER OF:

Mr. Ganesh Kumar Yadav

.. Petitioner

Versus

Capt. R. Tamil Selvan and Ors.

.. Respondents

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- Mr. Premlal Krishnan a/w. Mr. Nadeem Sharma, Mr. Hrishikesh Nadkarni, Mr. Kailash Tiwari, Mr. Salman Atharia and Mr. Abuzar Khan, Advocates i/by Pan India Legal Services LLP for Petitioner.
- Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Mandar Soman and Mr. Shailesh Shukla, Advocates i/by Shailesh H. Shukla & H. Vaidyanathan Associates for Respondent No.1 in Election Petition and for Applicant in Application No.10 of 2025.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 18, 2025.

JUDGEMENT:

1. Heard Mr. Krishnan, learned Advocate for Petitioner and Dr. Tulzapurkar, learned Senior Advocate for Respondent No.1 in Election Petition and for Applicant in Application No.10 of 2025.

2. Election Petition No.36 of 2025 is filed by Mr. Ganesh Kumar Yadav on 30th December, 2024. It challenges election of Respondent

No.1 to the General Election from 179 Sion – Koliwada Constituency held on 20.11.2024 as void under provisions of Section 100(1)(d)(iv) of the Representation of the People's Act 1951 (for short '**RP Act**') and for issuance of directions for initiation of proceedings under Section 125A of the RP Act.

3. Application No.10 of 2025 is filed by Respondent No.1 - Capt. R. Tamil Selvan for dismissal of Election Petition under Section 86 of the RP Act read with Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short '**CPC**'). Respondent No.1 is the returned candidate / elected candidate in the Elections under challenge.

4. Brief facts leading to filing of the Election Petition are as follows:-

Election Commission announced schedule for 2024 General Elections to the Legislative Assembly of the State of Maharashtra as under:-

Schedule	Date
Date of Issue of Gazette Notification	22.10.2024 (Tuesday)
Last Date of making nominations	29.10.2024 (Tuesday)
Date of Scrutiny of nominations	30.10.2024(Wednesday)
Last Date for the withdrawal of candidatures	04.11.2024(Monday)
Date of Poll	20.11.2024 (Wednesday)
Date of Counting	23.11.2024 (Saturday)

Date before which election shall be completed	25.11.2024 (Monday)
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5. Total 15 candidates were in the fray for election from 179 Sion – Koliwada Constituency, which included, *interalia*, Petitioner from Indian National Congress and Respondent No.1 from Bhartiya Janata Party. Voting in pursuance to election to the said Constituency was held on 20.11.2024. Counting of votes was conducted on 23.11.2024 and the final result was declared. Petitioner secured 65,534 votes (second highest votes) whereas Respondent No.1 with 73,429 votes was declared as the Returned Candidate.

6. Petitioner has filed present Election Petition challenging election of Respondent No.1 on three (3) main grounds:-

- (i) Respondent No.1's non-disclosure and omission of an immovable asset acquired through a housing loan worth Rs.90 lakhs;
- (ii) Respondent No.1's non-disclosure of an Arbitration Award of Rs.2,72,60,559/- passed against him and in favour of Central Railways; and
- (iii) Respondent No.1's non-disclosure of liabilities under Column 10(i) in the Affidavit of disclosure under Form No.26.

7. Respondent No.1 filed Application No.10 of 2025 seeking rejection of Election Petition under Order VII Rule 11 of CPC.

Petitioner filed Affidavit-in-reply dated 14.07.2025 to the Application filed by Respondent No.1. Respondent No.1 – Applicant filed Affidavit - in-Rejoinder dated 24.07.2025. Application No.10 of 2025 is called out for hearing and being heard by consent of parties.

8. Dr. Tulzapurkar, learned Senior Advocate appearing for Respondent No.1 would submit that Election Petition is liable to be rejected as it does not contain a concise statement of material facts as mandated under Section 83(1)(a) of the RP Act. He would submit that Election Petition thus does not disclose any cause of action. He would submit that for setting aside of election, it is incumbent upon Petitioner to specifically plead non-compliance either with the provisions of the Constitution of India, the RP Act or Rules or Orders made thereunder. He would submit that the present Election Petition is full of vague allegations, founded on mere presumptions and assumptions without any cogent or documentary evidence appended in support thereof.

8.1. With regard to the first ground of challenge, he would submit that allegation pertaining to purchase of immovable property through housing loan of Rs.90 lakhs is a bald allegation unsupported by any substantial or credible evidence. He denies Respondent No.1 has not taken any housing loan in his individual capacity, hence question of such disclosure in the Affidavit does not arise. He would

submit that Respondent No.1 alongwith his daughter had initially intended to purchase a flat and both of them applied for housing loan jointly. However, the flat was ultimately purchased solely in the name of his daughter as the sole owner. He would submit that although Respondent No.1 had signed as co-applicant, the entire loan/borrowing is serviced by his daughter alone. In support of the same, Respondent No.1 has placed on record the registered Index II document of purchase of the said flat below Exhibit 'A' at page No.85 and a copy of Certificate issued by the Indian Overseas Bank, Sion Branch below Exhibit 'B' at page Nos.87 and 88 appended to his Rejoinder dated 24.07.2025. After going through the said documents he would submit that Petitioner's allegation fails as also his Election Petition which fails to disclose any material cause of action. Therefore this ground does not deserve any countenance and fails.

8.2. With regard to the second ground, he would submit that Petitioner himself admits in the Petition that by order 11.03.2020 the said Arbitration Award has been stayed by this Court. Once this is the position, ground of non-disclosure of liability against the Respondent No.1 does not arise. He would submit that Petitioner once again failed to demonstrate the significance of the alleged non-disclosure and how it could materially affect the election result. He would submit that once the Award is stayed by the Competent Court and proceedings are subjudice liability thereunder cannot be construed as undisclosed

“Government dues”. Hence he would submit that this ground also cannot survive and is liable to be rejected.

8.3. With regard to the third ground of non-disclosure of liabilities in Form No.26 of the Affidavit of disclosure, he would submit that Petitioner has failed to advert and place on record any cogent material information or documents in support of his allegation of improper acceptance of nomination by the Returning Officer. He would submit that Petitioner has failed to demonstrate as to how such non-disclosure under Column 10(i) of disputed Government dues in Form No.26 would materially affect the election of Respondent No.1 as the Returned Candidate.

8.4. On the point of non-disclosure of other loans pending at the time of filing of Form No.26, he would submit that Petitioner in his Affidavit-in-reply dated 14.07.2025 to Application under Order VII Rule 11 of CPC, has referred to CRIF and CIBIL Reports. However Petitioner failed to annex the same to the Election Petition in the first instance though the CRIF Report dated 20.12.2024 was available with Petitioner before filing of the Petition. He would submit that it is evident that he deliberately withheld the same. Next, he would submit that CIBIL Report dated 09.07.2025, was obtained after filing of Petition and only after service of the present Application. He would submit that this Report merely reflects the status as on the date of the

Report and not the date when Form No.26 was filed by Respondent No.1. He would submit that the total amount of Rs.51,97,351 disclosed by Respondent No.1 in Form No.26 includes other loan amounts such as liability as guarantor for grant of loan of Rs.20 lakhs dated 31.03.2023 and business loan of Rs.49 lakhs availed on 06.03.2009 as stated under Column 8(i) at page No. 35 and Column 9 (i) at page No.39 of the Petition. In support of the same a copy of confirmation of balance as on 26.10.2024 from Indian Overseas Bank below Exhibit 'C' at page No.89 of Rejoinder dated 24.07.2025 is placed on record. He would submit that Petitioner cannot be permitted to produce new material evidence in his Affidavit-in-reply to the Order VII Rule 11 Application, rather he ought to have substantiated his case in the Election Petition itself. Hence he would submit that in the absence of appropriate documents disclosed in the Petition, Petitioner cannot be allowed to rely on the same.

8.5. He would submit that Petitioner is attempting to improve his case / pleadings in the Petition by introducing new pleadings about lease registration. He would submit that lease registration in question was obtained in the year 2019 and it has expired on 07.03.2024. Hence he would submit that such allegations are clearly an afterthought and completely contrary to the provisions of Section 83 of the RP Act.

8.6. He would submit that as per Section 100(1)(d)(iv) of the RP Act, election of returned candidate cannot be declared void for noncompliance of the provisions of the Constitution of India or the RP Act or Rules. He would submit that as per Rule 4(A) of the Conduct of Election Rules, 1961, every candidate is required to file an Affidavit at the time of submitting his nomination paper to the Returning Officer, which is thoroughly scrutinized in accordance with the statute and rules. He would submit that Respondent No.1 filed his statutory Affidavit at the time of submission of his nomination form / papers and complied with Rule 4(A). He would submit that as per Section 33(A) of the said Act, every candidate is required to disclose true and correct information in the Affidavit submitted as per Rule 4(A) of the Conduct of Election Rules, 1961. He would submit that Respondent No.1 submitted true and correct information and complied with the provision of Section 33(A) of the RP Act, therefore, there is compliance with the provisions of Conduct of Election Rule, 1961, the said Act and Rules or Orders made thereunder. Hence, according to him, averments in the Petition fails to make out any case that Respondent No.1 did not comply with the provisions of the Constitution of India, the RP Act and Rules or orders thereunder.

8.7. He would submit that contention of Petitioner that Affidavit filed by Respondent No.1 is false, misleading and there is suppression of details of his financial liabilities is *prima facie* incorrect. He would

submit that Section 125(A) of the RP Act provide penalty for filing false Affidavit to the extent of imprisonment of a prison term which may be extended to 6 months or fine. He would submit that for invoking provisions of Section 125(A), Petitioner has to initiate appropriate proceedings and establish that Respondent No.1 filed false Affidavit or concealed material information in his Affidavit filed as per Rule 4(A) read with Section 31(A) of the RP Act. Therefore, he would argue that allegations of Petitioner in the Petition are not sufficient to establish conviction under Section 125(A) of the said Act. He would submit that Petitioner has not given any details as to how the statutory Affidavit filed by Respondent No.1 is false, misleading and how Respondent No.1 has suppressed his liabilities. Hence, according to him Petitioner has failed to establish the ground under Section 100(1) (d)(iv) of the RP Act. He would therefore submit that there is no cause of action to file the present Petition and Petition is liable to be dismissed as per provisions of Order VII Rule 11 (A) of CPC for want of cause of action.

8.8. He would submit that the *sine qua non* for maintenance of Election Petition and to take the same to trial is demonstration through pleading as to how the allegations, if taken to be true, would materially affect the election of the returned candidate. He would submit that if there are no pleadings demonstrating that result of the election is materially affected, Court must reject the Election Petition

by exercising jurisdiction under Order VII Rule 11 of CPC.

8.9. In support of his submissions he has referred to and relied upon the decisions of the Supreme Court in the case of (i) *Harishankar Jain Vs. Sonia Gandhi* ¹ ; (ii) *Ramsukh Vs. Dinesh Aggarwal* ² and (iii) *Bitu w/o Ghanshyam Ramteke Vs. Nanaji Sitaram Shamkule* ³. He would accordingly pray for rejection of the Election Petition under the provisions of Order VII Rule 11 of CPC.

9. **PER CONTRA**, Mr. Krishnan, learned Advocate appearing for the Petitioner has vehemently opposed the Application under Order VII Rule 11 of CPC.

9.1. He would submit that result of election is affected by non-compliance of provisions of the Constitution of India, the RP Act and the Rules or orders framed thereunder namely violation of Section 100(1)(d)(iv) of the RP Act. He would submit that election of Respondent No.1 stands vitiated on account of deliberate suppression and misrepresentation of material particulars in the Affidavit in Form No.26 filed under Section 33A of the RP Act read with Rule 4A of the Conduct of Election Rules, 1961 which further mandates every candidate to declare all assets, financial liabilities, criminal antecedents and educational qualifications.

¹ 2001 (8) SCC 233.

² 2009 (10) SCC 541.

³ 2010 SCC OnLine Bom 1101.

9.2. On the ground of non-disclosure, he would submit that Respondent No.1 failed to disclose an immovable asset acquired by him availed through a housing loan of Rs.90,00,000, with outstanding balance of Rs.86,41,968 as reflected in the CRIF Report. He would submit that this figure is of significant magnitude and hence cannot be regarded as inadvertent omission. He would submit that such concealment of material fact amounts to breach of statutory mandate. He would submit that Respondent No. 1 is thus guilty of not disclosing the relevant information in his Affidavit of disclosure and such lack of transparency and non-disclosure has materially affected the result of the election. He would submit that liabilities of candidates are required to be disclosed so that the electorate can form an informed decision while returning a candidate.

9.3. On the ground of non-disclosure of liability under Arbitral Award, he would submit that Respondent No.1 has deliberately omitted disclosure of the two arbitral awards in his Affidavit as under:-

(a) Arbitral award dated 12.07.2011 directing payment of Rs.2,00,449 to the Government, which remains a subsisting liability; and

(b) Arbitral award dated 30.03.2017 directing payment of Rs.2,72,60,559 to Central Railway. He would submit that though execution of this Award has been stayed by this Court,

liability has not been extinguished and thus continues to subsist for the purposes of disclosure.

9.4. He would submit that pendency of Appeal, Review or Stay does not nullify the obligation to disclose such liability in Form No.26 as the object is to enable the electorate to assess the complete financial standing of the candidate at the time of election. He would submit that such suppression amounts to lack of transparency and thereby materially affects the election result.

9.5. On the ground of filing Form No.26, he would submit that under Column 10(i) of Form No.26 a candidate is required to disclose all liabilities that are under dispute including those subject to pending litigation or Arbitration. However, Respondent No.1 failed to mention the above liabilities which includes liability as guarantor of Rs.20 lakhs and business loan liability of Rs.49 lakhs, both of which are reflected in the CRIF and CIBIL Reports which constitute material encumbrances for the electorate to know.

9.6. With regard to the objection under Section 83(1) of the RP Act, he would submit that Petition contains a concise statement of material facts with sufficient particulars to disclose cause of action under Section 100(1)(d)(iv) of the RP Act. He would submit that Petition clearly discloses triable issues based on documentary material and public record. Hence, in view of the above grounds and

submissions, Mr. Krishnan, would submit that deliberate suppression of significant liabilities, arbitral awards and disputed liabilities by Respondent No.1 clearly amount to violation of Section 33A of the RP Act and incomplete disclosure in Form No.26 amounts to misleading the electorate and materially affecting the election result. Hence he would submit that Election Petition is maintainable in law and on facts which raise substantial triable issues.

9.7. In support of his above submissions, he has referred to and relied upon the following decisions of the Supreme Court:

- (i) *Sewaram Vs. Sobharan Singh* ⁴;
- (ii) *Union of India and Ors. Vs. Association for Democratic Reforms and Ors.* ⁵;
- (iii) *Ravi Yashwant Bhoir v. District Collector, Raigad* ⁶;
- (iv) *Resurgence India Vs. Election Commission of India and Ors.* ⁷;
- (v) *Kisan Shankar Kathore Vs. Arun Dattatray Sawaant and Ors.* ⁸;
- (vi) *Krishnamoorthy v. Sivakumar and Ors.* ⁹; and
- (vii) *Lok Prahari Vs. Union of India and Ors.* ¹⁰

9.8. Mr. Krishnan, would submit that Election Petition is not liable to be dismissed in *limine* under Section 86 of the RP Act for alleged non-compliance of Section 83 (1) of the RP Act. He would

4 AIR 1993 SC 212

5 AIR 2002 SC 2112

6 AIR 2012 SC 1339

7 AIR 2014 SC 344

8 (2014) 14 SCC 162

9 AIR 2015 SC 1921

10 AIR 2018 SC 1041

submit that Petitioner must be permitted to prove the allegations / contentions made out in the Election Petition by leading appropriate evidence at trial. Hence he would pray that Application under Order VII Rule 11 of CPC be dismissed.

10. I have heard Dr. Tulzapurkar for Respondent No.1 – Applicant and Mr. Krishnan for the Election Petitioner and with their able assistance perused the Election Petition and annexures appended thereto. Contentions of the parties in the Application under Order VII Rule 11 are considered and submissions made by learned Advocates for both parties have received due consideration of this Court

11. Petitioner has challenged the election of Respondent No. 1 under Section 100 (1)(d)(iv) of the RP Act and for issuance of directions for initiation of proceedings under Section 125A of the RP Act.

12. It is however *prima facie* seen that the Election Petition comprises of vague and generic pleadings and there is complete absence of material facts. Rather at the outset, I wish to note that Mr. Krishnan has argued that whatever is stated in the Election Petition is enough for Petitioner to lay the foundation for challenging the election of Respondent No. 1 and Petitioner be called upon to prove the same in evidence. He has fairly argued that though what Petitioner will prove in evidence is not specifically in so many words stated in the

Election Petition but whatever minimal pleadings stated therein are enough for maintainability of the Petition and hence Petitioner should be allowed to prove the same in trial. I do not however wish to subscribe or accept the above submission of Mr. Krishnan, since if Petition has to be maintained under Section 100(1)(d)(iv) or under Section 101 of the RP Act then entire cause of action in the form of specific material facts or concise statement of material facts along with full disclosure of names, dates, place, incidents, role etc. of such parties involved needs to be stated specifically in the Petition.

13. That is the *sine qua non* of the Election Petition. In this regard attention is drawn to the provisions of Section 83 of the RP Act:-

“83. Contents of Petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, 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 the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

14. Thus, it is mandatory under provisions of Section 83(1) (a) of the RP Act that Election Petition must contain a concise statement of the material facts with full particulars of corrupt practice with all details on which Petitioner relies. When provisions of Section 83(1)(a) are read in conjunction with provisions of Section 100(1)(d)(iii) and (iv) of RP Act what emerges is that the Election Petition must contain a concise statement of material facts to demonstrate the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void or a concise statement of material facts to demonstrate non-compliance with provisions of the Constitution or of the Act or Rules or orders made thereunder.

15. I would now like to advert to the case in hand to examine whether the present Election Petition suffers from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of RP Act. Case of Petitioner is confined to alleged violation of Section 100(1)(d) (iv). For the sake of ready reference, the said Section 100 is reproduced below:

“100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

- (i) by the improper acceptance or any nomination, or*
- (ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or*
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or*
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,*

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;*
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and*
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,*

Then the High Court may decide that the election of the returned candidate is not void.”

16. From above, it is seen that for invoking ground under Section 100(1)(d)(iv) of the RP Act, it is incumbent for Election Petitioner to plead in Election Petition that result of election of Returned Candidate has been materially affected by non-compliance with provisions of the Constitution or the provisions of the RP Act or of any Rules or orders made thereunder by furnishing entire details. It is

not open to Petitioner to argue that he has placed on record some details and the rest will be proved by him by leading evidence. Meaning of concise material facts mean all such relevant details calling an election. Petitioner cannot improve his case in evidence by pleading facts which are not pleaded in the Election Petition.

17. In the decision of this Court passed in the case of ***Ravindra Dattaram Waikar Vs. Amol Gajanan Kirtikar and Ors.***¹¹ (Coram : Mr. Sandeep V. Marne, J.) this Court has reiterated the settled position of law under the RP Act dealing with the necessity of pleading of material facts for maintainability of the Election Petition in paragraph Nos. 26 to 33 thereof which refer to the well settled authoritative pronouncements of the Supreme Court in similarly placed cases. What is held by this Court in paragraph Nos. 26 to 33 is directly relevant to the present case and the discussion herein above and the same are reproduced herein below for immediate reference:-

"26) Before proceeding ahead with the examination as to whether the Election Petition filed by the Petitioner discloses concise statement of material facts demonstrating grounds under Section 100(1)(d)(iii) and (iv) of the RP Act, it would be necessary to take stock of few judgments dealing with the necessity for pleading of material facts for maintenance of an Election Petition. By now it is well settled position of law that Election Petition is a statutory remedy and not an action in equity or a remedy in common law. It is also equally well settled position that said Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the said Act is mandatory requirement for exercising the statutory remedy under the RP Act. Reference in this regard can be made to the

¹¹ Application (L) No. 29930 of 2024 with Application (L) No. 29880 of 2024 in Election Petition No.6 of 2024 decided on 19.12.2024.

judgment of the Apex Court in **Jyoti Basu (supra)** wherein the Apex Court has held in paragraph 8 as under:-

“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. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say? ”

27) *In Dharmin Bai Kashyap Vs. Babli Sahu and others¹² , the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special*

¹² (2023) 10 SCC 461

remedy for enforcing it, the remedy provided by the statute must be availed of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that manner alone and in no other manner. The Supreme Court has held in paragraph 17 as under:-

“17. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions [Laxmi Singh v. Rekha Singh, (2020) 6 SCC 812]. Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the 1995 Rules, the election petition filed by the petitioner before the Sub-Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.”

28) *Having held that strict compliance with provisions of RP Act is mandatory requirement for exercise of statutory remedy, it would be appropriate to discuss the relevant case law on the subject dealing with the nature of pleadings that are required for maintainability of a valid Election Petition. In **Mangani Lal Mandal** (5th supra), the Apex Court held that the sine qua non for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or non-observance results in materially affecting the result of returned candidate. It is further held that mere violation or breach or non-observance of the provisions of Constitution, the Act, Rules or orders made thereunder would not ipso facto render the election of returned candidate void. The Supreme Court held in paragraphs 10, 11 and 12 as under:-*

“10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of noncompliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of

such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

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 nonobservance 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 : (1964) 6 SCR 54] ; (2) L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666];and (3) Uma Ballav Rath v. Maheshwar Mohanty [(1999) 3 SCC 357] .

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and nondisclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect."

29) In **Shambhu Prasad Sharma** (*supra*) the Apex Court dealt with an Appeal arising out of order passed by the High Court dismissing the Election Petition on the ground that the same did not make concise statement of material facts and did not disclose of cause of action. Upholding the rejection of Petition under provisions of Order VII Rule 11 of the CPC, the Apex Court held in paragraphs 15, 18 and 20 as under:-

“15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstanding to be nil.

16. to 17. XXXXX

18. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

19. XXXXX

20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially

affected the result of the returned candidate.”

30) In *Mairembam Prithviraj alias Prithviraj Singh* (supra), the Apex Court has relied upon its judgment in *Durai Muthuswami Versus. N Nachiappan*¹³, and held in paragraphs 22 and 23 as under:-

*“22. The facts, in brief, of Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] are that the petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of the first respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the first respondent as required by Section 100(1)(d) of the Act. The civil appeal filed by the petitioner therein was allowed by this Court in *Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45]* in which it was held as follows : (SCC pp. 48-49, para 3).*

“3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1 st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the pusaidose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act...

*(b)-(c) ****

13 (1973) 2 SCC 45

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

*(ii)-(iii) ****

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what

would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted."

23. It is clear from the above judgment in *Durai Muthuswami* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would

not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."

31) *The conspectus of the above discussion is that for maintaining an Election Petition and for taking it to the stage of trial, it is necessary that there is strict compliance with the provisions of Section 83(1)(a) of the RP Act. The concise statement of material facts must constitute a complete cause of action. Failure on the part of the Election Petitioner to raise necessary pleadings to make out a case of existence of ground under Section 100(1)(d)(iii) or (iv) of the RP Act would necessarily result in dismissal of Election Petition by invoking powers under Order VII Rule 11 of the Code. The Apex Court has summed up the legal position in this regard after taking stock of various judgments rendered in the past in **Kanimozhi Karunanidhi** (supra) in paragraph 28 as under:-*

"28. *The legal position enunciated in afore-stated cases may be summed up as under:—*

i. Section 83(1)(a) of said Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a

negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the said Act, the Election petitioner must aver that on account of noncompliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious pusaiddose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the said Act.”

32) *The above principles are reiterated in subsequent judgment in **Karim Uddin Barbhuiya** (supra), in which it is held in paragraph Nos. 13, 14, 15, 22 and 24 as under:-*

“13. It hardly needs to be reiterated that in an Election Petition, Election Petition does not disclose a cause of action, it is liable to be dismissed in limine. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the said Act. As held in Bhagwati Prasad Dixit in Dhartipakar Madan Lal ‘Ghorewala’ v. Rajeev Gandhi and Agarwal v. Rajiv Gandhi , if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.

14. A beneficial reference of the decision in case of Laxmi Narayan Nayak v. Ramratan Chaturvedi be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—

“5. This Court in a catena of decisions has laid down the principles as to the nature of

pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] and Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442].

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh v. Surinder Singh [(1973) 2 SCC 599 : (1974) 1 SCR 52], Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660].

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649].

(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771 : (1977) 1 SCR 490], Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC 423 : (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been

concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12 : AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].”

15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the said Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of *Kanimozhi Karunanidhi v. A. Santhana Kumar (supra)*:—

XXXXX

22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.

XXXXX

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the said Act.”

33) The Apex Court in **Karikho Kri** (supra) held in paragraph Nos.40 and 41 as under:-

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot

straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between nondisclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in Kisan Shankar Kathore (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment. Earlier, in Sambhu Prasad Sharma v. Charandas Mahant, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper."

18. Applying the above yardstick and authoritative pronouncements of the Supreme Court to the present case, it is seen

that there is absolute non-compliance of the provisions of Section 83 of the RP Act which contemplate that an Election Petition has to mandatorily contain a concise statement of material facts to begin with on which the Petitioner relies and full particulars of any corrupt practice that he alleges including as full a statement as possible of names of parties alleged to have committed such corrupt practices and the date and place of commission of each such practice.

19. In the present case, Petitioner has merely alleged general and vague violations by Respondent No. 1 without specifying any details whatsoever. No concise statement of material facts alleging violation under Section 83 of the RP Act is stated. Hence, the grounds stated in paragraph Nos. III(a) to III(i) in the Petition are not in consonance with the violation alleged under Section 83 read with Section 100(1)(d)(iv) of RP Act since no particulars are given and Petitioner himself has during the course of his arguments to oppose the Order VII Rule 11 Application argued that he should be given an opportunity to produce evidence to that effect at trial.

20. In the instant case, Petitioner has challenged the election of Respondent No.1 on the ground that result of the election, insofar as it concerned Respondent No.1 was materially affected by non-compliance with Article 324 of the Constitution and by non-compliance with Rule-4A of the said Rules read with Section 33 of the Act. It may

be noted that Section 33 of the RP Act pertains to presentation of nomination paper and the requirement for a valid nomination. Section 36 pertains to scrutiny of nomination by the Returning Officer. Sub-section (2) thereof empowers Returning Officer either on objections made to any nomination or on his own motion to reject any nomination on grounds mentioned therein. One of the ground to reject nomination is when there has been failure to comply with any of the provisions of Section 33. Sub-section (4) of Section 36 states that Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

21. Part-II of the Conduct of Election Rules, 1961 deals with General Provisions. Rule - 4 and Rule - 4A pertain to the submission of nomination paper and Form of Affidavit to be filed at the time of delivering nomination paper which are reproduced below:-

“4. Nomination paper- Every nomination paper presented under sub-section (i) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

4A. Form of affidavit to be filed at the time of delivering nomination paper- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

22. In the instant case, Respondent No.1’s nomination is duly scrutinized under Section 36. No objection is sustained by the

Returning Officer and his nomination is accepted as valid. Once such scrutiny attains finality, then election can only be set aside under Section 100 if it is shown that the result of such election has been materially affected by non-compliance with the provisions of the Constitution or the RP Act. The pleadings in the Petition do not disclose how the alleged omissions had a material bearing on the result of the election.

23. I am of the considered view that while disclosure in Form No.26 is mandatory, non-disclosure or partial disclosure constitutes an irregularity attracting Section 125A of the Act, and it cannot be a ground for setting aside the election under Section 100(1)(d)(iv). In the present case the alleged omissions do not amount to non-compliance with provisions of Section 33 or Rule 4A so as to constitute a defect of substantial character under Section 36(4) of the RP Act.

24. It is also significant to note that Affidavit in Form No.26 along with nomination papers is required to be furnished by the candidate as per Rule 4A of the Rules read with Section 33 of RP Act. It is seen that the Returning Officer is empowered, either on objections made to any nomination or on his own motion, to reject any nomination on grounds mentioned in Section 36(2), including the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However in the case of Respondent

No.1, at the time of scrutiny of his nomination paper and his Affidavit in Form No.26 neither any objection is raised nor Returning Officer has found any lapse or non-compliance of Section 33 or Rule 4A of Rules. Petitioner has exercised his right to question the Affidavit by filing the present Election Petition under Section 100(1)(d)(iv) of the RP Act. However, there are no material facts stated in the Petition constituting cause of action to maintain challenge to this ground under Section 100(1)(d)(iv) of RP Act.

25. In so far as the issue of non-disclosure is concerned, case of Petitioner is that in Form No.26, appended below Exhibit 'A' at page No.24 of the Petition, Respondent No.1 has not disclosed his liabilities so as to allow the electorate to come to an informed decision about the existing liabilities of Respondent No.1 before casting their vote. According to Mr. Krishnan this non-disclosure has a material effect in the disclosure form. Mr. Krishnan has vehemently argued that in Part 'B' pertaining to 'Abstract of the details given in Form No.26' Respondent No.1 has failed to disclose Government dues. The said Government dues, *inter alia*, pertain to non-disclosure of an Arbitration Award of Rs.2,72,60,559/- in favour of Central Railway. However the Petitioner himself is knowledgeable about the fact that the said Award has been stayed by this Court. It is infact true that the said Award has been stayed by order dated 11.03.2020, such is the pleading of Petitioner himself in ground 'f(ii)' at page No.11 of the Petition. Once

the Arbitration Award is stayed by the Competent Court in pending proceedings, non-disclosure of the same as liability of Respondent No.1 is not required to be disclosed as the said liability is not crystallised. It is pending adjudication.

26. The next issue of non-disclosure pertains to a housing loan of Rs.90 Lakhs disbursed to Respondent No.1. This ground once again cannot be countenanced as non-disclosure because the said loan has not been disbursed to Respondent No.1 *per se*. It is *prima facie* seen that flat is acquired by availing the above loan by the daughter of Respondent No.1. This fact is certified by the Index II document appended at page No.85 and Bank's letter dated 15.07.2025 appended at page No.87 of the Rejoinder in the Interim Application. Once this position is clarified there is no ambiguity about the Respondent No.1's case even if in the first instance, he may have applied to the Bank as a co-applicant alongwith his daughter. It is seen that in the Election Petition itself in paragraph No.5(e), in so far as this ground is concerned it appears that Petitioner was having knowledge of all these facts but he chose not to disclose them as they have been struck off by a whitener in the Election Petition before it is filed. Be that as it may, perusal of Form No.26 *prima facie* shows that appropriate and adequate disclosure has been made by Respondent No.1 in Part 'B' of his movable and immovable assets, including liabilities from banks/ financial institutions to the tune of Rs.51.97/- Lakhs. Hence the

objection raised by the Petitioner are clearly not sustainable.

27. It is seen that on scrutiny, the Returning Officer has not found any ambiguity or mistake much less, non-disclosure or falsehood which can be deemed as suppression. It is in this context that when Election Petitioner approaches the Court he has to make a concise material statement of facts with all details in the Petition itself at the threshold. The Petitioner cannot improve his case in further pleadings which is the attempt of Petitioner before me. Once the nomination of Respondent No.1 is held to be valid, it is deemed to be accepted as per Section 33 of RP Act and it can only be rejected at the time of scrutiny under Section 36(2) of RP Act. In this regard provisions of Section 36(3) and (4) are therefore extremely crucial and apply to Respondent No.1's case which are alluded to hereinabove. The said provisions read as under:-

"36. Scrutiny of nominations.—

(1) XXXXXX

(2) XXXXXX

(3) *Nothing contained in clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.*

(4) *The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."*

28. Thus once scrutiny is held by Returning Officer and he endorses each nomination paper, his decision of accepting the same and the list of validly nominated candidates is prepared that is to say that candidates whose nominations have been found valid. It is a statutory process envisaged under Sections 30, 33 and 34 of the RP Act. Therefore I am not inclined to accept the submissions advanced by Mr. Krishnan in the present case regarding suppression and non-disclosure.

29. Hence in the absence of specific and necessary pleadings and reliance placed on aforesaid findings and observations including the citations discussed, in my opinion on a holistic consideration of the pleadings stated in paragraph Nos. III(a) to III(i) of the Petition the present Election Petition is liable to be rejected under Order VII Rule 11 of the CPC.

30. In view of the above, I am inclined to agree with the submissions advanced by Dr. Tulzapurkar in the Application filed below Order VII Rule 11 of CPC seeking dismissal of the Election Petition.

31. I am of the view that Petitioner has failed to ensure strict compliance with the statutory provisions of the RP Act namely Section 83(1)(a) of the RP Act. Therefore following the mandate under various judgments of the Supreme Court, particularly in the case of *Kanimozhi*

*Karunanidhi Vs. A. Santhana Kumar and others*¹⁴ and *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others*¹⁵ that even a singular omission of statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of Order VII Rule 11 of CPC, in my view, the present Election Petition does not disclose any cause of action for making out any of the ground under Section 100(1)(d)(iv) read with Section 83 of RP Act and therefore the Election Petition cannot be taken to trial and is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of CPC. Resultantly the Election Petition fails.

32. In view of the above, Application No.10 of 2025 is allowed. Resultantly, Election Petition No.36 of 2025 is rejected under Order VII Rule 11 of CPC.

33. Election Petition No.36 of 2025 is accordingly dismissed. No costs.

[MILIND N. JADHAV, J.]

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