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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 12<sup>th</sup> OF DECEMBER, 2022  
ELECTION PETITION No. 49 of 2019**

**BETWEEN:-**

**SH. RAKESH DIXIT S/O LATE SATYANARAYAN DIXIT,  
AGED ABOUT 60 YEARS, 66 ABHVIYAKTI NAGAR  
OPPOSITE IRION INTERNATIONAL SCHOOL BAVADIA  
KALA BHOPAL (MADHYA PRADESH)**

**.....PETITIONER**

**(NONE)**

**AND**

**SADHVI PRAGYA THAKUR D/O NOT MENTION RIVIERA  
TOWNE NEHRU NAGAR NEAR MANIT RIVIERA TWP,  
KOTRA SULTANABAD BHOPAL (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI ARPAN PAWAR, ADV. FOR RESPONDENT NO.1)***

*This appeal coming on for hearing this day, the court passed the following:*

**ORDER**

None appears for petitioner on 11.10.2022, 23.11.2022 and on 29.11.2022.

Petition is listed on consideration of preliminary issue.

Despite circular of cause list and knowledge of listing, counsel for petitioner is not appearing in the case. Repeated opportunities were granted to petitioner to argue the case on preliminary issue.

Counsel for respondent submitted that election petition cannot be dismissed for non appearance and has to be heard on it's merits.

Heard learned counsel for respondent.

Law on the issue is settled in case of **P. Nalla Thampy Thera Dr. Vs. B.L. Shanker AIR 1984 SC 135**, which is quoted as under :

*"It, therefore, follows that the Code is applicable in disposing of an election petition when the election petitioner does not appear or take steps to prosecute the election petition. Dismissal of an election petition for default of appearance of the petitioner under the provisions of either 0. XI or 0. XVII of the Code would, therefore, be valid and would not be open to challenge on the ground that these provisions providing for dismissal of the election petition for default do not apply."*

In case reported in **AIR 2003 Punjab & Haryana 268-Gurmesh Bishnoi Vs. Bhajan Lal**, it was held as under :

*"Consequently, I have no hesitation in coming to the conclusion that an election petition can be dismissed for default or for non-prosecution, as the case may be, if the order is otherwise called for. The Court can hardly compel an unwilling party to prosecute its litigation even if such inaction may spring from negligence, indifference or even incapacity or inability. The power to dismissal of election petition is inherent power which every Tribunal possesses. Thus, this contention of the applicant is rejected. "*

In view of aforesaid, since petitioner is not appearing despite repeated opportunities being granted to him, therefore, election petition is **dismissed** for want of prosecution.

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