

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF JANUARY 2003

BEFORE

THE HON'BLE MR. JUSTICE H.PADIKARAJ

CIVIL REVISION PETITION NO.4832/2003

BETWEEN:

Mahila Vidya
Peetha Trust,
Vidyanagar, Hubli,
By its Secretary,
Sri.Krishnegouda
Thimmagouda Patil,
Age:Major.

: PETITIONER

(Sri.Madan Mohan M. Khasnur, Adv.)

AND:

1. Hatahsab Maliksab
Pinjar, Age:Major,
S/o.Maliksab Pinjar,
Gamanagatti,
Dharwad District.
2. Rajesab Maliksab
Pinjar, Age:Major,
S/o.Maliksab Pinjar,
Gamanagatti,
Dharwad District.
3. Dastagirsab
Maliksab Pinjar,
Age:Major,
S/o.Maliksab Pinjar,
Gamanagatti,
Dharwad District.

4. The Land Acquisition
Officer & Assistant Commissioner,
Dharwad District,
Dharwad.

5. Government Employees
Co. Op. Housing Society,
Laxmi Complex,
Hubli,
By its Chairman.

: RESPONDENTS

This Civil Revision Petition is filed under Section 115 of CPC against the Order dated 9-12-2002 passed on I.A. in LAC No.13/1993 on the file of the Principal Civil Judge (Senior Division), Hubli, rejecting I.A. filed under Order 18 Rule 17 A of CPC to recall PW.1 for cross examination.

This Civil Revision Petition coming on for admission this day, the Court made the following:

ORDER

Heard the arguments of the learned counsel for the petitioner and carefully perused the impugned Order made by the Court below.


2. Having regard to the short question involved in this revision petition and also having regard to the fact that the respondents herein did not file their objections



to the interim application filed by the petitioner, notice to respondents is dispensed with and the matter is finally disposed of, after hearing the learned counsel for the petitioner.

3. During the pendency of the matter before the Reference Court, the petitioner herein filed an interim application to recall the witness examined as RW-1 in the absence of the petitioner for the purpose of his cross examination. The said application of the petitioner having been dismissed by the Trial Court or the Reference Court by its impugned Order, the present revision petition has been filed by the petitioner.

4. Where the petitioner could not cross examine the witness RW-1 brought under warrant as the counsel for the petitioner was absent, the Court below in the interest of justice and having regard to the controversy ^{between} involved ~~in~~ the parties, should have allowed the prayer of the petitioner for recalling the witness RW-1 for cross examining him. Under the circumstances, I find that



the impugned Order made by the Trial Court is an improper exercise of jurisdiction. Hence, it is set aside. Consequently, the interim application filed by the petitioner is allowed. The witness RW-1 be recalled at the instance of the petitioner, if the petitioner takes appropriate steps by appearing before the Trial Court on or before 9-1-2003. This Order will be effective only if the Trial Court has not yet passed the Judgment in the case. If the Judgment has already been passed, the Order made by this Court will be ineffective. The Revision Petition is accordingly disposed of.

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Sd/-
Judge