

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

**DATED THIS THE 31<sup>st</sup> DAY OF OCTOBER 2014**

**BEFORE**

**THE HON'BLE MR. JUSTICE MOHAN .M.SHANTANAGOUDAR**

**W.P. No.79696 OF 2013 [GM-CPC]**

**BETWEEN:**

1. PEERSAB MULTANI S/O DASTSGIR MULATANI,  
AGE: 25 YEARS, OCC: STUDENT,  
R/O: KABBUR,TQ: CHIKKODI,  
DIST: BELGAUM.
2. GABUSAB MULTANI S/O DASTSGIR MULTANI,  
AGE: 23 YEARS, OCC: AGRICULTURE,  
R/O: KABBUR, TQ: CHIKKODI,  
DIST: BELGAUM.
3. GUNDU MULTANI S/O PEERSAB MULTANI,  
AGE: 41 YEARS, OCC: AGRICULTURE,  
R/O:KHADAKALAT, TQ: CHIKKODI,  
DIST: BELGAUM.
4. VILAS MULTANI S/O PEERSAB MULTANI,  
AGE: 39 YEARS, OCC: AGRICULTURE,  
R/O:NIPPANI, TQ: CHIKKODI,  
DIST: BELGAUM.
5. KALANDER MULTANI S/O PEERSAB MULTANI,  
AGE: 37 YEARS, OCC: AGRICULTURE,  
R/O: KABBUR, TQ: CHIKKODI,  
DIST: BELGAUM.
6. NAJURU MULTANI, S/O PEERSAB MULTANI,  
AGE: 35 YEARS, OCC: AGRICULTURE,

R/O: KABBUR, TQ: CHIKKODI,  
DIST: BELGAUM.

**... PETITIONERS**

**(BY SRI. SHIVAKUMAR V.CHITRAGAR, ADV. FOR  
SRI. NEELENDRA.D.GUNDE &  
SRI. SUNIL DESAI, ADVS.)**

**AND:**

MR. BABU MULTANI S/O MAKABUL MULTANI,  
AGE: 41 YEARS, OCC: AGRICULTURE,  
R/O: KABBUR, TQ: CHIKKODI,  
DIST: BELGAUM.

**... RESPONDENT**

**(BY SRI. SACHIN S MAGADUM ADV.)**

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO (I) CALL FOR THE REVELANT RECORDS AND (II) TO QUASH THE ORDER DATED:10/04/2013 PASSED ON I.A.NO.2 IN O.S.NO.32/2010 BY THE LEARNED SENIOR CIVIL JUDGE, CHIKODI, THEREBY DISMISSING THE I.A.NO.2 AS PER ANNEXURE-F AND CONSEQUENTLY DIRECT THE COURT BELOW TO CONSIDER ISSUE NO.6 AS PRELIMINARY FRAME AS PRODUCED AT ANNEXURE-C.

This WP coming on for *Preliminary Hearing in 'B' group* this day, the Court made the following:

**ORDER**

The order of Court below dated 10.04.2013 rejecting the prayer of the petitioners to decide the issue, regarding sufficiency of the court fee, as preliminary issue, is called in question in this petition.

2. The defendants/petitioners have raised the issued relating to sufficiency of court fees in the suit. Issue No.6 is already framed by the court below. Despite the same, the issue relating to court fees is not heard as a preliminary issue. Hence, an application came to be filed by the defendants which also came to be rejected by the court below on the ground that recording of evidence of the plaintiff is half-way through.

3. The impugned order is contrary to the judgment of this Court in the case of *ABDUL SALAM Vs. THE DISTRICT AUTOMOBILE WORKERS ASSOCIATION, REPTD. BY ITS SECRETARY AND ANOTHER* reported in **ILR 2010 KAR 3018**. In that judgment, this Court has ruled that even when the evidence is being recorded and if it is brought to the notice of the Court that the issue of court fee shall be decided as preliminary issue and the court below should stop recording the evidence and thereafter, hear the issue relating to sufficiency of court fee as the preliminary issue

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and subsequently, proceed in accordance with law from the stage at which it was stopped.

4. In view of the same, the impugned order is liable to be quashed. Accordingly, the same stands quashed. The trial court is directed to hear issue No.6 as preliminary issue and pass orders in accordance with law. The writ petition stands ***disposed of.***

**SD/-  
JUDGE**

RK\*  
**Ct:Byg/-**