

HONOURABLE SRI JUSTICE VILAS V.AFZULPURKAR

**CIVIL REVISION PETITION Nos.5015, 5030, 5083, 5120, 5122, 5123, 5124,
5126 and 5127 of 2013**

COMMON ORDER:

Heard Mr. K.Rajanna, learned counsel for the petitioners, and learned Government Pleader for Arbitration representing the respondent in this batch of revisions.

All the revision petitioners are claimants who had filed separate Land Acquisition O.Ps., before the Court below seeking enhancement of compensation under Section 18 of the Land Acquisition Act.

For the sake of convenience, the facts as stated in C.R.P.No.5015 of 2013 are referred to in this order.

It is stated that while the said reference O.Ps were pending, the petitioners had engaged one Mr.G.Narasimhulu, Advocate, as their counsel, but due to his personal problems, he returned the case bundle later on and the petitioners had to engage another counsel Mr.M.Parameshappa. When the aforesaid O.Ps were posted for evidence before the trial Court on 03.08.2011, the petitioners' counsel was not available as he had to leave for U.S.A urgently on account of his personal problems and hence, adjournment was sought in the O.Ps. However, the trial Court passed final orders confirming the award. The copy of the order, dated 03.08.2011, passed by the trial Court, which is in two sentences, is extracted hereunder:

“Affidavit of RW.1 filed. Ex.B1 marked. Perused record.
The reference is disposed of confirming the award passed
for Rs.1,13,350/-.”

It is further stated that each of the claimant thereafter filed applications under Order IX Rule 13 CPC to set aside the said default order, but the trial Court returned the same by the impugned endorsement, dated 15.07.2013,

which reads as under:

“This Court has not dismissed the matter for default or set the claimants *ex-parte*. The award passed by L.A.O. was confirmed after recording of evidence of RW1 on 3-8-2011.”

Aggrieved thereby, the present revisions are preferred.

A look at the order, dated 03.08.2011, passed by the trial Court in L.A.O.P.No.18 of 2007 would show that the order is clearly passed in the absence of the counsel for the claimants, as the name of the counsel shown in the order was not the counsel for the claimants at that time. No evidence was led on behalf of the claimants in the O.Ps and merely on the basis of affidavit evidence of the respondent i.e., RW.1, which was not subjected to cross-examination, the order dated 03.08.2011 was passed, which clearly shows that the same was passed *ex parte* and in default of appearance of the claimants. Order XVII Rule 2 CPC, particularly the explanation thereof added by A.P. Amendment, coupled with the decision of the Supreme Court in **Prakash Chander v. Janaki Manchandra**^[1], was not kept in mind by the trial Court while returning the petitioners' applications under Order IX Rule 13 CPC without numbering them. Therefore, the impugned order declining to number and consider the petitioners' applications under Order IX Rule 13 CPC is clearly erroneous.

The petitioners' counsel also placed reliance upon a decision of this Court in **Uppara Gangamma (died) by L.Rs. and others v. Mandal Revenue Officer**^[2], wherein identical order is stated to have been set aside by this Court on the similar grounds. The aforesaid decision is however not in similar circumstances, but the situation as existing before the learned Judge while deciding the said case does not exist in the present case, inasmuch as the petitioners' applications were merely returned un-numbered by the impugned order herein.

Hence, these Civil Revision Petitions are allowed by setting aside the impugned order and directing the Court below to number the petitioners' applications under Order IX Rule 13 CPC and hear and dispose of the same on merits expeditiously, within a period of four weeks from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

January 31, 2014
v v

[\[1\]](#) AIR 1987 SC 42

[\[2\]](#) 2013 (4) ALD 42