



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
(CIVIL APPELLATE JURISDICTION)

CIVIL REVISION APPLICATION NO. 63 of 2017

Diwakar Prabhakar Chopade
age 44 years, occupation agriculture & service
R/o Sawaladbara Tal. Soygaon Dist. Aurangabad

...Applicant.

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Versus

1. The Sub-Divisional Officer
(Land Acquisition Officer),
Sillod District Aurangabad.

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2. The Executive Engineer (Civil),
Maharashtra State Electricity Board,
Aurangabad.

...Respondents

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WITH

CIVIL REVISION APPLICATION NO. 187 of 2015

Pandurang @ Pandhari Tukaram Bhosale
(Died) through legal representatives:

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1. Pralhad Pandurang @ Pandhari Bhosale
age 74 years, occupation agriculture
R/o Sangvi (Bhi) Taluka Omerga Dist. Osmanabad.
at present r/o Padmanagar Society,
Near Usha Kiran Talkies, Latur Tal. & Dist. Latur.

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2. Shivaji Pandurang @ Pandhari Bhosale
age 66 years occup. agriculture
R/o Sangvi (Bhi) Tal. Omerga Dist. Osmanabad.
At present R/o Shriram Theater,
Omerga District Osmanabad.

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3. Waman Pandurang @ Pandhari Bhosale
age 47 years, occupation service
R/o as above.

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4. Sham Pandurang @ Pandhari Bhosale
age 58 years, occup. Agri & service
R/o Sangvi (Bhi), Tq. Omerga Dist. Osmanabad.
At present R/o Sane Guruji Nagar,
Omerga, District Osmanabad.

45

Applicants

Versus

1. The State of Maharashtra
Through : The Collector, Osmanabad
- 5
2. The Special Land Acquisition Officer
Krishna Khore Vikas Mahamandal,
Office Osmanabad.
- 10
3. The Executive Engineer,
Osmanabad Medium Project,
Osmanabad.

Respondents

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WITH
CIVIL REVISION APPLICATION NO. 78 of 2017

- Tarunbai Rajendra Patil
age 36 years, occupation agriculture
R/o Virwade, Taluka Chopda Dist. Jalgaon
- 20

...Applicant.Versus

1. The State of Maharashtra
Through : The Collector, Jalgaon.
- 25
2. The Special Land Acquisition Officer,
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Jalgaon, District Jalgaon.
- 30
3. The Executive Engineer
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Chopda Taluka Chopda District Jalgaon.

...Respondents

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WITH
CIVIL REVISION APPLICATION NO. 79 of 2017

- Santosh Harsay Agrawal
age 56 years, occupation agriculture
R/o Virwade Tal. Chopda Dist. Jalgaon
- 40

...Applicant.Versus

1. The State of Maharashtra
Through : The Collector, Jalgaon.
- 45

2. The Special Land Acquisition Officer,
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Jalgaon, District Jalgaon.
- 5 3. The Executive Engineer
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Chopda District Jalgaon. ...Respondents

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WITH
CIVIL REVISION APPLICATION NO. 80 of 2017

Kailash Bhiva Thakur
age 45 years, occupation agriculture
15 R/o Virwade, Tal. Chopda Dist. Jalgaon ...Applicant.

Versus

- 20 1. The State of Maharashtra
Through : The Collector, Jalgaon.
2. The Special Land Acquisition Officer,
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Jalgaon, District Jalgaon.
- 25 3. The Executive Engineer
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Chopda District Jalgaon. ...Respondents

30

WITH
CIVIL REVISION APPLICATION NO. 81 of 2017

35 Sneha Pravin Agrawal
age 40 years occupation agriculture
R/o Virwade Taluka Chopda Dist. Jalgaon ...Applicant.

Versus

1. The State of Maharashtra
Through : The Collector, Jalgaon.
- 45 2. The Special Land Acquisition Officer,
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Jalgaon, District Jalgaon.

3. The Executive Engineer
Uppar Tapi Project (Hatnur) / Minor Irrigation,
Chopda District Jalgaon. ...Respondents

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WITH
CIVIL REVISION APPLICATION (Stamp) NO. 37892 of 2017

- 10 1. Madanlal Mohanlal Mantri (died)
through legal representatives:
Mukunddas S/o Madanlal Mantri,
age 59 years occup. business
R/o Mantri Galli, Beed Tal. & Dist. Beed
- 15 2. Premalata W/o Madanlal Somani,
age 65 years occup. household
R/o at post Ter (Dhoki) Taluka & Dist. Osmanabad
- 20 3. Omprakash S/o Madanlal Mantri,
age 57 years occup. business
R/o Mantri Galli, Beed Tal. & Dist. Beed
- 25 4. Alaknanda W/o Hanumandas Rathi,
age 54 years occup. household
R/o Motinagar, Latur Tal. & Dist. Latur ...Applicants.

Versus

- 30 1. The State of Maharashtra
Through : The District Collector, Beed.
- 35 2. The Executive Engineer
Minor Irrigation Division,
Beed Tal. & Dist. Beed. ...Respondents

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- Mrs. Anita A. Gadekar, Adv. for applicant in C.RA. No. 63/2017,
Mr. M.S. Patil, Adv. for applicant in CRA. No. 187/2015,
Mr. V.B. Patil, Adv. for applicants in CRA. No. 78/2017, 79/2017,
80/2017, 81/2017 and*
- 40 *Mr. R.R. Chandak, Adv. for applicants in CRA. No. 37892/2017.
Mr. S.P. Sonpawale, Asstt. Govt. Pleader for respondent/State in
all applications.*
- Mr. S.G. Sangle, Adv. for respondent/acquiring body in CRA. No.
187/2015 & CRA (St.) No. 37892/2017 and*
- 45 *Mrs. Vaishali D. Jadhav-Patil, Adv. for respondent/acquiring body
in CRA. No. 78/2017, 79/2017, 80/2017, 81/2017
Mr. A.N. Sabnis, Advocate, appeared suo motu.*

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

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**Reserved on : 1st October, 2019.
Pronounced on : 17th October, 2019**

10 **J U D G M E N T : [PER : AVINASH G. GHAROTE, J.]**

1. This Division Bench has been constituted by the Hon'ble the Chief Justice, in pursuance to a request made by Mr. M.S. Sonak, J., dated 16th January 2018, who having found that
15 there was a divergence of opinion between the learned Single Judges of this Court, one view holding that where a reference u/s. 18 of the Land Acquisition Act was dismissed, otherwise than on merits, a Civil Revision Application u/s. 115 of the Civil Procedure Code was permissible, which is reflected from ***Kawadu S/o***
20 ***Madhav Bansod Vs. State of Maharashtra, 2004 (1) ALL MR 651***, which has been followed in ***Irnappa alias Irappa S/o Karbasappa Angire Vs. State of Maharashtra & Anr., in C.R.A. No. 117/2012 decided on 13/06/2012 and Appasaheb Mohanrao Chede Vs. State of Maharashtra &***
25 ***Anr., 2011 (2) All MR 255***, which also make a reference to an unreported decision in the case of ***Kamlakar S/o Laxman Suryawanshi Vs. State of Maharashtra in C.R.A. No.***

169/2005, in which a similar view has been taken. As against this view, a learned Single Judge of this Court, after considering the judgment in **Kawdu** (supra), has held in **Venkat Baburao Karle Vs. State of Mah. & Ors., 2012 (4) All MR 826**, that a
5 Civil Revision Application is not the correct remedy but an appeal will have to be instituted u/s. 54 of the L.A. Act, 1894, to question dismissal of reference. A mention is also made to the judgment dated 13/07/2017 in **C.R.A. No. 140/2016** and connected
10 matters, wherein another learned Single Judge of this Court has taken a note of conflict between **Kawdu's** case (supra) and **Venkat's** case (supra), but declined to go into the merits of the controversy.

2. The question is that after the amendment of the Code
15 of Civil Procedure by the Amending Act of 1999 & 22 of 2002, whereby a proviso has been inserted in Section 115 of C.P.C., which has been interpreted by the Hon'ble Supreme Court in **Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and others, AIR 2003 SC 2434**, a Civil Revision
20 Application U/S. 115 would lie, in light of the language of the proviso thereto. It is in the above background that the learned Single Judge noticing the conflict as stated above, by his order dated 16/01/2018, under Chapter I Rule 8 of the Bombay High Court Appellate Side Rules 1960, has reported to the Hon'ble

Chief Justice, who on consideration of the conflict, has referred the same to the present Division Bench for consideration.

3. We have heard Advocates Mr. V.B. Patil, argued on behalf of himself as well as Advocates Mr. M.S. Patil, Mrs. Anita Gadekar and Mr. R.R. Chandak for the petitioners; Mr. S.P. Sonpawale, Asstt. Govt. Pleader for respondent/State, Mrs. Vaishali D. Jadhav-Patil, learned Counsel appearing for the respondent/acquiring body in C.R.A. No. 78/2017, 79/2017, 80/2017 & 81/2017 and Mr. S.G. Sangle, learned Counsel for the respondent/acquiring body in C.R.A. No. 187/2015 & C.R.A. (Stamp) No. 37892/2017. Learned Counsel Mr. A.N. Sabnis also addressed the Court.

4. Mr. V.B. Patil, learned Counsel for the petitioner, strenuously urged before us that the provisions of Section 115 of C.P.C., permit a challenge to an order passed by the Courts subordinate in the eventualities as mentioned in clauses (a) to (c) of sub-section (1) of Section 115, in light of which the power of revision would be available in respect of an order, not passed on merits, in proceeding u/s. 18 of the L.A. Act, such as in cases where the reference u/s. 18 of the L.A. Act was dismissed in default for non-appearance of the applicants or for not leading evidence, or for that matter for any other reason, which did not touch the merits of the matter. He further contends that

dismissal on such a count, cannot be considered as a dismissal on merits, and therefore, would not amount to a decree, permitting raising of a challenge u/s. 54 of the L.A. Act. He invited our attention to the language of sections 18, 26 and 54 of the L.A. Act to buttress his arguments. He further contended that the proviso of the amended section 115 of C.P.C., did not come in the way of laying a challenge to orders, which were otherwise than on merits, in proceedings u/s. 18 of the L.A. Act. He further submitted that the judgment of the Hon'ble Apex Court in the case of **Shiv Shakti** (supra), did not take into consideration the provisions of the L.A. Act and, therefore, would not be applicable. He further submitted that holding that revision would not be maintainable u/s. 115 of C.P.C. would lead to consequences, which would not be conducive in the interest of the poor applicants, whose lands are acquired, for if they are required to file an appeal, the same would entail the payment of court fees, which would be onerous for them. He, therefore, submitted that for this reason also, the remedy of revision u/s. 115 of C.P.C. ought to be held to be available in respect of orders, which were otherwise than on merits, in references u/s. 18 of the L.A. Act. Learned Counsel Mr. V.B. Patil relied upon the following judgments in support of his submissions:

- (i) **Sundarlal Vs. Paramsukhdas**, AIR 1968 SC 366 in the context of section 18 of L.A. Act, holding that an order of

Court declining to implead a person as party to proceedings as a person interested in the same, would be revisable u/s. 115 of CPC and no appeal would lie.

- 5 (ii) ***Rajmani Vs. Collector, Raipur, 1996(5) SCC 701***, holding that in case of a dismissal of a reference u/s. 18 of L.A. Act, in default, an application u/o IX Rule 9 r/w. Sec. 151 CPC would be maintainable – which does not support his proposition that a revision u/s. 115 CPC would be
- 10 maintainable.
- (iii) ***C.R.A. No. 67/2015, Shobha Nanasaheb Game Vs. State of Maharashtra and others*** and connected matters, decided on 07/09/2015.
- 15 (iv) ***C.R.A. No. 140/2016, Vijaykumar Baburao Gulave Vs. of Mah.***, with connected matters, decided on 13/07/2017
- (v) ***Khazan Singh Vs. Union of India, 2002(2) SCC 242***, which is also relied upon by learned Counsel Mr. A.N. Sabnis
- 20 (vi) ***Vijaykumar Goenka Vs. State of Mah., 2004(3) Mh.L.J. 1069*** in support of his contention that only a revision u/s. 115 CPC is tenable against an order passed,
- 25 otherwise on merits, in a reference u/s. 18 of the L.A. Act.

5. The above contention was opposed by Mrs. Vaishali D. Jadhav, learned Counsel appearing for the respondent/acquiring body. She vehemently submitted that the view canvassed by the

30 petitioners, is contrary to the specific language and intent of the legislative mandate as is spelt out from the proviso to section 115

of C.P.C., consequent to its Amendment in 1999 & 2002. She further submitted that taking a contrary view would result in defeating the intent and purpose for enacting the proviso to Section 115 of C.P.C., which is not permissible in law. She further
5 contended that the rigor of law is applicable to one and all without any distinction whatsoever, and the contra contention as advanced by the learned Counsel for the petitioners about poor litigants suffering in case they are required to file an appeal, on account of payment of court fees, can at the most be said to
10 be an emotional argument, without any legal content. She further submitted that the Hon'ble Apex Court has already enunciated the law in respect of the ambit and scope of section 115 CPC as curtailed by the proviso, as inserted by the 2002 Amendment in the case of ***Shiv Shakti*** (supra), which was of a
15 general applicability, and the contention of the learned Counsel for the petitioners that the provisions of the L.A. Act were not considered therein, do not hold any water. She, therefore, submitted that in any case, post 2002 Amendment, a revision u/s. 115 of C.P.C. even in respect of orders otherwise than on merits,
20 would not be maintainable in light of the language of the proviso to section 115 of C.P.C..

6. Mr. Sangale, learned Counsel for the respondent/acquiring body in C.R.A. No. 187/2015 & C.R.A.

(Stamp) No. 37892/2017, supported the arguments of learned Counsel Mrs. Vaishali D. Jadhav and contends that the legislature intent, when clear and specific has to be enforced as it is, whatever be the consequences, and a plain reading of the proviso to section 115(1) of C.P.C. did not support the maintainability of a revision in respect of orders passed otherwise than on merits in proceedings u/s. 18 of the L.A. Act of 1894. He has further placed reliance on ***State of Jharkhand Vs. Hindusthan Construction Co. Ltd., 2018 (2) SCC 602***, and contends that the view taken in ***Shiv Shakti*** (supra), has been affirmed by the Hon'ble Apex Court.

7. Learned Counsel Mr. A.N. Sabnis, who appeared suo motu, has also supported the arguments of learned Counsel Mrs. V.D. Jadhav for the respondents. He pointed out that a person, who approaches the Court u/s. 18 of the L.A. Act for enhancement of the quantum of compensation, is required by law to be diligent in prosecution of his case and cannot be heard to contend otherwise. He further invited our attention to the provisions of section 26 (2) of the L.A. Act and contended that an award has been given the status of a decree and, therefore, only an appeal lies u/s. 53 of the L.A. Act, even if the order resulting in the termination of the proceedings u/s. 18 of the L.A. Act was not on merits. He further placed reliance on the judgment of the Hon'ble

Apex Court in the case of **Khazan Singh (dead) by L.Rs. Vs. U.O.I., (2002) 2 SCC 242** to contend that the Civil Court hearing a reference has no jurisdiction to dismiss reference for default. He further placed reliance upon **Mahadeo Bajirao Patil Vs. State of Maharashtra and others, (2005) 7 SCC 440,** specifically para 13 thereof, to contend that even if no amount was awarded by the L.A.O., still it could not be said that the order passed by the L.A.O. was not an award, in support of his contention that an order even otherwise than on merit, of the Reference Court bringing an end to the proceedings u/s. 18 of the L.A. Act, would amount to an award and, thus, would be a decree u/s. 26 of the L.A. Act. He further relied upon **Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675,** specifically para 4, to contend that the exercise of jurisdiction is taken away by the proviso inserted under subsection (1) of Section 115 of C.P.C. if the order being challenged would not have the effect of finally disposing of the suit or other proceedings. He has also placed reliance upon **M.S. Ramiah and others Vs. the Special Land Acquisition Officer, ILR 1974 Karnataka 319,** which has been relied upon in **Kawadu** (supra).

8. Learned Counsel Mr. Sabnis has further relied on **Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332,** which holds that a decision on delay application is a decision on

merits and urges that therefore, an appeal would lie. He further placed a reliance upon the judgment of the Full Bench in ***State of Maharashtra Vs. Sitaram Narayan Patil, 2010 (2) Mh.L.J. 387*** to contend that in a reference u/s. 18 of LA. Act, a claimant is in the position of a plaintiff and provisions of Order VI Rule 17 CPC were attracted by virtue of section 53 of the L.A. Act. He, therefore, submitted that in case of an order otherwise than on merits, in proceedings u/s. 18 of the L.A. Act, revision was no longer tenable in light of the proviso to section 115 CPC consequent to its Amendment in 2002.

9. The entire crux of the issue revolves around the language of section 115(1) of C.P.C. It is, therefore, material to consider the difference therein before and after the 2002 Amendment, which is reflected from the following tabular chart.

Section 115 (before Amendment)	Section 115 (After Amendment)
115.(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears --	115(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears--
(a) to have exercised a jurisdiction not vested in it by law, or	(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise jurisdiction so vested, or	(b) to have failed to exercise a jurisdiction so vested, or
<p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:</p> <p>Provided that the High Court shall not, under this section, vary, reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where--</p> <p>(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or</p> <p>(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.</p>	<p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the cases as it thinks fit:</p> <p>Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, <u>except where</u></p> <p><u>the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.</u></p>

We are not here concerned the sub-sections (2) and (3) of Section 115 of C.P.C.

10. A perusal of the comparative chart above would demonstrate the nature and effect of the change enacted by Section 12 of Act 46 of 1999 and the consequent Act 22 of 2002. Though the prohibition to entertain a revision in respect of an order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or the proceedings, was extant, as demonstrated by Exception (a) to the proviso to clause (c) of sub-section (1) of Section 115 of CPC, its efficacy was diluted by Exception (b) to the proviso to clause (c) of sub-section (1) of Sec. 115 CPC. By virtue of the Amendment, Exception (b) to the proviso to sub-section (1) of Sec. 115 CPC stood deleted and the Exception (a) merged with the proviso, whereby the jurisdiction of the High Court to exercise power u/s. 115(1) CPC to entertain revision have been curtailed to a substantial extent and such powers are not exercisable any more, unless the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The issue in our opinion, is no longer *res-integra* but is squarely covered by the judgment of the Hon'ble Apex Court in the case of ***Shiv Shakti*** (supra), wherein in para 32 it has been held , thus:

25 *“32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given*

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finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

11. Similar view has been taken by the Hon'ble Apex Court in **Surya Dev Rai** (supra), in para 4, which reads, thus:

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"4. Section 115 of the Code of Civil Procedure as amended does not now permit a

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revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under subsection (1) of Section 115 of the CPC. The amendment is based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision but strongly felt that the power should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso, being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially

curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.”

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12. Thus, the powers of the High Court exercising
revisional jurisdiction u/s. 115 of CPC, having been curtailed and
made applicable only in respect of an order, which, had it been
made in favour of the party applying for revision, would have
10 finally disposed of the suit or other proceedings, would not be
available in respect of an order, passed otherwise than on merits,
in proceedings u/s. 18 of the L.A. Act, as reversing the order
would not result in disposal of the proceedings u/s. 18 of the L.A.
Act, but would have an opposite effect, of restoring or reviving
15 the proceedings, which is not a position as of now, permissible
under the provisions of section 115 of the CPC.

13. This being the law on the matter, the contrary
submissions of Mr. Patil, learned Counsel for the petitioners,
20 cannot be considered. The submission that dismissal of the
proceedings u/s. 18 of the L.A. Act on account of default due to
non appearance of the parties or non leading of the evidence, not
amounting to a dismissal on merits, would attract section 115 of
CPC is without any merits for the reason that reversal of such an
25 order would not result in the final disposal of the proceedings,
rather on the contrary, would have the effect of revival of the

proceedings, which in light of the language of the proviso to sub-section (1) of section 115 of CPC is impermissible. The argument by Mr. Patil, learned Counsel for the petitioners, that the mandate in **Shiv Shakti** (supra), would not be attracted as it was not
5 considering the provisions of the L.A. Act, is clearly an unacceptable as firstly that cannot be a ground of distinction and secondly, **Shiv Shakti** has considered the provisions of section 115 of CPC, which in fact, is an omnibus power to entertain a revision, irrespective of the nature of the proceedings, provided
10 the requirements as laid down therein are satisfied. The contention that in case the litigants are required to file an appeal, they would be burdened with court fees, is no ground in law to hold that a revision would be maintainable u/s. 115 of CPC.

15 14. The judgments in **Sundarlal** and **Rajmani** (supra), both are earlier to the amendments to section 115 CPC and, thus, cannot be of any assistance to the learned Counsel for the petitioners. In fact, **Rajmani** (supra), holds that by virtue of section 53 of the L.A. Act, the remedy u/o. IX Rule 9 read with
20 Sec. 151 CPC would be available to the party, whose reference was dismissed in default. This, however, does not support the contention of the learned Counsel for the petitioners of a revision u/s. 115 CPC being the only remedy.

25 15. In **Shobha Game** (supra), and connected matters, in

a reference u/s. 18 L.A. Act, the petitioners had filed their affidavit in lieu of examination in chief, when the matters were referred to the *Lok Adalat*. No settlement being reached, they were sent back to the Court. The Counsels claimed to have lost track of the
5 dates, resultantly, a 'no cross-examination' order was passed and the judgment was pronounced on the next date. On a plea that there was procedural irregularity, revision applications u/s. 115 CPC were filed. A plea was raised that revisions were not maintainable and an appeal lay by placing reliance upon the
10 judgments quoted in para 3 thereof. The learned Single Judge in para 11 observed that normally he would have relegated the petitioners therein to file appeals, as provided u/s. 54 of the L.A. Act, but considering the fact that there was procedural irregularity committed by the reference Court while deciding the references,
15 the revisions were entertained. A perusal of the judgment clearly indicates that arguments on the basis of the language of the proviso of section 115(1) CPC were not advanced, nor the decision in ***Shiv Shakti*** (supra) was brought to the notice of the Court. The argument about non-maintainability of the revision
20 appears to be centered around the plea that since the Reference Court had passed the judgment, an appeal as provided u/s. 54 of the L.A. Act, was the only remedy. This judgment, therefore, does not lay down that in cases of orders otherwise than on merits, revision u/s. 115 CPC would be the only remedy and does not

assist learned Counsel Mr. Patil.

16. In **Vijaykumar Gulave** (supra) and connected matters, the references came to be dismissed as the applicants had failed to adduce any evidence in support of their claim, against which revisions were filed. The revision petitioners relied upon **Kawadu** 's case (supra), against which the State relied on **Venkat** 's case (supra). The learned Single Judge taking notice of the conflict, did not go into the merits, however, in view of the undertaking given by the revision petitioners, as indicated in para 3, thought it fit to give an opportunity to the petitioners to adduce evidence in support of their respective claims and, thus, remanded the matters back to the Reference Court. This would indicate that **Vijaykumar Gulave** (supra), cannot be cited as a binding precedent for the reason that the learned Court himself noticing the conflict declined to go into merits of the matter. **Vijaykumar Gulave** (supra), thus, does not support the arguments canvassed by learned Counsel Mr. Patil.

17. In **Vijaykumar H. Goenka** (supra), a reference u/s. 34 of the Maharashtra Industrial Development Act, 1961 came to be dismissed when the case was fixed for evidence as no application for adjournment was filed and M.J.C. u/o IX Rule 9 R/W. Sec. 151 CPC was filed for restoration, dismissal of which was challenged in the High Court by way of revision u/s. 115 CPC.

Relying upon **M.S. Ramiah** (supra), the learned Single Judge in para 7, held that though the words “dismissed for want of prosecution” or “dismissed in default” were not used, the dismissal was on account of absence of the applicants without
5 considering the material on record and even if it is taken that the reference was not liable to be restored u/o IX Rule 9 CPC, the order was liable to be recalled for the aforesaid reasons. The issue regarding the language of the proviso of section 115(1) CPC was not considered nor **Shiv Shakti** (supra) was brought to his
10 notice, and as such, is of no assistance to the case being canvassed by learned Counsel Mr. Patil for the petitioners.

18. A perusal of the judgment in **Kawdu (supra)**, would indicate that in a reference u/s. 18 of the L.A. Act, as on the date
15 fixed for evidence, neither the applicant nor his Counsel was present, resultantly no evidence having been adduced, the reference proceedings came to be dismissed, against which revision u/s. 115 of CPC came to be filed before the High Court. A perusal of the judgment would reveal that considering the
20 nature of the order passed and holding that it would not amount to a decree so as to make it appealable and in light of the applicability of C.P.C. by virtue of section 53 of the L.A. Act, the learned Court held that a revision was maintainable. What would be material to consider is that no argument whatsoever was

addressed to the Court on the amended section 115 of CPC and specifically the proviso, nor was the judgment in **Shiv Shakti** (supra), which was rendered on 17th April 2003, was brought to the notice of the Court, deciding **Kadwu's case (supra)**, which
5 was decided on 02/07/2003.

19. The judgment in **Appasaheb Chede** (supra), also without considering the rigor and language of the proviso to section 115 of CPC merely follows **Kawadu's** case (supra), and
10 **Kamlakar Vs. State of Maharashtra**. In **Kamlakar Vs. State of Maharashtra**, decided on 15/01/2007, in-spite of an argument being raised in para 4 thereof that the matter was not covered under the proviso to Section 115 of C.P.C. as it then stood amended, the learned Single Judge without considering this
15 argument choose to rely on **Kawadu's case** (supra), to hold that the revision was maintainable, as there was no remedy of appeal available against an order dismissing the reference for want of evidence. **Shiv Shakti's** case (supra), was not brought to the notice of the learned Court. In the case of **Irappa Angire**
20 (supra), the learned Single Judge has also merely relied upon the cases of **Kawadu** and **Kamlakar** (supra), without considering the effect of the proviso to section 115 of C.P.C. nor was the judgment in in the case of **Shiv Shakti** brought to its notice.

25 20. It is a settled position of law that a judgment rendered

without considering a statutory provision, or its effect, scope and ambit, cannot be held to be a binding precedent. So also, a judgment rendered in ignorance of a binding decision of the Hon'ble Apex Court can be said to be per-incuriam. The Latin expression 'per-incuriam' means through inadvertence. A decision can be said generally to be given *per-incuriam* when the Court has acted in ignorance of a previous decision of its own or of a superior Court. The expression *per-incuriam* fell for consideration of the Constitution Bench of the Hon'ble Apex Court in the case of ***Punjab Land Development and Reclamation Corpn. Ltd. Vs. Presiding Officer, (1990) 3 SCC 682***, in which it is held as under:

“40. -- The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court.

43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to “declare the law” on those subjects if the relevant provisions were not really present to its mind.”

21. In **State of M.P. Vs. Narmada Bachao Andolan, (2011) 7 SCC 639**, the expression *per-incuriam* has been held to
5 mean as under:

*“65. “Incuria” literally means “carelessness”. In practice per incuriam is taken to mean per ignoratum. The courts have developed this principle in relaxation of the rule of stare
10 decisis. Thus, the “quotable in law” is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.*

*67. Thus, “per incuriam” are those decisions
15 given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or
20 proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”*

22. In light of the above dictum, it is clearly apparent that
25 the judgments in the case of **Kawadu, Appasaheb Chede, Kamlakar Suryawanshi and Irnappa @ Irappa Angire** (supra), are rendered per-incuriam, for not considering the amended proviso to sub-section (1) of section 115 of C.P.C. and so
30 also, the binding precedent in the case of **Shiv Shakti** (supra),

and, thus, cannot be held to be laying down the correct law.

23. Learned Counsel Mr. Sabnis placed reliance upon **Khazan Singh** (supra), [which is also relied upon by learned Counsel Mr. Patil for the petitioners], wherein it is held by the Hon'ble Apex Court that:

10 *“7. The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to reference made by the Collector U/S. 18 of the L.A. Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to be determined of the party concerned. But, non participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default.” ;*

20 and has contended that the Civil Court acting u/s. 18 of the L.A. Act, has to pass an award only, and has no power to dismiss the proceedings in default, which would indicate that any order other than on merits, passed by the Civil Court would take form of a decree, in light of section 26 of the L.A. Act and, thus, an appeal would lie u/s. 54 of the L.A. Act, is also without any merit, for the reason that the language of section 26 clearly contemplates the passing of an “award” by the Civil Court, whether it be enhancing the amount, reducing or maintaining it, which has being so held

in para 7 of the judgment, as quoted above. The word 'Award', thus, occurring in Sec. 26 cannot be equated with an order dismissing the reference in default or for want of evidence. The deeming fiction given to an 'Award' as passed u/s. 26(1) by virtue of section 26(2) to be a decree within the meaning of section 2(2) and 2(9) of C.P.C. would necessarily mandate that the award fulfills the criteria, as laid down in section 2(2) of C.P.C. In that light of the matter, considering the language of section 2(b) of C.P.C. excluding any order of dismissal for default, from the definition of a decree, would naturally mean that proceedings u/s. 18 of the L.A. Act, which stand dismissed for default, cannot be held to be a decree within the meaning of the expression so as to invite the invocation of section 54 of the L.A. Act. It is perhaps for this reason that the mandate u/s. 18 of the L.A. Act upon the Civil Court is to make a determination of the matters referred to it under sub-section (1) of section 18 of the L.A. Act and not otherwise. In fact, in **Khazan Singh** (supra), the reference came to be dismissed on the premise that "neither the applicant nor his Counsel appeared in the Court on the said date". An application u/o IX Rule 9 r/w. Sec. 151 CPC filed by L.Rs. of Khazan Singh, who in the meantime had expired, was rejected by the Reference Court, for lack of sufficient cause. The High Court also dismissed the appeal on the ground that no satisfactory explanation for the absence of the claimant and the Counsel was given, against

which an appeal went to the Hon'ble Apex Court, which upon a consideration of fact position, as narrated above, allowed the appeal by setting aside the order of the Reference Court dismissing it for absence of Counsel and party and directing the Reference Court to answer the reference in accordance with law and pass an award, as envisaged in Sec. 26 of the L.A. Act. Thus, in **Khazan Singh** (supra) itself the Hon'ble Apex Court, indicated that though there is no power in a Reference Court to dismiss a reference in default and a duty is cast upon it to decide the reference on merit in light of the language of section 26, however, it was permissible to restore the reference dismissed in default though not u/o. IX Rule 13 but u/o. IX Rule 9 read with Sec. 151 CPC., as indicated in para 10 thereof. It is also to be borne in mind that the Hon'ble Apex Court in **Khazan Singh** (supra), was not called upon to decide the scope and ambit of section 53 of the L.A. Act.

24. The reliance placed by learned Counsel Mr. Sabnis on **Mahadeo Bajirao Patil** (supra), in fact, supports the above propositions that the Reference Court has to pass an award on merits and in a given case, even a nil award.

25. There cannot be any quarrel with the proposition as enunciated in the judgment of the Full bench in the case of **State of Mah. Vs. Sitaram** (supra), that by virtue of section 53 of the

L.A. Act the provisions of C.P.C., save to the extent they are inconsistent with the provisions of the L.A. Act, are applicable to proceedings u/s. 18 before the Civil Court and, therefore, by the aid and assistance of Order VI Rule 17 CPC a reference u/s. 18 of the L.A. Act can always be amended, subject to the requirements of Order VI Rule 17 being satisfied. That being so, it would run counter to the submissions of the learned Counsel Mr. A.N.Sabnis, that in respect of orders passed otherwise than on merits, in proceedings u/s. 18 L.A. Act, only an appeal lies. When Sec. 53 of L.A. Act applies the provisions of CPC to proceedings u/s. 18 of the L.A. Act, the provisions of section 115 CPC or for that matter those as contained in Order IX CPC in relation to dismissal of a suit in default and of its restoration by setting aside the order of dismissal in default, would equally be attracted. Nay all the provisions of the C.P.C., except those inconsistent with the provisions of the L.A. Act, would be applicable to proceedings before the Court u/s. 18 of the L.A. Act. This being so, there is no reason whatsoever to deny that in case of orders which so permit, why the provisions of Order IX Rules 9 & 13 of C.P.C. ought not to apply.

26. In the case of ***M.S. Ramiah*** (supra), relied upon by learned Counsel Mr. Sabnis, the learned Single Judge after taking note of the fact that the claimant had sought an adjournment, in

a reference u/s. 18, which was rejected, in spite of which the claimant had not taken necessary steps, resulting in no evidence being adduced on behalf of the claimant to show that the amount awarded by the L.A.O. was inadequate, the claims were dismissed and the awards were confirmed. On an application filed U/O IX Rule 9 CPC for setting aside the order, the Civil Court rejected the same that the order was made under Rule 2 of Order XVII and not under Rule 3 of CPC. He also held that there was no sufficient cause shown for non appearance. The High Court in an appeal against the same held that the Civil Court had no jurisdiction to refuse to determine the amount of compensation even where the claimant remained absent or where he is present, fails to adduce evidence and it was not open to the Court to dispose of references stating that the claim is dismissed or reference is rejected but it has to pass an award in the manner as provided u/s. 26 on material before it. The High Court thereafter in para 5 though held that the order impugned did not conform to the requirement of section 26 of L.A. Act, the remedy was an appeal and application u/o IX Rule 9 of CPC was misconceived. A reading of the judgment indicates that neither the provisions of section 53 of the L.A. Act, making the provisions of CPC as applicable to proceedings under it, nor section 115 CPC was ever under consideration before the Court. **M.S. Ramiah** (supra), therefore, does not help learned Counsel Mr. A.N. Sabnis in his contention

that only an appeal lies. In fact, in **M.S. Ramiah** (supra), the Court was itself of the opinion that the impugned order did not conform to the requirements of section 26 of the L.A. Act, in spite of which, it for reasons not evident, went on to hold that an appeal lay. In our considered opinion, **M.S. Ramiah** (supra) cannot be considered to be laying down a good law.

27. In **Sheodan Singh** (supra), relied upon by learned Counsel Mr. Sabnis, the Hon'ble Apex Court while considering the principle of *res judicata*, as contained in Sec. 11 CPC, in light of factual background therein, of decision of four suits by the trial Court on merits, by the same judgment and the consequent dismissal of two appeals against the same, one on account of having been filed beyond the period of limitation and the other on account of appellant having failed to take steps to bring the record, both of which dismissals were earlier in point of time, held that such a dismissal would result in confirming the judgment of the trial Court as the same was passed on merits and would apply as *res judicata*, in the two subsequent appeals filed against the same common judgment, as taking a contrary position would result in negating the principle of *res judicata* altogether. A perusal of para 14 of **Sheo dan Singh** (supra), would indicate that the Hon'ble Apex Court was alive to the propositions in light of section 11 of CPC that the dismissal of the former suit on

technical grounds, such as, dismissal for want of jurisdiction; or for default of plaintiff's appearance; or on ground of non-joinder or mis-joinder of parties; or multifariousness; or on ground that the suit was badly framed; or on ground of a technical mistake; 5 on account of under valuation, deficit court fees, etc., would not attract section 11 CPC., as the dismissal on these grounds would not amount to a dismissal on merits.

In the above context, a reference may be made to the factors enunciated by the Hon'ble Apex Court to determine 10 what is the nature of reference u/s. 18 of the L.A. Act, as laid down in ***Chimanlal Vs. Spl.L.A.O., Poona, AIR 1988 SC 1652***, which are as under:

- “ 4. The following factors must be etched on the mental screen:
- 15 1. *A reference u/s. 18 of L.A. Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award, unless the same material is produced and*
- 20 *proved before the Court.*
2. *So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by the Court*
- 25 *unless produced and proved before it. It is not the function of the Court to sit in appeal*

5 *against the Award, approve or disapproved its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court.*

 3. *The Court has to treat the Reference as an an original proceedings before it and determine the market value afresh on the basis of the material produced before it.*

10 4. *The claimant is in the position of a plaintiff who has to show that the price offered for his land in the Award is inadequate on the basis of materials produced in the Court. Of course, the materials placed and proved by the*
15 *other side can also be taken into account for this purpose.”*

28. The above being the enunciation of law, we do not think that ***Sheodan Singh*** (supra), can be of any assistance to
20 learned Counsel Mr. Sabnis in support of his submission that only an appeal lies.

29. In ***Venkat Baburao Karle*** (supra), in a reference
u/s. 18 of the L.A. Act, evidence was led and upon consideration
25 of the material placed before the Court, it was found that the claimants were not entitled to receive enhancement in amount of compensation. It was also found that the reference applications were presented beyond the prescribed period of limitation. The

Reference Court, therefore, rejected the applications. Rejecting the reliance placed on the case of **Kawadu** (supra) as well as **M.S. Ramiah** (supra), the learned Court held that Civil Revision Application questioning the legality and validity of the decision rendered by the Reference Court was not maintainable, as evidence was adduced and the Court had also appreciated the material placed on record and has recorded reasons in support of the final order, in light of which, it would fall within the meaning of the word 'Award', as contemplated by section 26 of the L.A. Act and, therefore, remedy would not be by way of the Civil Revision Application but would be by way of an appeal u/s. 54 of the L.A. Act. The application for condonation of delay was also rejected, which perhaps was the ground to file the revision. The judgment, however, does not make this position clear. The facts in **Venkat's** case were totally different in as much as, the decision therein was on merits and not otherwise. It is material to note that in **Venkat's** case (supra), also no arguments appear to have been advanced in respect of the restrictive scope of the proviso to section 115(1) of C.P.C. nor the judgment in **Shiv Shakti** (supra), was brought to its notice. However, the fact remains that the decision in **Venkat's** case (supra), was on merits and, thus, an appeal u/s. 54 of the L.A. Act was the only remedy available. The contra argument, as raised therein of section 115 CPC being attracted, was itself misconceived altogether.

30. The Division Bench of this Court in the case of **Chandu S/o Jagannath Ambekar and another Vs. Digambar S/o Kisanrao Kulkarni, 2004 (4) Mh.L.J. 69**, while considering
5 the scope of section 115 as it stood amended, in respect of an issue as to the maintainability of a revision u/s. 115 of C.P.C. challenging the order rejecting an application for condonation of delay filed in appeal held that an appeal presented out of time is an appeal and an order dismissing it as time barred is one passed
10 in the appeal, and the judgment in **Shiv Shakti** (supra), was duly considered and relied upon while holding that civil revision application was not maintainable. Para 14 and 15 being material are quoted as under:

15 *“14. The language of the proviso added below sub-section (1) of section 115 of the Code has to be read as it is and it is not permissible to delete any words therein. It governs the scope to maintain the revision applications u/s. 115 and the tests for the same are set out therein.*
20 *For entertaining a revision application it is necessary to examine at the first instance whether the order, if it had been made in favour of the party making revision would have finally disposed of the suit or other proceeding.*
25 *When an application for condonation of delay, filed in a proposed appeal, is rejected, the said order is a final order for the applicant/appellant but that is not the test for*

5 *maintaining a revision application u/s. 115. The order must be such that if it had been made in favour of the party applying for revision it would have finally disposed of the*

10 *suit or other proceeding. This condition would indicate that the revision applicant before the High Court must demonstrate the order of the trial Court, if it had been made in his favour would have finally disposed of the suit or other*

15 *proceeding. In the instant case if the order was passed by the trial Court in favour of the applicant the restoration application could have been decided on merits and, therefore, it would not result in finally disposing of the suit.*

20 *On the other hand, if the delay condonation application is allowed by the lower Court, a revision against such an order can be maintained by the respondent opponent in such a case because if the Court below had made an order on such an application in favour of the respondent/defendant the proceeding could have been finally disposed of. The interpretation carved out by the learned Single Judge in Chandrakant's case (supra) of the*

25 *language employed in the proviso below sub-section (1) of section 115 is in keeping with the legislative intent and it is not permissible to hold that a revision can be maintained against any order which has finally disposed of*

30 *a proceeding or it could not be termed as an interlocutory order. ”*

The position as to the invocation and application of section 115 CPC is well settled.

5 31. In the result, we hold as under :

(A) that a civil revision application u/s. 115 of C.P.C. against, any order passed, otherwise than on merits, in an application u/s. 18 of the L.A. Act by the Civil Court, is not
10 maintainable.

(B) We also hold that the judgments in the case of **Kawadu Madhav Bansod, Appasaheb Mohanrao Chede, Kamlakar Laxman Suryawanshi and Irnappa @ Irappa Angire** (supra), holding that a civil revision
15 application is maintainable, are rendered per-incuriam to the statutory provisions as contained in the proviso to sub-section (1) of section 115 of the Code of Civil Procedure and are also rendered per- incuriam in view of the the judgment
20 of the Hon'ble Apex Court in the case of **Shiv Shakti** (supra).

(C) We also hold that an 'order otherwise than on merits', passed in proceedings u/s. 18 of the L.A. Act, by the Civil
25 Court, cannot be considered as an award and, therefore,

does not amount to a decree, as defined in Section 2(2) of C.P.C. by virtue of the deeming provision u/s. 26(2) of the L.A. Act and, therefore, an appeal against it also would not be maintainable.

5

(D) We hold that the judgment in **Venkat's** case (supra), holding that an appeal is maintainable, is on a different footing altogether considering that the judgment passed therein was on merits after considering the evidence and, therefore, was an award and consequently a decree u/s. 2(2) of C.P.C. by application of Section 26(2) of the L.A. Act.

10

(E) We further hold that a reference u/s. 18 of the L.A. Act, in the light of the mandate as laid down by the Hon'ble Apex Court in the case of **Khazan Singh** (supra), has to be decided by the Civil Court on the basis of the material before it, on merits.

15

(F) We further hold that an 'order passed otherwise than on merits' in proceedings u/s. 18 of the L.A. Act by the Civil Court, in case it has been so passed, would be susceptible to a challenge under Article 227 of the Constitution of India before the High Court in its supervisory jurisdiction, or u/o IX Rule 9 r/w. Sec. 151 CPC. by virtue of section 53 of the

20

L.A. Act.

32. The reference is, thus, answered accordingly.

5 33. The matter be now placed before the respective
Courts to be decided in light of the answers above.

34. Before we part, we record our appreciation for the
excellent assistance rendered to us by all the Counsels, who had
10 addressed the Court while hearing the reference.

15 (**AVINASH G. GHAROTE**)
JUDGE.

(**PRASANNA B. VARALE**)
JUDGE.

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Madkar