



2026:DHC:9217



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 07.09.2026

Date of Decision: 15.10.2026

Date of Uploading: 16.10.2026

CNR No. DLHC010111392026

+ CM(M) 587/2026, CM APPL. 60123/2026 & CM APPL.
60283/2026

ARUN KATHURIA & ORS.

.....Petitioners

Through: Mr. Rakesh Malhotra,
Mr. Bharat Malhotra,
Mr. Kushal Malhotra,
Ms. Poorvi and Ms. Riya, Advs.

versus

SUNITA KATHUTIA THROUGH LR NAMELY RAMANI
KATHURIA

.....Respondent

Through: Ms. Smiti Verma, Mr. Udayvir
Rana and Mr. Samyak Jain,
Advs.

CNR No. DLHC010116982026

+ CM(M) 623/2026, CM APPL. 60124/2026 & CM APPL.
60284/2026

MADHU KOHLI (SINCE DECD) THR LRS

& ANR.

.....Petitioners

Through: Mr. Rakesh Malhotra,
Mr. Bharat Malhotra,
Mr. Kushal Malhotra,
Ms. Poorvi and Ms. Riya, Advs.

versus

SUNITA KATHURIA (SINCE DECD) THR LR &
ORS

.....Respondents

Through: Ms. Smiti Verma, Mr. Udayvir

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Rana and Mr. Samyak Jain,
Advs.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present connected petitions, being CM(M) 587/2026, titled *Arun Kathuria & Ors. v. Sunita Kathuria (since deceased) through her LR* and CM(M) 623/2026, titled *Madhu Kohli & Anr. v. Sunita Kathuria (since deceased) through her LR*, assail the common order dated 20.02.2026 passed by the learned District Judge-14, LAC, Central District, Tis Hazari Courts, Delhi in CS DJ No. 230/2016, titled *Sunita Kathuria v. Arun Kathuria & Ors.*, whereby the learned Trial Court dismissed the applications under Order VIII Rule 1A of the Code of Civil Procedure, 1908¹ seeking to place on record the Final Report/Cancellation Report dated 02.07.2015 along with the documents filed by the Investigating Officer, and also dismissed the application under Order XVI of the CPC seeking permission to summon Shri Tarun Babbar, son of late Shri L.N. Babbar, as a witness in relation to the signatures of Shri L.N. Babbar appearing on the Will dated 15.05.1996.

2. The brief facts leading to the filing of the present petitions are as follows.

3. The respondent and her mother, late Smt. Sunita Kathuria, instituted CS(OS) No. 2440/2007 in respect of property bearing No. 4-B/1, Ganga Ram Hospital Marg, New Delhi. The suit, as originally instituted, sought cancellation of the Will dated 17.05.1996 stated to

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have been executed by late Smt. Kunti Devi and a decree of permanent injunction restraining the petitioners from creating any third-party rights in the said property.

4. The respondents/plaintiffs moved an application under Order VI Rule 17 CPC which came to be allowed, and the suit was amended to incorporate a claim for partition of the estate of late Smt. Kunti Devi. In respect of property bearing No. 4-B/1, Ganga Ram Hospital Marg, a preliminary decree for partition and a declaration of the share claimed by the plaintiffs were sought, along with partition and separate possession or, in the alternative, sale of the property and distribution of the sale proceeds. The amended plaint also sought partition of the movable properties, a declaration that late Smt. Kunti Devi had died intestate and that the Will dated 17.05.1996 was not genuine or binding, and a permanent injunction against alienation or creation of third-party rights in the properties forming part of her estate.

5. It has been stated that the dispute in the suit is thus centred, *inter alia*, on the Will dated 15.05.1996, which was registered on 17.05.1996 before the Sub-Registrar, Kashmere Gate, Delhi. By the said Will, late Smt. Kunti Devi dealt with property bearing No. 4-B/1, Ganga Ram Hospital Road, New Delhi and her other movable and immovable properties, bequeathing different portions of the property to her sons. The Will bears the signatures of Shri J.R. Nangia and Shri L.N. Babbar, Advocate, as attesting witnesses.

6. The dispute concerning the Will also resulted in criminal proceedings. The respondents instituted a criminal complaint, pursuant to which FIR No. 40/2011 was registered on 26.03.2011 at P.S. Rajinder Nagar under Sections 420/468/471/120-B/34 IPC. The

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investigation included examination of the Will and other documents and the obtaining of an FSL report dated 23.04.2015. The Investigating Officer thereafter filed Final Report/Cancellation Report No. 99 dated 02.07.2015 before the learned Metropolitan Magistrate, along with the material collected during investigation, including statements of persons connected with the Will.

7. The Cancellation Report did not bring the criminal proceedings to an end. Thereafter, the respondents filed a protest petition against the Final Report and *vide* order dated 20.03.2021, the learned Metropolitan Magistrate treated the protest petition as a complaint under Section 200 of the Code of Criminal Procedure, and granted an opportunity to the respondents/complainants to lead pre-summoning evidence.

8. The said order was challenged by the respondent in Criminal Revision No. 158/2021 under Section 397 of Code of Criminal Procedure, 1973 whereby the learned revisional court *vide* order dated 25.11.2021 directed that an amended memo of parties be filed showing the persons sought to be proceeded against. The amended memo of parties was filed on 08.08.2023 before the successor Court, and a copy of the revision petition was furnished to the petitioners.

9. It has been stated by the petitioners that the copy of the revision petition so furnished contained only the first nine pages of the Final Report/Cancellation Report and did not contain the complete set of documents filed by the Investigating Officer. The petitioners entered appearance before the Revisional Court on 19.09.2023. The revision proceedings thereafter continued, and the Trial Court record of the criminal complaint was summoned before the Revisional Court.



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10. On 10.07.2024, the petitioners filed an application seeking certified copies of the complete record relating to the criminal proceedings. On 25.07.2024, only the order sheets were supplied. The petitioners thereafter applied through counsel for the remaining documents on 03.09.2024, and the copying agency supplied the documents on 04.10.2024. The material obtained included the documents accompanying the Final Report/Cancellation Report, including the statement of Shri L.N. Babbar dated 20.05.2010.

11. The civil proceedings had, in the meantime, progressed. Issues had been framed on 16.11.2010 and the parties proceeded with their evidence. The petitioners' list of witnesses included, inter alia, witnesses from the office of the Sub-Registrar, the CFSL and the criminal court in relation to FIR No. 40/2011 and the Cancellation Report. Their evidence was closed on 13.12.2018.

12. The suit thereafter proceeded towards final arguments. On 02.02.2019, the application under Order XIV Rule 5 CPC was filed which was subsequently withdrawn in 2023 and the matter was again fixed for final arguments. The matter was listed for final arguments on 07.02.2024, and part arguments were heard on 24.04.2024.

13. On 13.11.2024, the petitioner filed an application under Order VIII Rule 1(A) seeking leave to place the Final Report/Cancellation Report dated 02.07.2015 and the documents accompanying it on record was taken up before the learned Trial Court. The application also sought permission to summon the concerned record clerk/Ahlmad for proving the said documents.

14. The learned Trial Court dismissed the said application by order dated 18.11.2025. Thereafter, the petitioners in December 2025 filed an application seeking review and recall of the said order. By order



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dated 07.01.2026, the learned Trial Court recalled the order dated 18.11.2025 and permitted fresh applications to be filed.

15. In the meantime, the criminal proceedings had also concluded. The learned JMFC-03, Central District, Tis Hazari Courts, dismissed the complaint by order dated 17.10.2025. Consequent thereto, the learned ASJ-04, Central District, Tis Hazari Courts, dismissed Criminal Revision No. 158/2021 as infructuous by order dated 19.11.2025.

16. Pursuant to the order dated 07.01.2026, fresh applications were filed seeking leave to place on record the Final Report/Cancellation Report dated 02.07.2015 and the documents filed by the Investigating Officer. The petitioners in CM(M) 587/2026 also sought permission to re-summon the record clerk/Ahlmad from the criminal court for proving the said documents.

17. A separate application was filed by the petitioners, the rejection of which is the subject matter of challenge in CM(M) 623/2026 seeking permission to summon Shri Tarun Babbar, son of late Shri L.N. Babbar, as a witness in relation to the signatures of Shri L.N. Babbar appearing on the Will. The application was founded upon the circumstance that Shri Tarun Babbar had furnished an affidavit concerning his familiarity with the signatures of his deceased father.

18. The learned Trial Court considered the aforesaid applications and, by the common order dated 20.02.2026, dismissed the applications seeking to place the Final Report/Cancellation Report dated 02.07.2015 and the accompanying documents on record. The application seeking permission to summon Shri Tarun Babbar was also dismissed. The suit was thereafter directed to be listed for final arguments on 25.03.2026. The learned trial court noted that the



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applications have been filed at a belated stage and are impermissible in law.

19. Aggrieved by the aforesaid order, the present petitions have been filed. CM(M) 587/2026 assails the rejection of the applications seeking to place the Final Report/Cancellation Report dated 02.07.2015 and the accompanying documents on record, whereas CM(M) 623/2026 assails the rejection of the separate application seeking permission to summon Shri Tarun Babbar as a witness in relation to the signatures of Shri L.N. Babbar on the Will. The petitions thus arise from the same order dated 20.02.2026, though the applications forming the subject matter of challenge are distinct.

20. Learned counsel for the petitioners submits that the learned Trial Court has adopted a restrictive approach while considering the applications under Order VIII Rule 1A(3) CPC and Order XVI Rule 1(3) read with Rule 1A CPC. It is submitted that the applications did not seek to introduce a new case, but sought to place before the learned Trial Court documents which were central to the main issue already arising in the suit, namely, the execution and genuineness of the Will dated 15.05.1996.

21. Learned counsel submits that the complete Final Report/Cancellation Report dated 02.07.2015 and the documents accompanying it were not in the possession of the petitioners at the stage when the documents were required to be produced. In the criminal revision proceedings, the petitioners had initially been furnished only the first nine pages of the Final Report. The complete Final Report was obtained only after certified copies of the criminal court record were applied for in 2024, with the Final Report being supplied on 04.10.2024. The application for bringing the said Report

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on record was thereafter moved on 12.11.2024. It is, therefore, submitted that the learned Trial Court ought to have considered the circumstances in which the documents became available instead of treating the stage of the civil proceedings as determinative.

22. Learned counsel submits that the documents sought to be produced are not collateral to the suit. The Final Report contains, inter alia, the statement of Shri L.N. Babbar, one of the attesting witnesses to the Will. The material therefore bears directly upon the execution and attestation of the very document whose genuineness is in issue. According to learned counsel, permitting the documents to be taken on record would enable the learned Trial Court to adjudicate the underlying controversy on the material bearing upon it, whereas their exclusion would result in the Court examining the validity of the Will without considering documents directly connected with its execution.

23. Reliance is placed upon *Sugandhi (Dead) by LRs. & Anr. v. P. Rajkumar*² and *Levaku Pedda Reddamma & Ors. v. Gottumukkala Venkata Subbamma & Anr.*³, to submit that the power under Order VIII Rule 1A(3) CPC is discretionary and is intended to permit production of relevant documents at a later stage when those documents were not earlier in the possession of the party seeking to produce them. Learned counsel submits that the Court is required to consider the explanation for non-production and the relevance of the documents, and that procedural delay can, where necessary, be addressed by imposing appropriate terms rather than by excluding relevant material altogether.

² (2020) 10 SCC 706

³ Civil Appeal No. 4096/2022



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24. Learned counsel submits that the same approach ought to have been adopted with respect to the application under Order XVI Rule 1(3) read with Rule 1A CPC. Both attesting witnesses to the Will were no longer available. After obtaining the complete criminal record, including the statement of Shri L.N. Babbar, efforts were made to trace a person acquainted with his signatures. Shri Tarun Babbar, his son, was eventually contacted and furnished an affidavit concerning his familiarity with his father's signatures. The application, therefore, according to learned counsel, was directed to a specific and limited purpose connected with proof of the Will and was not an attempt to introduce an unrelated witness or a fresh factual case.

25. Learned counsel submits that the fact that the suit had reached the stage of final arguments could not, by itself, justify rejection of the application. The proposed evidence relates to an issue already before the learned Trial Court, and the petitioners had taken steps to secure the material and the witness once they became available. Reliance is also placed upon *Mohammed Abdul Wahid v. Nilofer & Anr.*⁴, to submit that procedural provisions must be applied keeping in view the object of adjudicating the real controversy between the parties.

26. Learned counsel further submits that any prejudice caused to the respondent by permitting the documents to be brought on record or the witness to be examined can be addressed by granting an opportunity to meet the material and by imposing appropriate terms. Complete exclusion of the material, according to learned counsel, would have the effect of preventing consideration of evidence directly bearing upon the genuineness and execution of the Will.

⁴ 2023 INSC 1075



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27. Learned counsel accordingly submits that the impugned order proceeds on a restrictive approach to the exercise of discretion under Order VIII Rule 1A(3) and Order XVI CPC. The petitioners, it is submitted, have explained the circumstances in which the complete documents became available, have taken steps thereafter to place them before the Court, and have also made efforts to trace a witness capable of addressing the signatures of the deceased attesting witness. It is submitted that there has been no intent on part of the petitioners to delay the trial court proceedings. It is accordingly prayed that the impugned order dated 20.02.2026, insofar as it rejects the aforesaid applications, be set aside and the applications be allowed, subject to such terms as this Court may consider appropriate.

28. *Per Contra*, Learned counsel for the respondent, at the outset, submits that the present petitions do not warrant interference under Article 227 of the Constitution. The impugned order concerns the exercise of discretion by the learned Trial Court on applications seeking production of documents and summoning of an additional witness after the petitioners had already concluded their evidence and the matter had proceeded to final arguments. It is submitted that no jurisdictional error or perversity is disclosed so as to warrant interference in exercise of the supervisory jurisdiction of this Court.

29. Learned counsel submits that the petitioners' case that they acquired knowledge of the Final Report only in 2024 is not borne out from the chronology of the proceedings. The Final Report/Cancellation Report dated 02.07.2015 was itself filed in the criminal proceedings arising out of the dispute concerning the Will, and the petitioners were parties to and participating in those proceedings. The criminal proceedings thereafter continued before the



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learned Magistrate and, subsequently, before the Revisional Court. The petitioners' own case is that they entered appearance in the revision proceedings on 19.09.2023, after the amended memo of parties was filed on 08.08.2023, and that a copy of the revision petition was furnished to them.

30. Learned counsel submits that the fact that the copy furnished in the revision proceedings contained only the first nine pages of the Cancellation Report does not mean that the petitioners were unaware of the Final Report itself. It only explains the delay in procuring the remaining portion of the Final Report. The distinction is material: the petitioners' case of subsequent knowledge cannot be equated with subsequent acquisition of a complete copy of a report whose existence and filing were already known to them. The petitioners thereafter obtained the remaining material on 04.10.2024 by applying for certified copies.

31. It is submitted that this chronology assumes significance because the petitioners did not move the learned Trial Court immediately upon obtaining the complete material in the criminal proceedings in 2023. More importantly, their evidence in the civil suit had already been closed on 13.12.2018. The respondent therefore submits that the subsequent procurement of the complete record cannot, by itself, furnish an explanation for why material relating to the same controversy should be introduced after the petitioners had already consciously brought their evidence to an end.

32. To buttress his arguments and submit that the parties cannot be allowed to fill the lacunae of their evidence, learned counsel has placed reliance on two judgments of Co-ordinate Benches of this



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Court in *SBI v SC Goel*⁵ and *Scindia Potteries & Services P. Ltd. v JK Jain & Anr.*⁶.

33. Learned counsel submits that the same chronology is even more significant with respect to the application seeking summoning of Shri Tarun Babbar. Shri L.N. Babbar was an attesting witness to the Will and died in 2015. The petitioners were aware of his death. Consequently, from 2015 itself, the petitioners were aware that Shri L.N. Babbar could not be examined as an attesting witness and that, if the Will was to be proved, the requirements governing proof of an attested document in the absence of the attesting witness would have to be addressed. The requirements of Sections 68 and 69 of the Indian Evidence Act, 1872 (corresponding to sections 67 and 68 of the Bharatiya Sakshiya Adhiniyam, 2023) therefore did not arise for consideration for the first time when the application for summoning Shri Tarun Babbar was filed.

34. Learned counsel submits that the petitioners' subsequent attempt to trace Shri Tarun Babbar cannot, therefore, be treated as a circumstance which rendered the proposed evidence unavailable earlier. Once the death of Shri L.N. Babbar was known, and his status as an attesting witness was known, the petitioners were aware of the evidentiary difficulty which his death presented. They nevertheless proceeded with the trial and voluntarily closed their evidence on 13.12.2018. The attempt, thereafter, to introduce his son as a witness for identification of Shri L.N. Babbar's signatures, according to learned counsel, amounts to an attempt to supplement evidence after

⁵ CM(M)2278/2025

⁶ (2012) SCC Online Del 5296



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the petitioners had themselves elected to conclude their evidentiary case.

35. Learned counsel further submits that this is not merely a case of permitting a formal witness to prove a document. The proposed evidence is intended to supply a mode of proof of the signatures of a deceased attesting witness to the Will. The petitioners had the opportunity to address the manner in which the Will was to be proved during their evidence. Having closed their evidence, they cannot seek to cure a lacuna in their evidence by introducing another witness at the stage of final arguments. The power under Order XVI CPC, it is submitted, cannot be exercised so as to permit a party to fill up such a lacuna after the evidentiary stage has been voluntarily brought to an end.

36. To buttress his arguments and to contend that after closing of evidence, parties cannot be allowed to lead further evidence in order to fill in the lacunae in their cases, the learned counsel has relied upon the case of *K. Bharathamma v. Bandaru Sakku Bai*⁷ and *Nikita Jain v. Ram Phal*⁸.

37. Learned counsel has submitted that the applications under Order VIII Rule 1A(3) and Order XVI CPC ought to be considered in the context of the entire chronology. The petitioners were aware of the criminal proceedings and the Final Report; they subsequently obtained the complete record, but only after the civil evidence had long since been closed. They were aware of the death of Shri L.N. Babbar in 2015 and of the consequent requirement of proving the Will in accordance with law, yet proceeded to close their evidence in 2018.

⁷ 2026 SCC Online SC 1484

⁸ CM(M) 2292/2025



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The respondent therefore submits that the learned Trial Court was justified in treating the applications as belated attempts to supplement the petitioners' case rather than as circumstances warranting reopening of the trial.

38. Learned counsel for the respondent has submitted that the impugned order consequently discloses no such jurisdictional error, perversity or material irregularity as would justify interference under Article 227 of the Constitution. The present petitions, it is submitted, are therefore liable to be dismissed.

39. Heard learned counsel for the parties and perused the records.

40. Upon a conspectus of the arguments advanced, the principal question which arises for consideration is whether, in the facts and circumstances of the present case and having regard to the stage of the proceedings and the objections raised by the respondent, the learned Trial Court was justified in declining to exercise its discretion under Order VIII Rule 1A(3) and Order XVI of the CPC.

41. Before proceeding further, it is pertinent to note that the power to permit production of documents or examination of a witness at a stage subsequent to the stage of evidence is subject to judicial scrutiny. The mere relevance of a document or a witness cannot, by itself, furnish a ground for permitting a party to reopen its evidence. The Court is required to consider the explanation for the delay, the stage of the proceedings, the nature of the material sought to be introduced, the effect of disallowing the additional documents or witnesses to the party's case and the prejudice which may be caused to the opposite party. At the same time, the procedural requirements governing the conduct of a trial cannot be applied in a manner which



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prevents the Court from effectively adjudicating the controversy which is already before it.

42. The Supreme Court in ***Sugandhi (Dead) by LRs. v. P. Rajkumar (supra)***, has emphasised the need to adopt an approach which furthers substantial justice while considering an application for production of documents under Order VIII Rule 1A(3) CPC. Similarly, in ***Levaku Pedda Reddamma & Ors. v. Gottumukkala Venkata Subbamma & Anr. (supra)***, the Supreme Court has recognised that the relevance of documents sought to be produced at a later stage may be considered by the Trial Court and that the delay in production can, in an appropriate case, be addressed by imposing costs. The aforesaid principles, however, cannot be understood to mean that a party is entitled to introduce material at any stage merely because such material has some relevance to the dispute.

43. It is, however, not necessary for this Court, while exercising jurisdiction under Article 227 of the Constitution, to return a conclusive finding as to the precise extent of the petitioners' knowledge of the Final Report or as to the circumstances in which the complete report and the accompanying material came to be obtained. What is of significance is that the material sought to be produced emanates from the criminal proceedings concerning the very Will which forms part of the controversy before the learned Trial Court. The documents are, therefore, not sought to be introduced to set up an entirely new case or to bring into the suit a controversy which was hitherto absent. Their relevance and their ultimate evidentiary effect would remain matters for consideration by the learned Trial Court. The circumstance that the complete material was obtained subsequently, particularly when the respondent would have an



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opportunity to meet the same, would not, in itself, justify its exclusion from consideration.

44. This Court is conscious that the petitioners had already closed their evidence and that the matter had progressed to the stage of final arguments. Ordinarily, the Court ought to be circumspect in permitting a party to reopen its evidence at such an advanced stage. However, the question is not merely whether the applications are belated. The Court must also consider whether the material sought to be introduced is such as would assist in the adjudication of the controversy already before the Court and whether the prejudice occasioned to the opposite party can be adequately safeguarded.

45. The same consideration assumes significance in respect of the prayer for summoning Shri Tarun Babbar. The respondent has submitted that Shri L.N. Babbar, who was an attesting witness to the Will, had expired in 2015; that the petitioners were aware of his death; and that, notwithstanding such knowledge, the petitioners proceeded with the trial and voluntarily closed their evidence on 13.12.2018. It is, therefore, contended that the attempt to summon Shri Tarun Babbar at this stage amounts to an attempt to fill a lacuna in the evidence.

46. The aforesaid objection cannot be brushed aside, as a party cannot be permitted to reopen its evidence merely to fill a lacuna in its case. The question, however, is whether the proposed evidence seeks to introduce a new factual foundation or to establish a matter already in issue before the learned Trial Court. In the present case, Shri Tarun Babbar is sought to be examined only to identify the signatures of his father, Shri L.N. Babbar, an attesting witness to the Will, which is already on record. The proposed examination, therefore, seeks to establish an existing document and does not, by itself, introduce a new



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case. Whether the testimony is sufficient to establish the signatures, whether Shri Tarun Babbar possesses the requisite familiarity with them, and whether the requirements of Sections 67 and 68 of the Bharatiya Sakshya Adhiniyam, 2023, are satisfied, would remain for determination by the learned Trial Court.

47. In the present case, the respondent would have an opportunity to cross-examine Shri Tarun Babbar, to question his familiarity with the signatures of his father and to raise all objections available in law concerning the admissibility and sufficiency of his testimony. The respondent would similarly have an opportunity to meet the documents sought to be brought on record and to make all submissions available in law in relation thereto.

48. In the opinion of this Court, the learned Trial Court has adopted a somewhat restrictive approach by treating the stage of the proceedings and the delay in seeking to introduce the material as determinative, without sufficiently examining its relevance to the controversy in issue. While a belated application does not warrant acceptance as a matter of course, the materiality of the evidence sought to be adduced must be duly considered in determining whether its production, on appropriate terms, would facilitate the adjudication of the dispute on merits.

49. At this juncture, it is relevant to consider the authorities relied upon by the respondent. The respondent's reliance on **SBI (supra)** and **Scindia Potteries (supra)** is untenable in view of the authoritative rulings of the Hon'ble Supreme Court in **Sugandhi (supra)** and **Levaku Pedda Reddamma & Ors (supra)** wherein the Hon'ble Supreme Court has stated that additional documents can be taken on record in order to bring out the real controversy of the case, and that



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procedural mistakes should not defeat the ends of substantive justice. Infact, a Co-ordinate Bench of this Court in **Vinod Bhatia & Anr. v Punjab and Sindh Bank & Anr.**⁹ while following the law laid down by the Hon'ble Supreme Court in **Sugandhi (supra)** allowed the additional documents filed under Order VII Rule 14(3) subject to payment of costs.

50. The respondent's reliance on **K. Bharathamma (supra)** and **Nikita Jain (supra)** is untenable as both the cases pertain to an application under Order XVIII Rule 17 CPC and furthermore, in both the cases the courts had held that the parties cannot be allowed to fill in the lacunae in their cases. However, once this Court has held that the petitioners were not trying to fill a lacuna and are simply seeking to summon the son of an attesting witness, the above cited cases do not become applicable.

51. It is also relevant to consider that a Division Bench of this Court in **Sudesh & Ors v Vijender Singh & Ors.**¹⁰ has dealt with an issue where an application under Order XVI for summoning of the sole attesting witness in a dispute regarding the will was dismissed. The Hon'ble Division Bench noted *inter-alia* as follows –

“24. The exercise of judicial discretion to admit evidence, after evidence has been closed, is well settled. Such discretion must be exercised judiciously, balancing the need to avoid procedural gamesmanship and delay against the overriding requirement that material evidence bearing on the real controversy be placed before the Court for adjudication on merits. In determining whether to allow evidence to be re-opened, the Court must consider:

- i. the materiality of the evidence sought to be adduced;
- ii. the bona fides of the party seeking to re-open evidence;
- iii. whether the opposing party would suffer prejudice of an irreversible kind; and

⁹ 2026 SCC OnLine Del 3412

¹⁰ 2025 SCC Online Del 6160



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- iv. whether reasonable safeguards and time-bound directions can be fashioned to mitigate any risk of prejudice of delay.

25. Applying the above principles to the facts of the present case, it is evident that the proposed evidence is highly material. The Will dated 24.05.2002 is the foundation of the dispute and attestation by Shri Ajay Gopal, the sole surviving attesting witness is central to establishing its execution and validity. The attesting witness is not only alive but has no voluntarily expressed willingness to depose, thereby placing the Appellants in a position to present evidence that was previously inaccessible through no fault of their own.

28. While the Respondents are correct that procedural remedies under Order XVI Rules 10 and 12 exist, the mere existence of such remedies does not preclude the Court from exercising its discretion to admit evidence when justice so requires. The overriding objective is to ensure adjudication on the merits rather than to allow procedural technicalities to frustrate the presentation of crucial evidence.”

52. Thus, the principles laid down by the Hon’ble Supreme Court in ***Sugandhi (supra)*** and ***Levaku Pedda Reddamma & Ors (supra)***., and followed by the Co-ordinate Bench of this Court in ***Vinod Bhatia & Anr. v. Punjab and Sindh Bank & Anr. (supra)***, reiterate that procedural requirements ought not to be applied so rigidly as to foreclose the consideration of material evidence. Further, the Division Bench of this Court in ***Sudesh & Ors (supra)*** recognised that, in a dispute concerning the execution and validity of a Will, the summoning of an attesting witness may be permitted even after the closure of evidence, where such evidence is material to the controversy.

53. The impugned order dated 20.02.2026 is, accordingly, set aside. The applications under Order VIII Rule 1A(3) and Order XVI CPC are allowed, subject to payment of costs of ₹75,000/- to the respondent, to be paid within a period of one week from today. The learned trial court is directed to ensure that the complete examination



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of Sh. Tarun Babbar is completed on any one date, which shall be decided subject to the learned trial court's convenience. The learned Trial Court shall thereafter proceed with the suit in accordance with law and uninfluenced by any observations contained in the present judgment, save to the limited extent necessary for giving effect to the present order.

54. Accordingly, the present petition stands allowed and disposed of in the above terms. Pending applications, if any, also stand disposed of.

55. It is, however, clarified that this Court has not expressed any opinion on the merits of the case.

56. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

OCTOBER 15, 2026/ar/sg