



2026:DHC:1101



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 10th February, 2026

+ CM(M) 126/2026

KISHAN

.....Petitioner

Through: Mr. Bhupesh Narula, Mrs. Rinku Narula, Mr. Anugrah Ekka and Mr. Kanishk Taneja, Advocates.

versus

USHA DEVI AND ANR

.....Respondents

Through: Mr. Monish Chhoker, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER (Oral)

Rajneesh Kumar Gupta, J.

1. This hearing has been conducted through hybrid mode.

CM APPL. 9078/2026 (for early hearing)

2. This is an application filed on behalf of the petitioner under Section 151 of the Code of Civil Procedure, 1908 seeking early hearing of the present petition.

3. Learned counsel for the respondents has appeared on advance notice and accepted notice.

4. For the ground and reasons stated in the application, the same is allowed. The present petition is taken up for hearing today with the consent of the learned counsels.

5. Accordingly, the application is disposed of.

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6. The present petition has been filed by the petitioner under Article 227 of the Constitution of India, 1950 assailing the order dated 30th October, 2025 passed by the learned Trial Court in CS. No. 236/2023, whereby the application of the petitioner/plaintiff filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 to recall and re-examine PW-3, namely, Mohd. Irshad Ali, has been dismissed.

7. Learned counsel for the petitioner submits that PW-3 is a material witness, being one of the attesting witnesses of the alleged will. It is further submitted that certain relevant facts could not be brought on record during the examination-in-chief of PW-3 due to inadvertence and oversight. Learned counsel further contends that if PW-3 is not permitted to be recalled, grave prejudice would be caused to the petitioner.

8. On the other hand, learned counsel for the respondents submits that the application has been moved only with a view to delay the proceedings, as the same has been filed at a stage when part final arguments were heard, and that the attempt is merely to fill up the lacunae in the petitioner's case.

9. The operative portion of the impugned order reads as unde:

“12. It is evident from the record that part arguments in the matters were heard on 19.07.2025 and only thereafter the present application came to be filed on 30.07.2025.

13. Again, it is settled law that even though powers U/O XVIII Rule 17 CPC are discretionary in nature, the same cannot be invoked by a Court to fill up omission in the evidence already led by a witness. In fact, in the matter of ‘Ramrati Vs. Mange Ram AIR 2016 Supreme Court 1343’, the Hon'ble Supreme Court of India went on to hold that the said power cannot be used even in cases where no prejudice is caused to either party.

14. In the present case, Counsel for D-1 and Maya Devi are vehemently opposing the application pointing out that in case the



present application is allowed, it would amount to allowing the plaintiff to supply the omissions they have pointed out during their part arguments made in the matter and this would gravely prejudice their case.

15. The same appears to be a correct stand taken by D-1 and Maya Devi. Evidently, the present application is a result of the deficiencies in plaintiff's evidence pointed out during arguments before this Court. Thus, if plaintiff is allowed to recall the said witness, it would basically be a case where plaintiff is being allowed to supply shortcomings/omissions in his evidence. PW-3 was examined before this Court on 27.04.2024 and he was cross-examined at length on the said date. His cross-examination runs in 5 pages and in case there was any clarification which was left out to be taken from him, he could have been re-examined or recalled soon after he was discharged.

16. The delay in moving of the present application and the stage at which it has been moved shows that this is an attempt by the plaintiff to fill in the lacunae in his evidence, which cannot be permitted in law.

17. Considering the above, in my humble opinion, the present application is misconceived. It is dismissed.

18. To come up for final arguments on 02.12.2025, Dasti.”

10. A perusal of the record shows that PW-3 was examined on behalf of the petitioner and was thereafter cross-examined by the respondents on 27th April, 2024. The present application was moved on 30th July, 2025, after the matter had been partly heard on merits.

11. Keeping in view the facts and circumstances of the case that the application has been moved after undue delay and appears to be an attempt to fill up the lacunae in the case, this Court does not find any infirmity in the impugned order, which is a well-reasoned order passed in accordance with law.



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12. Accordingly, the present petition is dismissed as being devoid of merits. Pending application(s), if any, also stand disposed of.

13. The next date already fixed i.e., 08th May, 2026 stands cancelled.

RAJNEESH KUMAR GUPTA, J

FEBRUARY 10, 2026/nd/isk