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

Reserved on: 08th April, 2026
Date of Decision: 16th April, 2026

+ **CM(M) 1330/2022 & CM APPL. 51878/2022**

VINOD KUMAR AND ORS.Petitioners
Through: Ms. Gaganpreet Chawla, Advocate.

versus

PARVATI DEVI AND ANR.Respondents
Through: Mr. Munish Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

1. The present petition has been filed by the petitioners/defendants under Article 227 of the Constitution of India, 1950 assailing the order dated 29th October, 2022 (hereinafter referred to as the "*Impugned Order*") passed by the learned Trial Court in Civil Suit bearing No. 12114/2016, whereby a final opportunity was granted to the respondent No.1/plaintiff to cross-examine petitioner No.1 who is DW-3, subject to payment of cost of Rs. 5,000/- (Rupees Five Thousand Only) to him.

2. Learned counsel appearing on behalf of the petitioners has argued that *vide* order dated 18th April, 2017, the right of the respondent No.1 to cross-examine petitioner No.1 was closed by the trial Court after sufficient opportunities have been granted to the respondent No.1. The application seeking recall of the order dated 18th April, 2017 has been filed after a lapse of almost Four (04) years by the respondent No.1 only to fill up lacunae in his



case. The application has been allowed by the trial Court without speaking order.

Per contra, learned counsel for respondent No.1 has argued that respondent No.1 is around 88 years of age and is residing in Gujarat. The son of the respondent No.1 is looking after this case, respondent No.1 came to know of the order dated 18th April, 2017 only on 27th December, 2021, when the newly engaged counsel on his behalf made enquiries in that regard. The learned trial court has passed the impugned order after duly considering the material on record and has rightly exercised its inherent powers under Section 151 of the CPC. The present petition is liable to be dismissed as it is without any merits.

3. I have heard the learned counsels for both the parties and perused the record.
4. The impugned order is reproduced as under:

“29.10.2022

*Present: Sh. Munish Kumar, Ld. Counsel for the plaintiff.
Sh. S.C Gulai, Ld. Counsel for the defendant no. 2
and 3. Defendant no. 3 Vinod Kumar in person.*

Cost of Rs.3000/- paid in cash to the defendant in compliance of the order dated 03.12.2021.

Arguments heard on application U/o XVIII Rule 17 CPC for recalling the order dated 18.04.2017.

It is submitted that the plaintiff is a senior citizen and aged around 88 years. It is further submitted that the plaintiff's son did not get any satisfactory information about the case despite contacting him several times therefore, engaged a new counsel namely Sh. Munish Kumar.

The new counsel for the plaintiff informed the plaintiff that a cost of Rs.3000/- is imposed upon them for non



appearance vide order dated 03.12.2021.

It is further submitted that there is no specific provision in the Code enabling the plaintiff to re open the evidence for the purpose of cross examination. The section 151 CPC provides that noting in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to abuse of the process of the court proceedings.

Subject to cost of Rs. 5,000/- to be paid to the defendant no. 3 a final opportunity is granted to the plaintiff to cross examine the defendant no. 3.

The counsel for the plaintiff undertakes to conclude the cross examination on the next date of hearing.

List for cross examination of defendant no. 3 on 14.12.2022.”

5. In **K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275**, the Hon’ble Supreme Court has observed as follows:

“11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purpose other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”



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6. Petitioner No.1 is one of the defendants in the suit and is, therefore, a material witness of the case.

7. Keeping in view the facts and circumstances of the case and the fact that petitioner No.1 is an important witness, this court is of the opinion that his cross-examination is necessary for effective adjudication of the case and to meet the ends of justice. Accordingly, this court does not find any infirmity or illegality in the impugned order dated 29th October, 2022 and the same is upheld. Accordingly, the present petition stands dismissed being devoid of any merits. Pending application(s), if any, also stand disposed of.

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 16, 2026/MR/isk