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

*Reserved on: 20<sup>th</sup> May, 2026*  
*Date of Decision: 29<sup>th</sup> May, 2026*

+ CM(M) 38/2026 & CM APPL. 995/2026

SUNIL KUMAR

.....Petitioner

Through: Mrs. Kajal Chandra, Ms. Hatneimawi,  
Mr. Suyash Swarup and Mr. Ananyay  
Bhardwaj, Advocates.

versus

RAJESH KUMAR

.....Respondent

Through: Mr. Dhruv Chawla, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA**

**ORDER**

1. This hearing has been conducted through hybrid mode.
2. The present petition has been filed by the petitioner/defendant under Article 227 of the Constitution of India assailing the order dated 09<sup>th</sup> December 2025, passed by the learned Trial Court, whereby the application filed by the respondent/plaintiff under Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking permission to inspect the original documents bearing the signatures of *Mr. Anil Kumar* and to take necessary photographs thereof has been allowed.
3. I have heard learned counsel for the parties and perused the record.
4. Learned counsel for the petitioner has argued that the learned Trial Court has passed the impugned order on the basis of surmises and conjectures, which is against the law. It is argued that the handwriting expert



sought to be examined by the respondent was not cited in the list of witnesses filed by the respondent on 02<sup>nd</sup> January 2018. It is further submitted that no sufficient cause has been shown by the respondent in the application for omission to mention the name of the said witness in the list of witnesses. The respondent cannot be permitted to file an amended list of witnesses at a belated stage without moving an appropriate application in that regard. It is further submitted that the impugned order is in complete contravention of the provisions of Order XVI Rule 1 of CPC. On these grounds, it is prayed that the impugned order be set aside. Reliance has been placed upon the Judgment of the Hon'ble Supreme Court in *Ashok Sharma v. Ram Adhar Sharma*, (2009) 11 SCC 47 and the Judgment of the Coordinate Bench of this Court in *Dinesh Jain v. Krishan Kumar Gupta*, [CM(M) 885/2008].

5. *Per contra*, learned counsel for the respondent has argued that the learned Trial Court has passed the impugned order after considering the facts and circumstances of the case and that there is no illegality or infirmity in the impugned order. The petition is liable to be dismissed as it is devoid of merits.

6. The relevant portion of the impugned order dated 09<sup>th</sup> December 2025, reads as under:

*“7. I have heard both the Ld. Counsels for the parties and perused the record.*

*8. Admittedly, the family settlement dated 23.05.2009 is in dispute. The defendant has already placed reliance upon the report of handwriting expert. Now in order to refute the evidence produced by defendant, plaintiff wants to place on record report of another handwriting expert. The defendant has also produced the report which was prepared on 14.04.2023. Therefore, though plaintiff has moved the application with delay, however, considering the facts and circumstances of the*



*case, in the interest of justice, application is allowed and handwriting expert is allowed to inspect the file and obtain photographs of the relevant documents in presence of both parties...”*

7. The Coordinate Bench of this Court in ***Dinesh Jain v. Krishan Kumar Gupta***, [CM(M) 885/2008], observed as under: -

**“2. Order 16 Rule 1 and 1(A) reads as under:**

**1. List of witnesses and summons to witnesses.—(1)** *On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.*

*(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.*

*(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*

*(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)].*

**[1A. Production of witnesses without summons.—A** *Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.]*



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5. *Filing of list of witnesses is not a mere formality and is not a superfluous act. List of witnesses if filed by the parties to apprise the Court as well as the opposite party as to what evidence will be produced by the party to prove its case. If there is a bonafide mistake and sufficient reasons are given by the party, the Court should allow the filling of such a list. However, if no bonafide reasons are given and the party keeps sleeping, there is no reason for allowing a party to file a list of witnesses later on.”*

8. A perusal of the record shows that one of the issues involved in the suit, as framed by the learned Trial Court on 04<sup>th</sup> December 2017, is as under: -

*“1) Whether there was any family settlement dated 23/05/2009 executed between plaintiff, defendant, their father Lal Chand and their brothers Anil Kumar and Ram Chand. If so, its effect? (OPD)”*

The onus to prove the aforesaid issue is upon the petitioner. In support of his case, the petitioner has also examined a handwriting expert as DW-3.

9. Keeping in view the facts that the family settlement is in dispute between the parties, the petitioner has also examined a handwriting expert and the case is presently at the stage of the evidence on behalf of the respondent, this Court is of the opinion that it would be in the interest of justice if an opportunity is also granted to the respondent to examine a handwriting expert, as prayed for in the application, since the same would assist the learned Trial Court in arriving at a just conclusion on the aforesaid issue. The omission to mention the name of



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such witness in the list of witnesses as filed by the respondent appears to be *bona fide* after taking into consideration the facts and circumstances of the case. Accordingly, this Court does not find any illegality or infirmity in the impugned order, as the same is a well-reasoned order. The petition is dismissed as being devoid of any merits. Pending application(s), if any, also stand disposed of.

**RAJNEESH KUMAR GUPTA  
JUDGE**

**MAY 29, 2026/ABK**