

CS 90/22

ANITA SHARMA Vs. MUKANDI DEVI AND ORS

08.01.2026

Present: Ld. Counsel for plaintiff.
Mr. Parkash and Ms. Mansi Shukla Gaur, Ld. Counsel for defendants.

1. Defendants have preferred an application U/S 114 CPC seeking recall of order dated 29.11.2025. On the said date, the following order was passed:

"Present: Sh. Rajeev Gupta & Sh. Sandeep Yadav,
Ld. counsel for plaintiff.
Ld. proxy counsel for defendants.

Defendants have not paid the cost of Rs.10,000/- in terms of order dated 03.05.2024 whereby the delay in filing of written statement of the defendants was condoned and a cost of Rs.10,000/- was imposed. The said order has been affirmed by the Hon'ble High Court of Dehi in CM(Main) no. 1368/25 dated 28.07.2025. Still, the cost is not paid. In such circumstances, the written statement of the defendants is taken off the record.

Consequently, the matter has to be posted for final arguments because when the defendants entered appearance and their written statement was taken on the record subject to cost, the matter was at the stage of final arguments. With defendants' written statement being taken off the record, now no purpose shall be served by fixing the matter for defence evidence.

List for final arguments on 08.01.2026."

2. Counsel submits that owing to hospitalization of his son, defendants could not be contacted by him to direct them to pay the cost of Rs. 10,000/- in terms of directions passed in order dated 28.07.2025 by the Hon'ble High Court of Delhi in CM Main No. 1368/25. He submits that owing to his default,

defendants should not be made to suffer and therefore the said order be recalled and the matter be allowed to be contested on merits.

3. On the other hand, Counsel for plaintiff argued that this is yet another ploy of defendant to delay the matter. As per Counsel for plaintiff, there is no error apparent on the face of record which may give the Court a reason to recall the order dated 29.11.2025.
4. Perusal of application shows that son of the defendant's Counsel was admitted in a hospital in the first half of August 2025. But, thereafter, defendants should have paid the cost in terms of the observations made by the Hon'ble High Court of Delhi in its order dated 28.07.2025. There is some default on the part of Counsel for defendants which led to the passing of order dated 29.11.2025 noted above. But, it is settled law that default of a Counsel should not prejudice a party to the case and a matter invariably should be decided on merits.
5. Keeping in mind the above, one opportunity is granted to defendants to pay the cost. Cost of Rs. 10,000/- paid by Counsel for defendants to Counsel for plaintiff.
6. In view of the same, the order dated 29.11.2025 is recalled. The WS of defendants is taken on record. Rejoinder thereto already filed.
7. Let parties file their affidavit of admission/denial within 4 weeks from today with copy to other side.
8. List for admission/denial and framing of issues on 13.03.2026.

Aashish Gupta
DJ-01/NE/KKD/DELHI
08.01.2026