

CS DJ 58318/16
SAMUHIK PRAYAS SAMITTEE (REGD.) Vs. SUNIL
KUMAR

15.10.2025

Present: Sh Sandeep Jindal, Ld Counsel for the plaintiff
(Through VC)
Sh A.K Tripathi, Ld Counsel for the defendant along
with defendant

The matter is listed for arguments on two applications filed on behalf of the plaintiff, one filed under Section 151 of the Civil Procedure Code (*hereinafter said as 'CPC'*) seeking *waiver of cost* of ₹3,000/- imposed vide order dated 02.09.2024 and another filed under Order XVIII Rule 17 read with Section 151 CPC seeking *recall of DW-4/ Surender Pal Singh*, for cross-examination.

Ld. Counsel for the plaintiff submits that another application of the plaintiff under Section 151 CPC seeking *permission to file election proceedings of the plaintiff and for substitution of the newly appointed President of the plaintiff society in place of the deceased former President is also on record.*

Ld. Counsel for the defendant submits that the respective replies of the defendant to all the aforesaid applications of the plaintiff is already on record.

I have heard the learned counsel for both the sides on all the aforesaid three applications and have perused the record.

Firstly, coming to the application under Section 151 CPC filed by the plaintiff for Waiver of Cost Imposed on 02.09.2024.

It is averred in the application that the cost of ₹3,000/- was imposed vide order dated 02.09.2024 as on that date the newly appointed President of the plaintiff society was present with the proxy counsel, while the main counsel was busy in another matter before a different court in the same premises. It is contended that due to such circumstances, the proxy counsel sought an adjournment for filing the election proceedings, leading to the imposition of cost. It is further urged that the plaintiff society is a charitable organization working for the underprivileged and imposition of cost would cause financial hardship. Accordingly, it is prayed that the cost be waived.

In reply, it is contended on behalf of the defendant that sufficient opportunities had been granted to the plaintiff for filing the election proceedings and substitution documents, but the same were not filed despite repeated adjournments. It is argued that the cost was rightly imposed considering the conduct of the plaintiff in delaying the proceedings.

I have considered the submissions from both the sides. The order dated 02.09.2024 shows that cost was imposed for non-filing of election proceedings despite prior directions. However, having regard to the explanation offered by the plaintiff and the nature of the default, which is procedural, and considering that the plaintiff is a registered society, this Court is of the view that the ends of justice would be served by waiving the said cost.

Accordingly, in the interest of justice, the cost of ₹3,000/- imposed upon the plaintiff vide order dated 02.09.2024 stands waived off.

Now coming to the second application of the plaintiff filed under Order XVIII Rule 17 read with Section 151 CPC for Recalling of the Witness (DW-4, Surender Pal Singh). It is averred that on 20.11.2024, DW-4 was examined but could not be cross-examined as neither the plaintiff nor his counsel was present, resulting in the closure of the plaintiff's right to cross-examine. It is argued that the non-appearance was not deliberate but due to the counsel being busy in another court and that recall of the witness is necessary for fair adjudication. Reliance is placed on *K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275.

In reply, it is contended on behalf of the defendant that the plaintiff has been adopting dilatory tactics, seeking adjournments on multiple occasions and that the right to cross-examine was rightly closed after repeated defaults. It is further submitted that the present application is an abuse of the process of law.

I have carefully considered the rival submissions. It is trite law that under Order XVIII Rule 17 CPC, the Court has the power to recall a witness for the purpose of clarification of evidence, but not to enable a party to fill lacunae in its case. In *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*, (2009) 4 SCC 410, the Hon'ble Supreme Court held that the scope of this provision is limited. However, in *K.K. Velusamy v. N. Palanisamy* (supra), the Supreme Court clarified that in exceptional cases where the interest of justice so demands, the Court may invoke its inherent powers under Section 151 CPC to recall a witness even for cross-examination, if such examination is essential for a just and fair decision of the case.

In the present case, though the plaintiff's counsel was absent on the said date, the cross-examination of DW-4 is stated to be material to the adjudication of the dispute. No serious prejudice would be caused to the defendant if a limited opportunity is granted to plaintiff for cross examining the said witness. However, it is equally important to discourage casual approach to court proceedings.

Accordingly, in the interest of justice and to ensure that the matter is decided on merits, the application of the plaintiff is allowed subject to payment of cost of ₹2,000/- to be paid to the defendant. Upon payment of the said cost, the plaintiff shall be permitted to cross-examine DW-4 on the next date of hearing. It is further clarified that only one effective opportunity shall be granted to the plaintiff for cross examination of the said witness.

Now coming to the third application filed by the plaintiff under Section 151 CPC for “*Substitution of Newly Appointed President and for Filing Election Proceedings*”. It is averred that the erstwhile President of the plaintiff society expired on 03.03.2024 and that fresh elections were thereafter conducted. The plaintiff now seeks to bring on record the newly elected office-bearers along with the election proceedings and resolution authorizing the new President to pursue the present litigation.

In reply, the defendant has opposed the application, primarily on the ground of delay, contending that the application was filed only on 12.02.2025, nearly eleven months after the demise of the earlier President and that no explanation for the delay has been offered.

I have considered the rival submissions. The substitution of the authorized representative or office-bearer of a registered society, upon demise of the existing President is procedural in nature and intended to ensure continuity in representation of a juristic entity. Apparently, the same does not affect the substantive rights of the parties.

In the present case, the plaintiff has filed the election proceedings and supporting resolution authorizing the new President to pursue the case. The defendant has not disputed the authenticity of the said election documents. Therefore, no prejudice would be caused to the defendant if substitution is permitted.

Accordingly, the application of the plaintiff for Substitution of Newly Appointed President and for Filing Election Proceedings under Section 151 CPC is allowed. The *newly appointed President* of the plaintiff society, as per the election proceedings and resolution filed, stand *substituted in place of the deceased former President*.

List the matter now for appearance of DW-4/ Surender Pal Singh and for his cross examination on **23.01.2026**.

Let summons be issued to DW-4/ Surender Pal Singh on filing of PF within 4 weeks returnable on date fixed.

(Ravinder Singh II)
DJ-04, North, Rohini Courts,
Delhi/15.10.2025