

28 CS DJ 1680-17

NIRAJ TIWARI Vs. M-S IMPERIA STRUCTURES LTD

23.01.2026

Present:- Sh. Rupesh Kumar, Ld. Counsel for plaintiff.
Sh. Tushar Sharma , Sh. Sachin Jain and Sh. Ram
Panwar, Ld. Counsel for defendant.

1. Today the matter has come up for orders on an application under Order XVI Rule 1 CPC filed on behalf of plaintiff for summoning of witness to produce records.
2. Plaintiff had been examined and discharged vide order dated 11.09.2025. On the same date, Ld. Counsel for plaintiff sought some time to file an application for summoning of witnesses and 2 weeks time was granted.
3. On 04.10.2025, the present application was filed by the plaintiff. Reply has been filed.
4. Ld. Counsel for plaintiff has submitted that vide this application, plaintiff wishes to summon the concerned official of HR department of defendant company to produce the leave record of the plaintiff from 01.12.2011 to 15.04.2017 and record pertaining to bills for the period from November 2016 till May, 2017. It is submitted that vide the present suit, the plaintiff seeks to recover the unpaid salary of the plaintiff, reimbursement of expenses, gratuity and leave encashment. It is submitted that these claims of the plaintiff are contained in the plaint itself. It is submitted that the records relating to the expenses as well as the leave of the plaintiff was maintained by the defendant company. It is submitted that during the examination of PW1, the defendant have objected to the copies of bills related to expenses and as

such the same need to be called from the witness so as to ascertain the claim of the plaintiff. It is submitted that only because the same has been denied, the need to summon the present witness has arisen. It is submitted that since the present dispute is with regards to the employment of the plaintiff with the defendant and all the records are maintained by the defendant, the present application has been filed. It is submitted that only because the defendant has denied the documents of the plaintiff, the need to file the present application and summon the witness has arisen.

5. Per contra, Ld. Counsel for defendant has submitted that the present application is an abuse of process of law and cannot be allowed at this stage. It is submitted that vide order dated 11.09.2025, only 2 weeks time was granted to the plaintiff and the same being filed after 2 weeks is very much belated and deserves to be dismissed.

6. It is submitted that as per sub rule 1 of Order XVI Rule 1 CPC, parties are liable to file their list of witnesses within 15 days. It is further submitted that though the Court has discretion to allow a party to summon a witness who is not part of the list, however, the same can be done if such party shows sufficient cause for the omission to mention the name of such person in the list. It is submitted that no such cause has been shown and as such the application deserves to be dismissed. Further, it is submitted that a party is not entitled to summon the opposite party as a witness.

7. Heard. Perused.

8. The present case is for recovery of unpaid salary of the plaintiff, reimbursement of expenses, gratuity and leave encashment and the same have been mentioned in the plaint itself. Thus, it is clear since the filing of the suit. The plaintiff has calculated an amount of Rs. 4,04,000/- as his leave encashment entitlement. Perusal of cross examination of PW1 reveals that questions were put to the plaintiff as to the mode of calculation of leave encashment and regarding the documents showing his leave record. The plaintiff has stated that he had sought his leave record from the defendant but they have not provided the same.

9. Thus, it is clear that the claim for leave encashment was made by the plaintiff from the day of the filing of the suit and the records regarding the same are maintained by the defendant itself.

10. Thus, once the claim of plaintiff is denied and the records are to be maintained by the defendant, this court is of the opinion that the plaintiff has shown enough cause as to non-mentioning of the witness in his list.

11. Coming to the contention of the defendant that the opposite party cannot be called as a witness, suffice is to say that the witness sought to be summoned is only for the purpose of bringing on record documents which are material to the present case and are likely to resolve the controversy completely.

12. In view of the above discussion, the application under Order XVI Rule 1 CPC is allowed.

13. Let witness be summoned on filing of PF and copy of the application within 7 days.

14. List for further PE on **09.04.2026**.

(Rahul Bhatia)
DJ-1 (South-East), Saket Court
New Delhi/23.01.2026(sk)