

**In the Court of Sh. Deepanker Mohan  
District Judge-04, Shahdara District,  
Karkardooma Courts, Delhi**

**CS 2125/16**

**NARENDER KUMAR VASHISHT AND ORS Vs. SMT ANITA  
SHARMA**

**14.11.2025**

**ORDER**

1. By way of this order, this court shall dispose of the application under Order XVIII Rule 17 r/w Section 151 CPC filed on behalf of defendant on 23.09.2025.

2. Reply to the afore-said application was filed on behalf plaintiffs on 04.10.2025.

3. Arguments heard on 18.10.2025.

4. Defendant has filed the present application seeking recall of the order dated 23.11.2021 and further permission to cross examine PW-3 Rahul Vashisth. It is stated in the application that PW-3 Rahul Vashisth tendered his evidence affidavit on 17.07.2018 and he was partly cross examined till 1:30pm and thereafter, further cross examination of PW-3 was deferred for 13.09.2018. On 13.09.2018, Ld. Presiding Officer of this Court was on leave. It is further stated that on 06.10.2018, the matter was adjourned on the request of plaintiff and on 30.10.2018, the matter was again adjourned because none has appeared on behalf of plaintiff. Thereafter, on 12.11.2018, Ld. Presiding Officer of this Court was again on leave.

5. It is further stated that on 23.04.2019, cross examination of PW-3 could not be conducted because defendant had moved two separate applications i.e. (1) application under Order XI Rule 14 CPC and (2) application under Order I Rule 10 CPC. It is further stated that the order dated 23.04.2019 records that the cross examination of PW-3 was deferred till the disposal of the afore-said two applications. It is further stated that on 04.05.2019, the matter was adjourned for the arguments and on 03.06.2019, the Ld. Presiding Officer of this Court was on leave.

6. It is stated in the application that on 11.09.2019, the Court recorded the observations that firstly, the cross examination of witness shall be conducted and only thereafter, the afore-said two applications would be considered. The cross examination of PW-3 was further deferred for production of summon record from ICICI Bank, Preet Vihar, Delhi for the purpose of cross examination of PW-3. It is further stated that on 14.11.2019, the matter was adjourned as the advocates were restraining from the work. It is further stated that thereafter on 18.01.2020, PW-3 was not present and the matter was again adjourned. Thereafter, due to surge of Covid-19 Pandemic, cross examination of PW-3 could not be conducted and the matter was adjourned on 18.08.2020 and 21.01.2021.

7. It is further stated that on 23.11.2021, the right of defendant to cross examine PW-3 was closed because none had appeared on behalf of defendant. It is further stated that during this period, the matter is to be taken through hybrid mode and

physically appearance of parties as well as counsels were restricted, as per SOPs. It is further stated that due to the impact of 2<sup>nd</sup> wave of Corona virus, none appeared on behalf of defendant. It is further stated that the Court before closing the right of defendant to cross examine PW-3, has not sent any Court notice to defendant and the Court has not given a proper opportunity to defendant to cross examine PW-3.

8. It is further stated in the application that vide order dated 23.04.2019, it was ordered that further cross examination of PW-3 shall be kept in abeyance till the disposal of the afore-said applications. It is further stated that the afore-said applications were disposed of on 02.11.2023. It is further stated that the order dated 23.11.2021 is contrary to the order dated 23.04.2019, thus, defendant has a right to cross examine PW-3 who is a material witness. It was argued by Ld. counsel for defendant that there is no negligence on the part of counsel rather the order dated 23.11.2021 was passed in contrary to the previous order sheet i.e. 23.04.2019. It was further argued that defendant is not seeking parity to get adjournment, however, she has a right to avail the opportunity to cross examination of PW-3, who is the material witness. It was further argued that the party should not make suffer because of the lapse on the part of the counsel and also the opportunity to conduct the cross examination of the witness should not be denied in usual and casual manner. It was further argued that right to cross examination is an integral part of principal of nature justice. It was further argued that defendant be granted one opportunity to cross examine PW-3 so that truth

could come out. Ld. counsel for defendant in support of his arguments relied upon the following case laws:- (1) Ayub Khan Noor Khan Pathan Vs. State of Maharashtra and Ors, VIII (2012) SLT 428, (2) P. Sanjiva Rao Vs. State of Andhra Pradesh, V (2012) SLT 74 and (3) K.K. Velusamy Vs. N. Palanisamy, Civil Appeal No.2795-2796 of 2021, date of judgment 30.03.2011.

9. Ld. counsel for plaintiff opposed the afore-said application and submitted that the present application is a gross misuse of process of law and the same has been filed at belated stage in order to protract the proceedings of the present case. It was further argued that the present application has been filed after a long delay of 04 years and the same is barred by limitation. It was further argued that defendant has not challenged the order dated 23.11.2021 before the Hon'ble High Court of Delhi, therefore, the same has attained finality. It was further argued that if the application is allowed and defendant is granted liberty to further cross examine PW-3 at this stage then it will cause undue delay and further prejudice the rights of defendant. It was further argued that the final arguments have already been concluded on behalf of plaintiff and the present application cannot be entertained at this stage because defendant wants to cure the defects in her case which has already been argued on behalf of plaintiff. It was argued that the judgments relied by Ld. counsel for defendant are not applicable to the facts and circumstances of the present case. It was further argued that the present application deserves to be dismissed with cost.

10. Perusal of the record shows that on 26.05.2017, evidence affidavit of PW-3 Rahul Vashisth was filed and his evidence affidavit was tendered on 17.07.2018. He was partly cross examined by Ld. counsel for defendant at length on the same day and further cross examination was deferred. Thereafter, on 13.09.2018, 06.10.2018, 30.10.2018, 22.11.2018, 22.12.2018 and 07.02.2019, the cross examination of PW-3 Sh. Rahul Vashisth could not be conducted.

11. On 23.04.2019, PW-3 Sh. Rahul Vashisth was present for his further cross examination but two applications i.e. (1) application under Order XI Rule 14 CPC and (2) application under Order I Rule 10 CPC had been filed on behalf of defendant. Perusal of the order dated 23.04.2019 reflects that Ld. counsel for defendant has submitted that he shall cross examine PW-3 after the disposal of the application under Order I Rule 10 CPC. The Ld. Predecessor of this Court has directed plaintiff to file reply to the aforesaid applications.

12. Perusal of the order dated 04.05.2019 reflects that an application to cross examine PW-3 Sh. Rahul Vashisth was filed on behalf of defendant on 02.05.2019 and on request, the same was fixed for date fixed.

13. Vide order dated 11.09.2019, Ld. Predecessor of this Court has ordered that the applications i.e. (1) application under Order XI Rule 14 CPC and (2) application under Order I Rule 10 CPC, shall be considered after the conclusion of cross examination of PW-3 Sh. Rahul Vashisth. The application dated 02.05.2019 for

summoning the witness from ICICI Bank, Preet Vihar, filed by defendant was allowed considering the submissions of Ld. counsel for defendant that the document/record in possession of ICICI Bank are required during the cross examination of PW-3.

14. Admittedly, defendant had not challenged the order dated 11.09.2019 before the Hon'ble High Court of Delhi vide which it was ordered that the applications of defendant shall be considered after the conclusion of cross examination of PW-3. The order dated 11.09.2019 has attained finality. Moreover, the order dated 23.04.2019 does not reflect that Ld. Predecessor of this Court has ordered to defer the cross examination of PW-3 till the time afore-said applications are not decided. The order dated 23.04.2019 only reflects submissions made by Ld. counsel for defendant.

15. Thereafter on 14.11.2019, witness from ICICI Bank was present, however, due to non-availability of Ld. counsels for both the parties, the matter was adjourned. Thereafter, on 18.01.2020, PW-3 was not present and due to the said reason, matter was adjourned. Thereafter on 18.08.2020 and 21.01.2021, matter was adjourned due to Covid-19 Pandemic.

16. Perusal of the order sheet dated 23.11.2021 reflects that in the morning, PW-3 Sh. Rahul Vashisth was present for his cross examination but as none has appeared on behalf of defendant to cross examine him, the matter was pass over. Thereafter, at 1:20pm, the matter was again taken up. This time PW-3 was again present, however, none has appeared on behalf of

defendant since morning, the right of defendant to cross examine PW-3 was closed.

17. It is pertinent to mention here that plaintiffs have examined PW-3 in rebuttal. It is further noteworthy to mention here that it is not stand of defendant that she or her counsel were unaware about the date of hearing of 23.11.2021. Perusal of the record shows that no application for recall of the order dated 23.11.2021 has been promptly filed by defendant. Rather, Ld. counsel for defendant was more inclined for adjudication of the afore-said two applications.

18. Vide order dated 02.11.2023, the afore-said two applications were dismissed. Thereafter, defendant had also filed review petitions against the order dated 02.11.2023 and the same were also dismissed vide orders dated 16.10.2024 and 23.10.2024.

19. Vide order dated 17.12.2024, an additional issue qua possession was framed. Ld. counsel for plaintiffs has submitted that plaintiffs do not want to lead any further evidence qua the said issue because plaintiffs have already led their evidence qua the said issue. Defendant was granted opportunity to examine her evidence qua the said issue. Thereafter, defendant had examined four more witnesses. The witness DW-7 Sh. Satish Sharma had deposed to counter the facts mentioned in the evidence affidavit of PW-3. After examining four more witnesses, DE was closed on 12.07.2025.

20. Thereafter, on 30.08.2025 and 11.09.2025, final arguments had been addressed on behalf of plaintiffs and the matter was listed for final arguments on behalf of defendant for 23.09.2025. The present application had been filed on 23.09.2025.

21. The present application has been filed at a belated stage after about 04 years from the date when the right of defendant to cross examine PW-3 was closed and also when the final arguments had already been concluded on behalf of plaintiffs. No sufficient cause has been disclosed by defendant which prevented her from filing the present application earlier. The applications as well as review petitions filed by defendant have already been dismissed. Defendant has also examined four witnesses in her defence after conclusion of evidence of both sides. Defendant cannot be allowed to cross examine PW-3 at this stage when the matter has reached at the stage of final arguments particularly, when final arguments of plaintiff had already been concluded and also when PW-3 had already been cross examined at length by the Ld. counsel for defendant. The present matter pertains to the year 2008 and is one of oldest 20 matters of this Court.

22. The defendant is claiming that she has a indefeasible right to cross examine PW-3. The right to cross examine is a vital and important right. The prudent and vigilant litigant is entitled for such right. No person who is sleeping over her/his rights, can be allowed to enjoy such right at belated stage without showing any sufficient cause. This Court is not inclined to grant another opportunity to defendant to cross examine PW-3 at this stage also

because if defendant be allowed to cross examine PW-3 then the same shall prejudice to plaintiff.

23. *The Hon'ble Supreme Court of India in "Yashpal Jain Vs. Sushila Devi" Civil Appeal No.4296/2023, date of decision 20/10/2023* has passed the following directions which are mentioned as below:-

*"i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and 49 same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.*

*ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.*

*iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.*

*iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.*

*v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.*

*vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would 50 result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.*

*vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.*

*viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).*

*ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.*

*x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.*

*xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.*

*xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by*

*concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.”*

24. Considering the factual matrix of the case, submissions made by the Ld. counsels, pleadings of the application and reply and above observations, this Court concludes that defendant has no indefeasible right to cross examine PW-3 Sh. Rahul Vashisth at this stage without showing sufficient cause, therefore, **application under Order XVIII Rule 17 r/w Section 151 CPC stands dismissed**. The case laws relied by Ld. counsel for defendant are on different facts and circumstances and therefore, the same are not applicable to the facts and circumstances of the present case.

25. **Application under Order XVIII Rule 17 r/w Section 151 CPC is accordingly disposed of.**

26. Put up for final arguments on 28.11.2025.

**Announced in the open Court  
on 14<sup>th</sup> November, 2025**

(Deepanker Mohan)  
District Judge-04  
Shahdara District/KKD Courts/Delhi