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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 580/2021
LARSEN AND TOUBRO LIMITED

.....Plaintiff

Through: Mr. Sahil Manganani,
Adv. (Mob. 7791004200).

Versus

NBCC INDIA LIMITED AND ANR

.....Defendant

Through: Dr. Subhash C Gupta, Sr.
Counsel, Adv. for
D-2/ESIC (Mob.
9810689321) (joined
through VC).

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. PREETI
PAREWA, (DHJS)

ORDER

% 27.03.2026

IA no.311/2026 under Order XVI Rule 1(2) read with
Rule 7 of CPC, moved on behalf of defendant no. 1 for
summoning of witnesses along with the records.

1. The present order disposes of an application filed by Defendant No. 1 under Order XVI Rule 1(2) read with Rule 7 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking summoning of additional witnesses from Defendant No. 2 along with certain records.

2. It is submitted on behalf of Defendant No. 1 that although two witnesses from Defendant No. 2 were earlier summoned pursuant to order dated 15.10.2025, the said witnesses could not produce complete records nor depose on material financial aspects, particularly regarding:

(i) Books of accounts,



- (ii) Payments allegedly made by Defendant No. 2,
- (iii) Final bills, escalation claims, and reimbursements,
- (iv) Extension of Time (EOT).

3. It is contended that the relevant records are in custody of other officials of Defendant No. 2 and therefore additional witnesses, particularly from Finance & Accounts, are required to be summoned for proper adjudication.

4. *Per contra*, the Plaintiff has opposed the captioned IA on the following grounds:

- (i) The application is a fishing and roving enquiry;
- (ii) It seeks to reopen evidence already concluded;
- (iii) The earlier order dated 15.10.2025 has attained finality;
- (iv) Defendant No. 1 is attempting to fill lacunae in evidence;
- (v) All relevant facts are already on record through the testimony of DW-1, testimony of DW-2, the documentary evidence and the reply to interrogatories.

5. I have heard the submissions and gone through the case record, including the reply filed on behalf of the plaintiff to the captioned IA.

6. The primary issue before this Court is whether Defendant No. 1 has shown sufficient cause and necessity for summoning additional witnesses at this stage under Order XVI CPC?



7. As per record, the matter is at the stage of Defendant's Evidence before the learned Local Commissioner.

8. Order XVI Rule 1 CPC enables parties to summon witnesses, however:

(i) Sub-rule (3) mandates showing sufficient cause if witnesses are sought beyond the initial list or stage.

(ii) The power is discretionary, to be exercised judicially.

9. In the present case, it is an admitted position that the Defendant No. 1 had filed a list of witnesses and vide order dated 15.10.2025, this Court restricted summoning to two witnesses. Except Witness namely, Sh. G. Thangarasu, AEE (Civil) at ESIC, PMD HQ, no other witness sought to be summoned by way of present IA has been mentioned by the Defendant No. 1 in the List of the Witnesses. It is also pertinent to mention here that the List of Witnesses filed on behalf of Defendant No. 1 is not in the prescribed format as per the Delhi High Court (Original side) Rules, 2018.

10. It is well settled position of law that additional evidence cannot be permitted to fill up lacunae or patch up weak parts of a case. [Reliance placed on *K.K. Velusamy v. N. Palanisamy*, 2011(3), AIR, JHAR R 545]. Further, relevance and necessity is key to decide such an application.

11. The justification advanced by Defendant No. 1 in support of the captioned IA is that the earlier witnesses lacked knowledge of financial aspects and the records are



in custody of other officials. The Defendant No. 1 had full opportunity to identify relevant custodians, seek appropriate witnesses earlier and structure its evidence accordingly. The nature of request made by the applicant/Defendant No. 1 indicates filling of lacuna by applicant/Defendant No. 1.

12. It is not the case of the applicant/Defendant No. 1 that there has been any subsequent developments or discovery of new facts. The only basis of the captioned IA is the non-production of the records by the witnesses summoned earlier by the applicant/Defendant No. 1.

13. It is appropriate to mention here that the applicant/Defendant No. 1 has already answered the interrogatories qua the payment made by Defendant No. 2 for construction of the Medical College in question and therefore cannot be permitted now to make a fishing or roving inquiry for prolonging trial and re-opening of the settled issues.

14. Thus, this Court finds that no sufficient cause has been shown by the applicant/Defendant No. 1 for summoning witnesses mentioned at serial no. (b) to (e) of para 13 of the captioned IA.

15. However, since Sh. G. Thangarasu, AEE (Civil) at ESIC, PMD HQ, has been mentioned by the applicant/Defendant No. 1 in the List of Witnesses, he is being permitted to be summoned by the applicant/Defendant No. 1 on filing of the requisite process fee along with the requisite records (as mentioned in IA No. 25834/2025), for **the date already fixed** before the learned Local Commissioner i.e. 11.04.2026.



16. Accordingly, the captioned IA filed on behalf of applicant/Defendant No. 1 is **partly allowed** and **disposed of** accordingly.

PREETI PAREWA (DHJS)
JOINT REGISTRAR (JUDICIAL)
MARCH 27, 2026/bs