



\$~18

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

**CS(OS) 438/2016**

**SH. SURENDRA KUMAR GUPTA** .....Plaintiff

Through: Mr. Manoj Harit, Adv. (joined  
through VC) with Mr. Pranjal  
Kishore & Mr. Nagarjun Sahu,  
Adv. (physically).

versus

**SH. ASHOK KUMAR GUPTA AND ORS** .....Defendants

Through: Mr. Sanjay Relan & Mr. Sushant  
Dahiya, Adv. (joined through  
VC)

**CORAM:**

**JOINT REGISTRAR (JUDICIAL) MS. PREETI  
PAREWA, (DHJS)**

**ORDER**

% **17.10.2025**

**IA No.7593/2023 under Order XVI Rule 1(3) r/w Order  
XVIII Rule 17 and Section 151 of CPC, moved on  
behalf of the defendant no.2.**

1. The defendant no.2 has moved the present application seeking recall of Defendant No.1 for limited re-examination under Order XVIII Rule 17 CPC, and permission to examine Defendant Nos. 4 and 5 under Order XVI Rule 1(3) CPC, for the limited purpose of proving certain receipts already forming part of the record.

2. It is stated by the applicant/defendant no.2 that the plaintiff had taken certain personal borrowings from Defendant Nos. 1,4 & 5 and, upon instructions of the plaintiff, Defendant No. 2 paid the said amounts to the said defendants. The receipts evidencing such payment, issued by Defendants No. 1,4 & 5, were produced and exhibited during the cross - examination of Defendant No. 2.

3. The defendant no.2 now wishes to recall Defendant No. 1, the author of one of the said receipts, for



clarification and proof of execution, and also to examine Defendant Nos. 4 and 5 — the issuer and author of the other receipts — for proving authenticity and factual basis of the said receipts.

4. It is admitted that Evidence by way of Affidavits of Defendant Nos. 4 and 5 were not earlier filed, nor were their names included in the original list of defendant's witnesses.

5. *Per contra*, the plaintiff opposes the application, contending that the defendants 'evidence is closed and the present application is made to introduce new contention for the purpose of negating the admissions extracted during the cross-examination and to adduce completely new evidence which was not a part of the Written Statement or Evidence by way of Affidavit and runs contrary to the submissions and contentions made by the defendants throughout the suit proceedings; that the attempt to examine Defendants Nos. 4 and 5, whose affidavits were not filed, is beyond the permissible scope of recall; and that allowing such request would amount to reopening the defendant's case to fill evidentiary gaps.

6. I have heard the rival submissions and gone through the case file.

7. At the outset, the following issues arise for determination:

(i) Whether the defendants have shown 'sufficient cause' under Order XVI Rule 1(3) CPC to call Defendant Nos. 4 and 5 as witnesses despite omission from the original list; and

(ii) Whether Defendant No. 1 can be recalled under



Order XVIII Rule 17 CPC—after closure of evidence to clarify and prove receipts already exhibited.

### Discussion and Findings

8. The receipts at issue form part of the record, as they were exhibited during the cross - examination of defendant no.2. Defendant No.1 is allegedly the author of those receipts; his limited recall is sought to confirm authorship and execution. The proposed examination of Defendant Nos. 4 and 5 is confined to affirming facts already placed before the Court and establishing the link between the payments made by Defendant No. 2 and the receipts executed by Defendant No. 4 & 5 in this regard.

9. Under Order XVIII Rule 17 CPC, the Court retains a narrow discretionary power to recall witnesses — primarily to clarify evidence or resolve ambiguities. The Supreme Court in *Shubhkaran Singh v. Abhayraj Singh* (2025 INSC 628) and *K.K. Velusamy v. N. Palanisamy* (2011 11 SCC 275) has reaffirmed that such recall must not be used to fill lacunae but may be invoked when essential to ensure justice and a full record.

10. As to unlisted witnesses, Order XVI Rule 1(3) CPC enables the Court to summon witnesses not named earlier if ‘sufficient cause’ for omission is shown and the witness’s testimony is material. The omission here appears bona fide and non - deliberate, arising from oversight, and the evidence sought is relevant and already emerging from existing exhibits.

11. The exercise of discretion in this regard would therefore serve the interests of justice, without causing



prejudice to the plaintiff, who retains full liberty to cross - examine all such witnesses. In the totality of circumstances, in the opinion of this Court, allowing limited recall and examination is necessary to enable complete adjudication of the controversy regarding the receipts.

Conclusion:

12. In view of the above, the application is allowed in part, subject to the following conditions:

- a) Defendant No.1 shall be recalled for limited re-examination to prove and authenticate the receipt authored by him, already forming part of the record.
- b) Defendant Nos. 4 and 5 are permitted to be examined under Order XVI Rule 1(3) CPC solely for the purpose of proving the receipts that bear their signatures or were allegedly issued towards transactions directed by the plaintiff.
- c) The plaintiff shall have full liberty to cross-examine Defendant Nos. 1, 4, and 5, restricted to the scope mentioned above.
- d) The defendants shall not introduce new documents or new factual assertions beyond those already pleaded or exhibited.
- e) The defendant no.2/applicant shall deposit costs of Rs.20,000/- payable to the plaintiff before such re-examination or examination.
- f) All witnesses shall be produced on the next date fixed for evidence; any delay or default shall entail forfeiture of this permission.

13. The application thus stands disposed of accordingly.



**IA no.16949/2025 under Order XVIII Rule 17 CPC  
moved by the defendant for recalling the plaintiff's  
witness.**

14. Learned counsel for the plaintiff submits that the above-said IA is not maintainable.

15. At the request of the applicant, place the captioned IA before the Hon'ble Court on 15.12.2025, for further directions.

**PREETI PAREWA (DHJS)  
JOINT REGISTRAR (JUDICIAL)  
OCTOBER 17, 2025/ab**