

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**CM(M) 145/2026  
CM(2537/2026)**

**Reserved on: 5<sup>th</sup> May, 2026.**

Pronounced on: 6<sup>th</sup> May, 2026.

Uploaded on: 7<sup>th</sup> May, 2026.

Whether operative part or full  
judgment has been pronounced: **Full**

**Nisar Ahmad Itoo (Aged: 48 years)**

**...Petitioner(s)**

S/o Abdul Gani Itoo

R/o Raban Gandhi Behram, Shopian.

Through: Mr. Mubashir Malik, Advocate.

**Vs.**

**Abdul Rashid Bhat**

**...Respondent(s)**

S/o Ghulam Mohammad Bhat

R/o Katapora, Kulgam.

Through:

**CORAM:**

**Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.**

**JUDGMENT**

**CM(M) 145/2026;**

**01.** The present petition under Article 227 of the Constitution of India is directed against order dated 05.08.2025 passed by the Court of learned Principal District Judge, Kulgam, whereby an application filed by the petitioner/defendant under Section 151 of the Code of Civil Procedure (CPC), 1908 seeking summoning of a witness, namely Shri Jatinder Singh, has been rejected.

**02.** The record reveals that the respondent/plaintiff has instituted a suit for recovery of an amount of ₹4,50,000/- against the petitioner under Order XXXVII CPC. The petitioner

contested the suit and was granted leave to defend, whereafter the matter proceeded for trial.

03. It further emerges from the record that the petitioner herein had filed a list of witnesses before the trial court, wherein the name of the aforesaid witness, namely Jatinder Singh, figured at Serial No. 6.

04. The record also indicates that the petitioner herein had filed an application seeking summoning of the said witness. The said request, as reflected from the order dated 10.03.2020, came to be rejected.

05. The Principal District Judge, Kulgam, after granting opportunities to the petitioner to lead evidence, ultimately closed the evidence of the petitioner/defendant on 24.11.2023. Thereafter, the matter came to be listed for final arguments.

06. At a subsequent stage, the petitioner filed an application under Section 151 CPC seeking summoning of the said witness through process of the court. The said application was opposed by the respondent/plaintiff.

07. The learned trial court, after hearing the parties and perusing the record, dismissed the application vide order dated 05.08.2025. The trial court, while doing so, observed that sufficient opportunities had already been granted to the petitioner to produce his witnesses and that the evidence stood closed. It was also noticed that the request for procuring the attendance of the same witness had earlier been declined.

08. The trial court further took note of the fact that the case has been pending for final arguments for a considerable period

and observed that the application was an attempt to protract the proceedings.

09. The trial court also considered the scope of the provisions of the Code of Civil Procedure and observed that Order XVIII Rule 17 CPC pertains to recalling of a witness who has already been examined and does not empower the court to call a witness whose statement has not been recorded earlier. It was further observed by the Learned Trial Court that the inherent powers under Section 151 CPC cannot be invoked in the facts of the present case to summon the witness at such a stage.

10. **Heard and considered.**

11. The question that arises for consideration is whether, in the facts and circumstances of the case, the learned trial court was justified in declining such request and whether interference is warranted in exercise of supervisory jurisdiction under Article 227 of the Constitution.

12. It is well settled that the jurisdiction under Article 227 is supervisory in nature and is to be exercised sparingly. This Court does not act as a court of appeal and cannot reappreciate the matter merely because another view is possible. Interference is confined to cases where there is patent illegality, jurisdictional error, or manifest perversity.

13. Hon'ble Supreme Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand**, reported as (1972) 1 SCC 898 held as under:

*“Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary*

*Court of appeal. The material part of this article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors."*

**14.** Furthermore, Hon'ble Apex Court in *Koyilerian Janaki v. Rent Controller (Munsiff), Cannanore, reported as (2000) 9 SCC 406* observed as under:

*"The power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party."*

**15.** In the present case, this Court finds no such infirmity in the order passed by the learned Principal District Judge, Kulgam.

**16.** The petitioner admittedly had knowledge of the witness and had included him in the list of witnesses at the appropriate stage. The procedural framework under the Code of Civil Procedure casts an obligation upon the parties to lead their evidence within the time and opportunities granted by the court. Failure to do so cannot, as a matter of course, be remedied by invoking inherent powers at a subsequent stage.

**17.** The invocation of Section 151 CPC, in the facts of the present case, appears to be an attempt to circumvent the consequences flowing from closure of evidence. Inherent powers are meant to advance justice where the Code is silent,

but the same power cannot be exercised in a manner that defeats the scheme of the Code or renders mechanism discipline nugatory.

18. Permitting summoning of a witness at this belated stage, particularly after closure of evidence and when the matter was ripe for final arguments, would necessarily result in reopening of the entire defence evidence. Such a course would not only delay the proceedings but would also prejudice the opposite party, who is entitled to a timely conclusion of the trial.

19. The procedural framework under the Code of Civil Procedure prescribes definite timelines and regulated opportunities for leading evidence with the avowed object of ensuring expeditious adjudication, preventing protraction of proceedings, and safeguarding the parties from undue prejudice and delay. Once adequate opportunities have been granted by the Court, a party is under a corresponding obligation to produce its witnesses and conclude evidence within the time so granted, and failure to do so cannot, as a matter of course, be cured at a belated stage by invoking the inherent jurisdiction of the Court, for such an approach would defeat the very purpose underlying the procedural discipline contemplated under the CPC and encourage dilatory tactics in judicial proceedings.

20. The conduct of the petitioner, as borne out from the record, does not disclose any circumstance showing that despite due diligence, the witness could not be produced earlier. In absence of such a showing, the Court cannot permit

a party to fill up the lacunae in its case under the guise of exercising inherent powers.

21. Another significant aspect is that a similar application dated 10.03.2020 for securing the presence of the very same witness had earlier been declined. The petitioner has not demonstrated any change in circumstances thereafter so as to justify a fresh consideration of the same application filed under section 151 of CPC before the learned Principal District Judge, Kulgam at a much later stage of the proceedings.

22. The impugned order, when examined in the above backdrop, cannot be said to suffer from any illegality or perversity. The order by the learned trial court is in consonance with settled principles governing exercise of such jurisdiction under section 151 of CPC.

23. For the foregoing reasons, the petition is found to be without merit and is accordingly *dismissed* along with connected application(s). The order dated 05.08.2025 passed by the learned Principal District Judge, Kulgam is *upheld*.

(Wasim Sadiq Nargal)  
Judge

SRINAGAR:

06.05.2026

"HAMID"

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| ❖ | Whether Judgment is Speaking?   | Yes/No. |
| ❖ | Whether Judgment is Reportable? | Yes/No  |