



2026:AHC:26136

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 650 of 2026

Shri Gopi Kishan Khandelwal

.....Petitioners(s)

Versus

Smt. Archana Tripathi

.....Respondents(s)

Counsel for Petitioners(s)	:	Prakhar Tandon
Counsel for Respondent(s)	:	Manish Tandon

Court No. - 35

AFR

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

The present petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.02.2025 passed by the Judge, Small Cause Court, Kanpur Nagar in SCC Suit No.12 of 2020 (Archana Tripathi vs. Gopi Kishan Khandelwal), whereby Application No. 99C/99-Ga filed by the petitioner-tenant seeking recall/re-examination of witness DW-1 was rejected. The petitioner has also assailed the subsequent order dated 19.09.2025 passed by the Additional District Judge, Court No. 24, Kanpur Nagar in SCC Revision No. 81 of 2025, whereby the revision against the trial court's order was dismissed.

2. The petition raises a significant question concerning the scope and application of Order XVIII Rule 17 of the Code of Civil Procedure read with Sections 137, 138 and 145 of the Indian Evidence Act, 1872, particularly the fine distinction between an impermissible attempt to fill up lacunae in evidence and a permissible exercise of seeking

clarification of an ambiguity in a witness's testimony, so as to enable the Court to arrive at the truth and ensure a fair adjudication.

3. The underlying SCC Suit No.12 of 2020 was instituted by the respondent–plaintiff seeking eviction, recovery of arrears of rent and damages, claiming ownership over the suit property on the basis of a Will dated 10.11.2010. The petitioner–defendant contested the suit by filing a written statement dated 18.02.2021, asserting that rent since the year 2010 had not been paid to the plaintiff but was being received by one Devendra Kumar Tripathi, son of Satyawati Tripathi, original owner of the premises. It was further pleaded that the Will dated 10.11.2010 relied upon by the plaintiff stood cancelled by a subsequent Will dated 21.01.2012 executed by the original owner, who admittedly died on 23.04.2019. According to the defendant, rent continued to be received by Devendra Kumar Tripathi both prior to and after the death of the original owner.

4. In the replication, the plaintiff admitted that Devendra Kumar Tripathi had been receiving rent earlier, though she claimed that thereafter she became entitled to receive rent. During trial, PW-1, namely Karmendra Tripathi, admitted in his cross-examination that the signatures appearing on the rent receipts, marked as paper nos. 81-Ga to 86-Ga, were those of Devendra Kumar Tripathi and that the said signatures tallied with the originals.

5. The defendant entered the witness box as DW-1 and filed his affidavit in evidence, wherein he categorically stated that rent was received by Devendra Kumar Tripathi and that rent receipts were issued by him. Original rent receipts bearing the signatures of Devendra Kumar Tripathi were also brought on record. However, during cross-examination dated 16.12.2024, DW-1 made a statement to the effect that Devendra Kumar Tripathi did not issue rent receipts. It is not in dispute that at the time when this statement was recorded, the counsel for the defendant was not present.

6. Despite the apparent inconsistency between the affidavit and the statement made during cross-examination, the plaintiff's counsel did not confront DW-1 with his earlier affidavit or with the rent receipts on record, as required under Section 145 of the Evidence Act. Nor was DW-1 afforded any opportunity to explain the discrepancy. Thus, on a cumulative reading of the material on record, there existed three apparently consistent pieces of evidence supporting the case that rent was received by Devendra Kumar Tripathi and rent receipts were issued by him, namely, the admission of the plaintiff in the replication, the admission of PW-1 in cross-examination, and the categorical statement of DW-1 in his affidavit in evidence.

7. In these circumstances, the defendant filed Application No. 99C-2/99Ga under Sections 137 and 138 of the Evidence Act seeking re-examination of DW-1 strictly for the purpose of clarifying the ambiguity created by the statement made during cross-examination, without seeking to introduce any additional or fresh evidence. The Trial Court rejected the application by order dated 04.02.2025, holding that the prayer amounted to filling up lacunae in the evidence. The Revisional Court, by order dated 19.09.2025, affirmed the rejection, observing that the power under Order XVIII Rule 17 CPC is to be exercised sparingly, that the inconsistency arose from statements of different witnesses, and that the application appeared to be an attempt to fill up deficiencies at a belated stage when the suit was ripe for final arguments and subject to directions for expeditious disposal.

8. Learned counsel for the petitioner has contended that both courts below have misdirected themselves in law by mechanically branding the request for re-examination as an attempt to fill up lacunae, without appreciating the settled distinction between curing a defect in evidence and clarifying an ambiguity arising on record. It is submitted that the alleged contradiction was never put to DW-1 in accordance with Section 145 of the Evidence Act and therefore could not be treated as a contradiction in the eye of law. Denial of re-examination, it is urged, has

resulted in serious prejudice and denial of a fair opportunity, warranting interference under Article 227 of the Constitution.

9. *Per contra*, learned counsel for the respondent has supported the impugned orders, submitting that Order XVIII Rule 17 CPC does not confer a right upon a party to recall or re-examine a witness and that the discretion exercised by the courts below does not suffer from any perversity or jurisdictional error.

10. The law on the subject is no longer *res integra*. In **Shubhkaran Singh vs. Abhayraj Singh**¹, it has been authoritatively held that the power under Order XVIII Rule 17 CPC is necessary for the proper conduct of a case and can be exercised by the Court at any stage, even at the stage of writing judgment. It was, however, simultaneously emphasized that such power is to be exercised sparingly and only in exceptional situations, and that its object is confined to removing ambiguities or clarifying statements and not to fill up lacunae in a party's case. It was further observed that while the power under Order XVIII Rule 17 primarily vests in the Court, recall or re-examination at the instance of a party may, in appropriate cases, be permitted in the exercise of inherent powers under Section 151 CPC.

11. The position was reiterated in **K.K. Velusamy vs. N. Palanisamy**², wherein it was underscored that Order XVIII Rule 17 CPC is primarily intended to enable the Court to clarify any doubt or issue arising from the evidence on record, and that procedural provisions are meant to advance justice and not to thwart it. It was observed that where the application is *bona fide* and the clarification sought would assist the Court in rendering justice, the discretion to recall or re-examine a witness may be exercised, subject to appropriate safeguards against delay or abuse of the process of the Court.

12. At the same time, in **Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate**³, it was cautioned that recall cannot

1 (2025) SCC Online SC 1028

2 (2011) 11 SCC 275

3 (2009) 4 SCC 410

be permitted to fill omissions or lacunae noticed after cross-examination, and that the power must be exercised judiciously and not as a matter of routine.

13. The consistent thread running through the aforesaid decisions is that the determinative factor is the object and purpose of the recall or re-examination. If the exercise is aimed at repairing a weak case or introducing evidence that was available but deliberately withheld, it would amount to filling up lacunae. However, where an apparent ambiguity arises on record, particularly one that goes to the root of the matter, and where clarification would assist the Court in arriving at the truth without causing prejudice to the opposite party, refusal to permit such clarification would defeat the ends of justice.

14. The legal principles governing the exercise of power under Order XVIII Rule 17 CPC, as crystallised by settled judicial precedents, may be summarised as follows:

14.1 Order XVIII Rule 17 CPC confers a discretionary power upon the Court to recall any witness at any stage of the proceedings, including even at the stage of writing the judgment, if such recall is found necessary for the proper adjudication of the case.

14.2 The power under Order XVIII Rule 17 CPC is primarily intended to enable the Court itself to clarify any ambiguity, doubt or inconsistency in the evidence already on record, so as to arrive at the truth and render a just decision.

14.3 The said power is discretionary in nature and is to be exercised sparingly, cautiously and in exceptional circumstances, and not as a matter of routine or merely because recall would not cause prejudice to the opposite party.

14.4 Recall of a witness under Order XVIII Rule 17 CPC cannot be permitted for the purpose of filling up omissions, repairing weaknesses, or curing lacunae in the evidence already adduced by a party.

14.5 The power of recall primarily vests in the Court and may be exercised *suo motu* or at the instance of a party, but only where the Court is satisfied that such recall is necessary for the proper conduct of the case and for removal of an ambiguity in the evidence.

14.6 Order XVIII Rule 17 CPC is not intended to provide a right to a party to recall and re-examine a witness merely because, upon hindsight, a party perceives inadequacy or inconsistency in its earlier examination of the witness.

14.7 Where an application for recall is *bona fide* in nature and is confined to seeking clarification of an apparent inconsistency or ambiguity, and where such clarification would assist the Court in arriving at the truth, recall may be permitted, subject to appropriate safeguards.

14.8 While allowing recall, the Court must ensure that the process is not misused as a delaying tactic, and must impose suitable conditions, including limitation of the scope of examination, denial of unnecessary adjournments, and expeditious conclusion of the proceedings.

14.9 The controlling and determinative test is whether the recall is sought to fill up lacunae in the evidence, which is impermissible, or to reconcile inconsistencies and clarify ambiguities, which is permissible and may be necessary to prevent failure of justice.

15. In the present case, the affidavit of DW-1, the pleadings and the admission of PW-1 form a consistent evidentiary foundation. The isolated statement made by DW-1 during cross-examination, recorded in the absence of his counsel and without being confronted as required by Section 145 of the Evidence Act, has created an apparent ambiguity rather than exposing any deliberate omission. The prayer for re-examination is confined strictly to clarifying this ambiguity and does not seek to introduce any new material. Treating such a request as an attempt to fill up lacunae reflects a misapplication of the settled legal position and amounts to a failure to exercise jurisdiction vested in the court.

16. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that subordinate courts act within the bounds of their authority, exercise jurisdiction vested in them in accordance with law, and adhere to the principles of natural justice. Though this Court does not sit as a court of appeal over interlocutory or procedural orders, it is duty-bound to intervene where refusal to exercise jurisdiction results in manifest injustice or denial of a fair opportunity to a party. Procedural law, as repeatedly held by the Supreme Court in **Sangram Singh vs. Election Tribunal, Kotah**⁴ and **State of Punjab vs. Shamlal Murari**⁵, is the handmaid of justice and must be applied in a manner that advances, rather than obstructs, substantive justice.

17. It has been pointed out that the next date fixed before the Trial Court is 10th February, 2026. Learned counsel for the petitioner has undertaken that DW-1 shall be produced on the said date and that no adjournment shall be sought. Learned counsel for the respondent has fairly stated that he has no objection if the witness is examined on the said date strictly for the limited purpose of clarifying the ambiguity regarding issuance of rent receipts by Devendra Kumar Tripathi.

18. In view of the aforesaid discussion, this Court is of the considered opinion that the ends of justice would be served by permitting recall of DW-1, strictly for the limited and specific purpose of clarifying the ambiguity arising from the statement made by him during cross-examination, which stands at variance with his affidavit and the other evidence on record. Such recall shall not be construed as permitting the petitioner to fill up any lacuna in the evidence, but only as an aid to the Court in arriving at a just and proper adjudication of the controversy. The impugned orders dated 04.02.2025 passed by the Judge, Small Causes Court, Kanpur Nagar in SCC Suit No.12 of 2020 and dated 19.09.2025 passed in SCC Revision No.81 of 2025 are, therefore, unsustainable in law and are accordingly set aside.

4 AIR 1955 SC 425

5 AIR 1976 SC 1177

19. The petition is, consequently, disposed of with a direction that on the next date fixed before the Trial Court, i.e. 10th February, 2026, the witness DW-1 shall be produced by the tenant-defendant and shall be examined by the Trial Court strictly within the aforesaid limited scope. No adjournment shall be granted to either of the parties on the said date. The Trial Court shall thereafter proceed to conclude the suit expeditiously, in accordance with law. It is made abundantly clear that in the event of failure on the part of the tenant-defendant to produce or examine the aforesaid witness on the said date, no further opportunity shall be granted for recall or re-examination of DW-1, and the Trial Court shall proceed to decide the suit on the basis of the evidence already on record.

(Dr. Yogendra Kumar Srivastava, J.)

February 5, 2026

RKK/-