

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No:- CM(M) No. 3/2026

Date of Pronouncement: 15.01.2026

Uploaded on: 19.01.2026

Union of India and another

.... **Petitioner(s)**

Through:- Mr. Sandeep Gupta, Advocate

V/s

Vipan Sawhney and others

.....**Respondent(s)**

Through:-

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

1. The plaintiffs-petitioners have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to assail the order dated 12.08.2025 of the trial court, whereby the application filed by the plaintiffs under Order XVIII Rule 3A CPC, seeking permission to examine the plaintiff as his own witness, was dismissed and the evidence of the plaintiffs was closed.
2. It is contended that the civil suit has been instituted by plaintiff No. 2, DIG, BSF, Sector Headquarters, BSF, Rajouri, in his official capacity, for the purpose of preservation and protection of the property of the Union of India. The suit seeks a declaration that the "No Objection" granted by the official defendants in favour of the private defendants for construction of a commercial hotel building over land measuring 1 Kanal and 16 Marla's, falling under Khasra

No. 2 min, situated at Salani, Rajouri, is invalid, inoperative, and non-est in the eyes of law, as the said construction breaches vital security concerns. It is pleaded that, considering the sensitive nature of the area of Rajouri, the construction, if allowed, would jeopardize the security of the BSF campus and expose its officials to grave security risks.

3. It is further submitted that the plaintiffs had already examined several witnesses and, prior to closure of their evidence, moved an application under Order XVIII Rule 3A CPC seeking permission to examine plaintiff No. 2 as his own witness. The application was filed on the ground that the evidence of plaintiff No. 2 could not be recorded earlier due to compelling official exigencies, as he was supervising four battalions of BSF deployed at the Sector Headquarters, Rajouri, which lies close to the Line of Control and functions under the operational control of the Indian Army in the districts of Rajouri and Poonch, the entire area being highly sensitive from a security perspective.
4. It was in this backdrop that plaintiff No. 2 could not earlier appear as his own witness and accordingly sought permission by way of a formal application. The trial court, though observing that the provisions of Order XVIII Rule 3A CPC are directory in nature, dismissed the application without appreciating the peculiar facts and circumstances of the case, thereby depriving the plaintiff of an opportunity to lead material evidence. The dismissal of the

application resulted in the closure of the plaintiffs' evidence, which, it is contended, has caused serious prejudice to the plaintiffs' case.

5. Learned counsel for the petitioners submitted that the petitioners had no efficacious alternative remedy except to approach this Court for correction of the errors committed by the trial court. It is argued that the observation of the trial court that the plaintiffs were lethargic in pursuing the case is misplaced, as the evidence could not be produced earlier due to the pandemic. Subsequently, five witnesses were examined, and only plaintiff No. 2 remained to be examined. The trial court, however, failed to exercise its jurisdiction in accordance with law, leaving the petitioners with no option but to file the present petition.
6. A perusal of the impugned order reveals that although the trial court was of the view that Order XVIII Rule 3A CPC is directory, it nevertheless declined to exercise discretion in favour of the plaintiffs on the ground that plaintiff No. 2 remained lethargic and was not diligent in pursuing the suit. The trial court further held that no convincing reasons were furnished to justify the exercise of discretion, particularly since a last and final opportunity had already been granted to the plaintiffs to lead evidence. Instead of producing the evidence, the plaintiffs filed the application under Order XVIII Rule 3A CPC, which, according to the trial court, appeared to be an attempt to protract the proceedings.
7. Having regard to the nature of the issues involved, it is evident that upon dismissal of the application under Order XVIII Rule 3A CPC,

the evidence of the plaintiffs stood closed and the matter was thereafter listed for evidence of the defendants. This Court has consistently held that the provisions of Order XVIII Rule 3A CPC are directory in nature. Reference may be made to ***Romesh Kumar v. Chaman Lal, 1990 SLJ J&K***, wherein it was held that the said provisions are directory and not mandatory, and that a party may be permitted to appear as a witness at a later stage, provided sufficient reasons are shown and it is ensured that such appearance is not intended to fill up lacunae in the evidence.

8. Similarly, in ***Dwarika Devi v. Dhani Ram Mangotra, 2002 (1) SLJ J&K 159***, it was held that the Court has the power to grant permission to the plaintiff to appear as his own witness even after examination of other witnesses, but such permission must be supported by recorded reasons. The trial court is duty-bound to record reasons even where no rebuttal is filed by the opposing party.
9. In ***Ali Mohd. Khandey v. State of J&K, 2010 SLJ (2) 734***, it was held that a plaintiff may be permitted to appear as his own witness at a later stage, for reasons to be recorded, namely: (i) up to the closure of the plaintiff's evidence; (ii) where the plaintiff opts to produce evidence on certain issues after the defendants' evidence; and (iii) when evidence is to be produced in rebuttal. However, permission cannot be sought after the rebuttal evidence has finally been closed.

10. In *Mohan Lal v. Vinod Kumari*, 1988 SLJ 144, it was held that where the Court is satisfied that the prayer for examining a party at a later stage is genuine, made in good faith, and would not result in filling lacunae in the evidence already recorded, such permission ought to be granted to further the cause of justice.
11. From the aforesaid legal position, it is clear that the provisions of Order XVIII Rule 3A CPC are directory and confer discretion upon the trial court to permit examination of a party at a later stage, subject to satisfaction of the Court and recording of reasons.
12. It is equally well-settled that procedural technicalities should not be allowed to impede the administration of justice and that adequate opportunity must be afforded to a party to prove its case.
13. In the present case, it is undisputed that the suit has been filed by the Union of India through plaintiff No. 2 in his official capacity. While the trial court acknowledged the directory nature of Order XVIII Rule 3A CPC, it declined to exercise discretion on the ground that the plaintiff remained lethargic, despite having availed a last opportunity.
14. During the course of hearing, learned counsel for the plaintiffs submitted that the petition could be disposed of by granting two opportunities to enable plaintiff No. 2 to appear as his own witness and that the plaintiffs were willing to compensate the respondents by way of costs. In view of the directory nature of the provision, the pivotal question is whether the plaintiff can truly be termed lethargic, which must be inferred from the impugned order itself.

15. Plaintiff No. 2, being the in-charge of Sector Rajouri covering the districts of Rajouri and Poonch, a sensitive border area under the operational command of the Indian Army, had specifically pleaded that due to operational exigencies and frequent changes in officers, he could not appear earlier. To avoid any procedural infirmity, he moved a formal application under Order XVIII Rule 3A CPC. These grounds cannot be faulted or characterized as lethargic. It is not a case where the plaintiffs failed to lead evidence altogether; rather, several witnesses had already been examined, and only the statement of the plaintiff himself remained, which was considered necessary for a just adjudication of the dispute.
16. Considering that plaintiff No. 2 was acting in an official capacity and could have been prevented from attending court due to operational duties, the trial court, having held the provision to be directory, ought to have exercised discretion in favour of permitting his examination. The dismissal of the application resulted in the termination of the plaintiffs' right to lead evidence, thereby causing serious prejudice. The defendants would not have been prejudiced, as the testimony of plaintiff No. 2 would have been subject to cross-examination.
17. In these circumstances, the trial court failed to exercise its jurisdiction in accordance with law, resulting in a miscarriage of justice by denying plaintiff No. 2 the opportunity to appear as his own witness. Although the suit was instituted in the year 2012 and

the plaintiffs cannot be absolved of delay, such delay can be adequately addressed by imposing compensatory costs upon them.

18. Accordingly, the petition is allowed. The impugned order dated 12.08.2025 is set aside. The plaintiffs are granted two opportunities to conclude their evidence, including the examination of plaintiff No. 2 as his own witness, subject to payment of costs of ₹5,000/- to be deposited before the trial court on or before 02.02.2026. On that date, the plaintiff shall file an affidavit of his testimony and furnish an advance copy to the defendants to enable effective cross-examination. The evidence shall be concluded within two hearings.
19. The petition stands *disposed* of accordingly.

JAMMU
15.01.2026
Rahul Sharma

