

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No. 2/2026

Decided on: 19.06.2026

Hira Lal

.....Petitioner

Versus

Bahadur Singh (deceased) through his LRs & ors. ...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

*Whether approved for reporting?*¹

For the Petitioner: Mr. H. S. Rangra, Advocate.

For the Respondents: Mr. Umesh Kanwar, Advocate.

Romesh Verma, Judge (oral)

The instant petition arises out of order dated 10.11.2025, as passed by the learned Senior Civil Judge, Court No.1, Sunder Nagar, District Mandi, H.P., whereby an application filed by the petitioner/plaintiff under Order 18 Rule 17 read with Section 151 CPC for recalling of the witness, namely, Nooram Singh, has been dismissed.

2 The facts, as emerge in the instant case, are that the petitioner/plaintiff filed a suit for injunction and damages before the learned trial court on the ground that the land comprised in

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

khewat No. 226, khatauni No. 113 measuring 07-03-07 Bighas, situated in Muhal chhattar/2, Tehsil Sundernagar, Distt. Mandi H.P is owned and possessed by the plaintiff along with his brother, co-sharer, in equal shares. The plaintiff started the construction of house over the suit land on 11.10.2013 after obtaining the proper demarcation from the revenue agency. After obtaining demarcation, the plaintiff and defendant No.1 agreed for the same and plaintiff allotted the construction work to local contractor, Nooram Singh and while raising construction, defendants on 12.10.2023 started interfering on the suit land and on that count, the plaintiff was compelled to call the Panchayat in order to settle the matter in dispute.

3 As per the plaintiff, he completed construction work of his house consisting of four rooms upto slab level and when he started shuttering work of the slab, the defendants uprooted the shuttering of the house of plaintiff and also carried away shuttering with threats that further construction shall not be carried out by the plaintiff. Therefore, the plaintiff prayed for decree of permanent prohibitory injunction restraining the defendants from interfering in the peaceful possession of the plaintiff and not to cause any interference in the construction activities of the plaintiff and further sought damages to the tune

of Rs.1,80,000/-alongwith interest @ 10% per annum and recurring damages in his favour and against the defendants.

4 The suit was duly contested by the defendants by filing written statement, wherein preliminary objections qua maintainability, cause of action, suppression of material facts, estoppel etc. were raised. On merits, all the averments, as made in the plaint, were specifically denied. It was stated that prior to institution of the instant suit, the plaintiff had filed a suit for permanent prohibitory injunction under Section 38 of the Specific Relief Act against defendants No. 1 and 2 before the learned Civil Judge, Sr. Division, Sunder Nagar on the false and frivolous grounds with respect to the same suit land, which was dismissed as withdrawn by the plaintiff.

5 It would be pertinent to mention that the suit was instituted by the plaintiff on 19.08.2014 and during the pendency of the suit, an application under Order 18 Rule 17 read with Section 151 CPC for recalling of witness came to be filed on 08.09.2025, wherein it has been averred that while inspecting and perusing the Court file, it revealed that due to oversight, documents which were relied upon by the plaintiff's witness, Nooram Singh, could not be exhibited and the same were marked in the statement of the plaintiff. Therefore, prayer was made that the witness Nooram Singh be recalled and

documents prepared by him be got exhibited and proved in his statement before the court as the statement of the witness is necessary for just decision of the case.

6 The said application was duly resisted by the defendants/respondents by filing reply, wherein it was averred that the aforesaid application has been filed in order to fill up lacunae. It was further averred that the application is not maintainable and the same has been filed just to drag litigation unnecessarily.

7 Learned trial court vide its order dated 10.11.2025 dismissed the application filed by the plaintiff. Feeling aggrieved by the aforesaid order, he has approached this Court by filing petition under Section 115 of the Civil Procedure Code.

8 It is contended by Mr. H. S. Rangra, learned counsel for the plaintiff/petitioner, that the impugned order is erroneous and liable to be quashed and set aside. He has submitted that since the prayer as made in the application is valid and genuine, therefore, the learned trial court should not have declined said prayer of the plaintiff/petitioner.

9 On the other hand, Mr. Umesh Kanwar, learned counsel for the defendants/respondents has defended the impugned order. He has urged that while invoking provisions of Section 115 of CPC, scope of interference in the impugned order

being well reasoned is very limited. He has further submitted that provisions of Order 18 Rule 17 CPC cannot be invoked in order to fill up lacunae in view of dictum of the Hon'ble Supreme Court.

10 I have heard the learned counsel for the parties and have also gone through the records of the case carefully.

11 The plaintiff/petitioner has filed an application under Order 18 Rule 17 read with Section 151 CPC with the prayer that witness namely Nooram Singh be recalled and documents prepared by him be got exhibited and proved in his statement before the Court.

12 The provision of Order 18 Rule 17 CPC reads as under:

“17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

13 The said provision empowers the Court to recall any witness, who has been examined and to put such questions to him as the Court thinks fit. The legal proposition in this regard has been discussed by the Hon'ble Apex Court in ***Special Leave Petition Nos. 12012-12013 of 2025, titled Shubhkaran Singh vs. Abhayraj Singh and Others, decided on 15th May***

2025, wherein it has been held that the power under the provisions of Order 18 Rule 17 CPC is to be exercised sparingly only in appropriate cases, and not as a general rule merely on the ground that recalling the witness and conducting further examination would not cause prejudice to the parties. It has been observed that such an approach is neither the scheme nor the intention of Order 18 Rule 17 CPC.

14 It has been further held that Order 18 Rule 17 CPC is primarily a provision enabling the Court to clarify any issue or doubt by recalling a witness either suo motu or at the request of a party, so that the Court itself may put questions and elicit answers. Once a witness is recalled for the purpose of such clarification, the Court may, of course, permit the parties to assist it by putting certain questions. The power under Order 18 Rule 17 CPC is not intended to be exercised routinely or merely for the asking. If used in such a manner, it would defeat the very purpose of the various amendments introduced to expedite the trial. The Hon'ble Supreme Court, in the said case, has held as follows:

“ 9. In this connection, we may refer to the following observations in Sultan Saleh Bin Omer v. Vijayachand Sirmal [A.I.R. 1966, A.P. 295.], which accords with the above view:

“A close reading of this rule makes it obvious that the right under that Rule to put question at any stage or a suit or

recall any witness for that purpose, is given to the Court. The court can put questions to the witness recalled, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave..... It cannot therefore be said that an opportunity to a party to recall any witness for the purpose of examining cross-examining or re-examining is governed by O. 18, R. 17 C.P.C.”

10. We are of the opinion that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross- examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under Section 151 C.P.C. 11. This Court in the case of *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*, reported at (2009) 4 SCC 410 more particularly para 28 held as under:

“28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.” (Emphasis supplied)

12. In the case of *K.K. Velusamy v. N. Palanisamy* reported at (2011) 11 SCC 275, this Court discussed the power of the Court under Order 18 Rule 17 of CPC. It was held that this power is only for clarification i.e. to enable Court to clarify any issue or doubt, it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit answers. The relevant paras 9, 10 and 19 read as under:

“9. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross- examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify

any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

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19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.” (Emphasis supplied)”

15 The Hon'ble Supreme Court in Civil ***Appeal No. 1684 of 2016, titled Ram Rati vs. Mange Ram (D) through LRs and others, dated 23.02.2016***, while relying upon the judgment of ***Vadiraj Nagappa Vernekar (dead) through LRs vs. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410***, has held that the provision of Order 18 Rule 17 CPC is to be sparingly exercised in appropriate cases, and not as a general rule, merely on the ground that his recall and re-examination would not cause any prejudice to the parties. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The Hon'ble Supreme Court in the said judgment has held as follows:

“12. In Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate¹, this principle has been summarized at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

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28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground 1 (2009) 4

SCC 410 that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

13. In *K.K. Velusamy v. N. Palanisamy*², the principles enunciated in *Vadiraj* (supra) have been followed, holding at paragraphs- 9 and 10:

“9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*.)

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the 2 (2011) 11 SCC 275 evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any

witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

16. Some good guidance on invocation of Section 151 of the CPC to reopen an evidence or production of fresh evidence is also available in *K.K. Velusamy (supra)*. To quote paragraph-14:

“14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

17. *Vadiraj (supra)* and *K.K. Velusamy (supra)* have also found affirmation by this Court in *Bagai Construction Through its Proprietor Lalit Bagai v. Gupta Building Material Store*.

18. The settled legal position under Order 18 Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.”

16 Similarly, the Hon'ble Supreme Court in **Civil Appeal No. 1172 of 2009, titled Vadiraj Nagappa Vernekar (dead) through LRs vs. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410** has held as under:

“16. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross- examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-

examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in- chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

17 Similar reiteration of law can be found in a judgment, dated 19.05.2026 rendered by this court in **CMPMO No. 683/2025, titled as Manoj Kumar Sharma vs. Vinod Suri.**

18 The said exposition of law clearly shows that the provisions of Order 18 Rule 17 CPC cannot be exercised in a routine manner. Merely because re-examination or recalling of a

witness would not cause any prejudice to the parties would not entitle the applicant to seek relief under the said provision.

19 As observed above, the suit came to be filed by the plaintiff/petitioner on 19.08.2014 and after lapse of more than 11 years, an application under Order 18 rule 17 CPC read with Section 151 CPC has been filed, which does not fall within parameters as laid down by the Hon'ble Supreme court.

20 The learned trial court has rightly exercised jurisdiction and there is no infirmity in the same as it seems that the plaintiff/petitioner has filed the aforesaid application just to prolong the litigation and in order to fill up lacunae as rightly urged by the learned counsel for the respondents/defendants. Consequently, there is no illegality or jurisdictional error in the impugned order.

21 In view of aforesaid discussions, the instant petition being devoid of any merit is dismissed, leaving the parties to bear their own costs.

22 The parties are directed to remain present before the learned trial court on **08.07.2026**.

23 Pending application(s), if any, also stands disposed of.

19th June, 2026
(*pankaj*)

(Romesh Verma)
Judge