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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 19.08.2026**# **CNR No. DLHC010385052026**+ **CM(M) 1827/2026, CM APPL. 55434/2026 (Ex. From filing certified copies of the annexures) & CM APPL. 55435/2026 (Stay)****SUNIL KUMAR**

.....Petitioner

Through: **Mr. Ashesh Lal, Mr. Raghav Parwatiyar, Ms. Shikha Walia and Mr. Heemanshu Singh, Advocates.**

versus

AISHWARYA KUMARI

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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JUDGEMENT (Oral)

1. The present Petition has been filed under Article 227 of the **Constitution of India, 1950¹**, read with Section 151 of the **Code of Civil Procedure, 1908²**, challenging the **Order dated 01.11.2025³** passed by the learned **Principal Judge, Family Court, North-West District, Rohini Courts, Delhi⁴**, in HMA No. 1214/2017, titled "*Sunil Kumar v. Aishwarya Kumari*", whereby the application filed by the Petitioner under Order XVIII Rule 17 read with Section 151 of the CPC seeking recall of the Order dated 13.10.2025, whereby his

¹ Constitution of India

² CPC

³ Impugned Order

⁴ learned Family Court

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right to cross-examine RW-1 had been closed, came to be dismissed.

2. Learned counsel appearing on behalf of the Petitioner submits that the Impugned Order has resulted in serious prejudice to the Petitioner, since his right to cross-examine RW-1 has been closed without affording him an effective opportunity to complete the cross-examination.

3. He submits that the absence of the Petitioner's counsel on 13.10.2025 was neither deliberate nor intentional, but was occasioned on account of the heavy cause list before the counsel on the said date. It is submitted that the Petitioner should not be made to suffer for the inability of his counsel to remain present on account of circumstances beyond his control.

4. Learned counsel further submits that the cross-examination of RW-1 had already commenced and was only partly concluded, and therefore, the closure of the Petitioner's right to further cross-examine the said witness would cause serious prejudice to his defence and would prevent the Petitioner from effectively contesting the proceedings.

5. He further submits that the learned Family Court ought to have adopted a liberal approach and granted one further opportunity to the Petitioner, particularly since the matter could have been compensated by imposing appropriate costs.

6. Learned counsel also submits that the delay in approaching this Court was not deliberate and that the Petitioner had sufficient explanation for the period in question.

7. He, therefore, submits that the Impugned Order be set aside and the Petitioner be granted one final opportunity to complete the cross-



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examination of RW-1, subject to such terms and costs as this Court may deem appropriate.

8. This Court has heard learned counsel for the Petitioner and, with her able assistance, has perused the material on record, including the Impugned Order, which reads as under:

“1. This file is taken up on filing of application u/o 18 Rule 17 read with Section 151 CPC, by petitioner for recalling the order dated 13.10.2025 vide which petitioner’s right to cross examine RW1 was closed.

2. Notice of the application was not issued to the opposite party.

3. The counsel for applicant submitted that he could not appear on 13.10.2025 in the court due to heavy cause list and hence his client's right to cross-examine RWI was closed. He was very much available on 19.05.2025 but RWI was not present and that is why the case was adjourned. He further argued that he was absent only on 13.10.2025 and that absence was not in his control as his cause list was very heavy so one more opportunity be granted to petitioner to cross examine RWI and for that purpose, the order dated 13.10.2025 be set aside.

RWI was examined in chief on 09.12 .2024 and adoumment was granted on the request of petitioner's counsel for cross examination for 03.02.2025. The witness was cross examined partly and further cross was deferred again on the request of petitioner’s counsel. On 19.05.2025, RW1 was present in the court but petitioner’s counsel sought pass over till 2.00pm but till that time, respondent's counsel was not to remain in the court and so, the case was adjourned to 29.07.2025 but PO was on leave on that day. On the next effective date i.e. 13.10.2025 no one had appeared for petitioner despite last and final opportunity for cross-examination of RWI. These order sheets how that it was petitioner who took several adjournments for cross-examination of PW 1. More than sufficient opportunities were granted to him and despite it his counsel did not turn up.

5. The petitioner is negligent not only in cross examination of PWI. The record shows that he was negligent and delayed his evidence also. The petitioner did not examine any witness on 14.12.2021, 30.05.2022, 09.10.2023, 18.03.2024 and 30.05.2024. When petitioner did not produce himself for evidence, the court had to give him last and final opportunity subject to cost of Rs.3,000/- and the case was adjourned to 20.08.2024. It is only after that coercive step that petitioner brought himself in the witness box and was examined on 20 .08.2024. Till that date, he had not summoned any other witness, but he stated on 20.08.2024

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that he wanted to examine one more witness. Instead of summoning one witness, he moved an application for summoning two witnesses and, notice to those two witnesses were issued. But at last, the petitioner changed his plan and did not examine any other witness and the case was thereafter, adjourned to 09.12.2025 for RE . So from the date of filing of the petition i.e. 31.07.2017, it is the petitioner who delayed his own case till 22.10.2024, except for the two intervening years during which there was widespread of Corona.

6. In view of the discussion, there is no merit in the application and the same is dismissed.

7. Put up on date fixed i.e. 26.11.2025 for final arguments.”

9. A perusal of the aforesaid would reveal that the learned Family Court has considered the explanation furnished by the Petitioner for his absence on 13.10.2025, as also the previous conduct of the Petitioner in prosecuting the proceedings. It has been specifically noticed that RW-1 had been examined in chief on 09.12.2024 and that the Petitioner had thereafter been granted an opportunity for cross-examination on 03.02.2025, on which date the witness was partly cross-examined and the further cross-examination was deferred at the request of the Petitioner's counsel.

10. The learned Family Court has further taken note of the subsequent proceedings, including the date of 19.05.2025 when RW-1 was present but the Petitioner's counsel sought a pass-over, and the matter thereafter was adjourned to 29.07.2025, on which date the Presiding Officer was on leave. It was in these circumstances that, on the next effective date, i.e. 13.10.2025, despite the matter having been fixed as a last and final opportunity for cross-examination, none appeared on behalf of the Petitioner, resulting in the closure of his right to cross-examine RW-1.

11. Significantly, the Impugned Order does not rest merely upon the Petitioner's absence on 13.10.2025. The learned Family Court has

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also considered the Petitioner's conduct throughout the proceedings and has recorded that the Petitioner had repeatedly failed to lead his own evidence on several dates, *namely*, 14.12.2021, 30.05.2022, 09.10.2023, 18.03.2024 and 30.05.2024. It has further been noticed that even after being granted a last and final opportunity subject to costs, the Petitioner examined himself only on 20.08.2024 and thereafter altered his position with regard to the witnesses he intended to examine.

12. The aforesaid findings demonstrate that the application seeking recall was not considered in isolation, but in the backdrop of the manner in which the proceedings had been conducted by the Petitioner. The explanation that the counsel could not appear on 13.10.2025 on account of a heavy cause list was, therefore, considered against the previous opportunities granted to the Petitioner and the repeated adjournments which had already taken place.

13. This Court finds no merit in the challenge to the Impugned Order. The Petitioner has not been able to demonstrate that the opportunity to cross-examine RW-1 was closed without sufficient opportunity having been afforded to him. On the contrary, the chronology noted in the Impugned Order demonstrates that several opportunities had already been granted and that the absence on 13.10.2025 occurred despite the matter having been specifically fixed as a last and final opportunity.

14. The explanation of counsel's absence on account of a heavy cause list, in the facts of the present case, cannot be considered in isolation from the Petitioner's previous conduct. The learned Family Court has exercised its discretion after taking into account the entire



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course of the proceedings, and no perversity or material irregularity is discernible in the exercise of such discretion.

15. It is also pertinent that the present Petition has been instituted after a considerable lapse of time from the date of the Impugned Order. The explanation furnished by the Petitioner for the delay in approaching this Court, as noticed from the pleadings, is vague and does not disclose any sufficient justification for the considerable period which elapsed before the present Petition came to be filed.

16. In these circumstances, this Court is not persuaded to exercise its extraordinary jurisdiction under Article 227 of the Constitution of India. The conduct of the Petitioner, viewed cumulatively with the repeated opportunities already afforded by the learned Family Court and the absence of any sufficient explanation for the delay in approaching this Court, does not warrant any indulgence.

17. Accordingly, the present Petition, being devoid of merit, stands dismissed.

18. The present Petition, along with pending application(s), if any, stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 19, 2026/tk/jk

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