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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010385562026

+ CM(M) 1837/2026, CM APPL. 55561/2026 & CM APPL.
55562/2026

ASHIYA BEGUM

.....Petitioner

Through: Mr. Gaurav Sharma, Ms. Pooja
Sharma, Mr. Pradeep Sharma and
Mr. Abhishek Chauhan, Advocates.

versus

PRINCE KUMAR CHAUHAN AND ORS

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

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19.08.2026

1. The petitioner/defendant, by way of the present petition, assails the order dated 08.06.2026 passed by the learned ADJ, Shahdara, Karkardooma Courts, Delhi, in CS No. 590/2021, titled "*Prince Kumar Chauhan And Ors Vs. Ashiya Begum*", whereby petitioner's application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") for recalling of respondent/plaintiff's witnesses for cross-examination, was dismissed.
2. This is not even a fit case to even issue notice.
3. Succinctly put, the brief facts of the case are that the respondent filed a suit under Order XXXVII CPC for recovery of a sum of Rs. 5,60,000/- from the petitioner, alleging that the petitioner had entered into an agreement dated 03.04.2018 for sale of the property bearing no. D-72/2,



New Property bearing no. D-91/2, ad measuring area 50 sq. yards, out of Khasra No. 469/51, situated in the area of village Maujpur, Gali No. 5 and New Gali No. 10, Mohanpuri, Vijay Park, Shahdara, Delhi-110053 and, upon her failure to proceed with the sale, had agreed to refund the said amount.

4. The petitioner contested the claim, however, her written statement was not taken on record *vide* order dated 10.03.2023 for want of an application for condonation of delay. Thereafter, issues were framed and the respondent led evidence. Despite opportunities, the petitioner failed to cross-examine PW-1 and PW-2, whereafter her right to cross-examine the said witnesses were closed on 29.01.2024. The respondent thereafter concluded his evidence on 20.08.2024.

5. During the stage of defence evidence, the petitioner was granted repeated opportunities to lead and conclude here evidence, subject to costs. On 08.08.2025, the petitioner sought an adjournment on the ground that she intended to change her counsel, and a final opportunity was granted subject to costs. A new counsel was thereafter engaged, however, owing to the non-availability for adjournment was dismissed on 25.09.2025 and her right to lead defence evidence was closed.

6. The petitioner thereafter moved an application under Section 151 CPC seeking recall of PW-1 and PW-2 for cross-examination, which was dismissed by the learned Trial Court, leading to the present proceedings.

7. Learned counsel for the petitioner contends that the right to cross-examine PW-1 and PW-2 is vital for a just adjudication of the dispute, particularly as the petitioner's written statement was not taken on record due to the failure of her erstwhile counsel to file an application for condonation



of delay.

8. It is submitted that the repeated defaults and inaction of the erstwhile counsel, coupled of the petitioner's right to cross-examine the said witnesses, for which the petitioner ought not to be made to suffer. Learned counsel further submits that Section 151 CPC empowers the Court, in appropriate cases, to recall witnesses where such course is necessary to secure the ends of justice, particularly when the application is *bona fide* and the proposed cross-examination would assist in arriving at the truth.

9. It is contended that recalling PW-1 and PW-2 would cause no prejudice to the respondent, who may be compensated by costs, whereas refusal would deprive the petitioner of a valuable opportunity to defend the case and result in adjudication on an incomplete record. Reliance is place on the settled principle that an innocent litigant should not suffer for the default or misconduct of her advocate.

10. Heard learned counsel for the petitioner and perused the record.

11. As observed hereinabove, the present case is not even a fit case for issuance of notice. Nevertheless, the short question which arises for consideration is whether, in the facts and circumstances of the present case, the petitioner has made out any ground for exercise of the inherent jurisdiction of this Court so as to recall PW-1 and PW-2 for cross-examination, despite the closure of her right to cross-examine them on 29.01.2024.

12. The record does not support the contention of the petitioner was deprived of a reasonable opportunity to cross-examine the plaintiff's witnesses. On 05.01.2024, the petitioner was granted an opportunity to cross-examine PW-1, subject to costs of Rs. 5,000/-, as her counsel



expressed his inability to conduct the cross-examination. On 15.01.2024, yet another opportunity was sought by the proxy counsel on the ground that the main counsel was unwell, and the matter was adjourned subject to further costs of Rs. 3,000/-. The order dated 15.01.2024 specifically made it clear that the opportunity granted was the last and final opportunity and that, in the event of failure to cross-examine the witnesses, the right of the petitioner would stand closed.

13. Despite the aforesaid orders, none appeared on behalf of the petitioner on 29.01.2024 to cross-examine PW-1 and PW-2. The Trial Court, accordingly, closed the petitioner's right to cross-examine the said witnesses. The closure, therefore, was not a consequence of a single inadvertent default, but followed repeated opportunities granted by the learned Trial Court.

14. The subsequent conduct of the petitioner also assumes significance. The record indicates that, even at the stage of defence evidence, as many as six opportunities were granted to the petitioner to lead her evidence. The present application under Section 151 CPC was thereafter filed only on 04.11.2025, i.e. after a considerable lapse of time from the closure of the right to cross-examine PW-1 and PW-2.

15. The plea that the petitioner ought not to suffer for the defaults of her erstwhile counsel cannot suffice, rather it demonstrate a continued lack of diligence in prosecuting the matter.

16. It is equally material that the order dated 05.01.2024 records the presence of the petitioner's son along with the counsel. Thus, the petitioner was not wholly unaware of the progress of the proceedings. A litigant is undoubtedly entitled to place reliance upon counsel engaged by her,



however, such reliance does not absolve a litigant altogether of the obligation to remain reasonably vigilant about the proceedings, particularly where repeated opportunities have been granted and orders have been passed recording defaults.

17. The power to recall a witness cannot be invoked as a matter of course where the party seeking such recall has failed to demonstrate sufficient cause for not availing the opportunities already granted.

18. This Court is also unable to accept the submission that the petitioner would suffer grave prejudice if the witnesses are not recalled. The prejudice, if any, is a consequence of the petitioner's own conduct in failing to avail the repeated opportunities granted by the learned Trial Court.

19. The impugned order does not disclose any jurisdictional error, perversity, material irregularity or failure to exercise jurisdiction warranting interference under Article 227 of the Constitution.

20. For the aforesaid reasons, this Court finds no merit in the present petition. Therefore, the impugned order is upheld.

21. The petition, along with pending application(s), if any, stands dismissed.

AJAY DIGPAUL, J

AUGUST 19, 2026/AS/dd