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

CNR No. DLHC010406042026

+ CM(M) 1903/2026, CM APPL. 58371/2026 & CM APPL. 58372/2026

DHIRAJ MAKHIJA

.....Petitioner

Through: Mr. Sahil Mongia, Adv. (through VC)

versus

NIKHIL KAPOOR

.....Respondent

Through: Mr. Saurabh Kumar Tuteja and
Mr. Mukul Sharma, Advs. with
Respondent-in-person (through VC)

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

% **31.08.2026**

1. Through the present petition, the petitioner challenges the order dated 08.07.2026 passed by the learned Principal District & Sessions Judge, East District, Karkardooma Courts, Delhi in CS No.593/2024 titled as '*Nikhil Kapoor vs. Dhiraj Makhija*' whereby his application under Order XXVI Rule 10A read with section 151 of the Code of Civil Procedure, 1908 and sections 39 and 45 of the Bhartiya Nyaya Sanhita seeking forensic examination of the call recordings has been dismissed.
2. The respondent/plaintiff has instituted the underlying suit for recovery seeking Rs. 5,00,000, wherein issues came to be framed on 18.03.2025, the plaintiff completed his evidence on 17.03.2026 and the petitioner/defendant examined himself on 22.04.2026 as defendant witness.



3. Thereafter, on 28.04.2026, the petitioner filed an application Order XXVI Rule 10A read with section 151 of CPC and sections 39 and 45 of BNS contending *inter alia* that the respondent/plaintiff, during his cross examination, on 17.03.2026 has disputed the call recordings dated 11.04.2024 and 15.04.2024, as fabricated, thereby necessitating the production of a voice sample and subsequent examination by CFSL.

4. The application under Order XXVI Rule 10A CPC came to be dismissed *vide* the impugned order dated 08.07.2026. While doing so, the learned Trial Court, apart from noting the discrepancies between the transcription of the call recordings and the Section 63 BSA certificate, also observed that the petitioner/defendant had not filed any list of witnesses and had already examined himself as DW-1. Consequently, the petitioner's defence evidence was closed and the matter was directed to be listed for final arguments.

5. The learned counsel appearing for the petitioner has submitted that the learned trial court has erred in dismissing the application under Order XXVI Rule 10A CPC as the same is vital to the petitioner's case. He has submitted that the forensic report will clearly negate the respondent's objections qua the call recordings exhibited as DW1/3 and substantiate the petitioner's averments.

6. He has also submitted that the learned trial court has erred by assuming the role of an expert and has proceeded to independently determine the authenticity of the stated calls, without referring them to CFSL, as had been sought for.

7. However, during the course of arguments, upon a specific query from this Court as to why the concerned CFSL official and his report had not been



included in the list of witnesses filed pursuant to the directions of the learned Trial Court after framing of issues, no satisfactory explanation was forthcoming.

8. Heard. Perused the records.

9. The attempt to introduce the concerned witness and report is clearly belated, having been made after the issues had been framed and more than a year after the commencement of PE. Once the parties have entered into the stage of evidence, they are expected to be fully aware of their respective cases, and the manner in which they seek to prove the same through their witnesses and documents.

10. It is not open to a party to move an application at a belated stage seeking to summon a witness merely because, at that stage, the party considers such witness to be necessary or appropriate for proving its case.

11. Permitting such applications as a matter of course at such a belated stage would defeat the legislative intent of underlying the procedural provisions which requires the parties to disclose and crystallize their respective cases at the appropriate stage and proceed with the trial accordingly. Such belated attempts cannot be permitted to fill up lacunae or alter the manner in which a party has decided to conduct his case.

12. In view of the aforementioned reasons, the petition, along with pending applications, stands dismissed.

AJAY DIGPAUL, J

AUGUST 31, 2026/AS/sg