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

CNR No. DLHC010432712026

+ **CM(M) 2016/2026 & CM APPL. 62140/2026**

NARENDER CHAWLA & ANR. Petitioners

Through: **Mr. Rakesh Kakar and Ms. Varsha,**
Advocates

versus

LALITA RANI & ANR. Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

% **14.09.2026**

CM APPL. 62141/2026 (Exemption)

1. Exemption allowed, subject to just exceptions.
2. Accordingly, the application stands disposed of.

CM(M) 2016/2026

3. Through the present petition, the petitioners seek setting aside of the impugned order dated 11.08.2026 whereby their application for recall of PW-5 has been dismissed and defence evidence has been closed.
4. The brief facts of the present case are as follows-
5. The respondent has instituted the underlying suit seeking permanent injunction, against which the petitioners filed their written statement.
6. During the course of proceedings, on 20.11.2025, PW-5 – Sh. Manoj Chahel was examined in chief and cross-examined in part, however, the



cross-examination was deferred for want of documents and the matter was fixed for 19.12.2025. On 19.12.2025, the proxy counsel for the petitioner sought an adjournment on the grounds that the main counsel was unwell. On the same date, the witness was bound down and the matter was posted for 23.03.2026. On 23.03.2026, despite being bound down, the witness was not present, and the matter was fixed for 23.05.2026.

7. On 23.05.2026, the proxy counsel for the petitioner sought another adjournment on the grounds that the main counsel was otherwise occupied in another court. Accordingly, the right to cross-examine PW-5 was closed, and the matter was listed for DE on 11.08.2026.

8. Meanwhile, the petitioner filed an application under Order XVIII Rule 17 CPC seeking recall of PW-5 contending *inter-alia* that the petitioner was available on all dates aside from 23.05.2026 where he was occupied for 15 minutes before the court of learned Additional District & Sessions Judge.

9. The application of the petitioner was dismissed *vide* order dated 11.08.2026 whereby the learned trial court noted that no reasons for condoning the delay had been given by the petitioner, and that despite directions, the petitioner had not filed their evidence affidavit. Accordingly, the right to file evidence affidavit was closed, DE was closed, and the matter was put up for final arguments on 16.09.2026.

10. The learned counsel for the petitioners has submitted that the learned trial court has gravely erred in failing to consider the sufficient reason for delay as provided in the application under Order XVIII Rule 17 CPC. He has submitted that as stated in the application, he was present on all dates, even when PW-5 was not present, and the absence on 23.05.2026 was purely inadvertent.



11. He has further submitted that the right to cross-examination is a vital right, and its closure shall substantially prejudice the petitioner's case. He has also submitted that PW-5 is a public witness, and that the petitioner is not trying to fill in any lacuna in his case. Lastly, he has prayed that his right be reinstated, subject to terms as this Court deems fit.

12. This Court is of the opinion that it is vital to strike a balance between deterrence from absence in court and the substantial rights of parties. It is also trite law that valuable rights of cross-examination ought not to be summarily closed at the outset.

13. Accordingly, in view of the statement made by the learned counsel for the petitioner, the impugned order is set aside, subject to payment of cost of Rs. 5,000 payable to the counsel of the respondent within a period of 3 days from today.

14. It is made clear that one final opportunity is being provided to cross-examine PW-5, and that no further indulgence shall be given. The learned trial court is directed to fix a date as convenient to their calendar and parties are directed to not take any adjournments on the date fixed.

15. The present petition is allowed and disposed of along with pending applications, if any.

AJAY DIGPAUL, J

SEPTEMBER 14, 2026

gs/sg