A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 894 of 2026
CNR No- ODHC010374502026

(In the matter of an application under Articles 227 of the Constitution of India, 1950).

Rajdhani Bus Owners Association, Baramunda, Bhubaneswar **....** ***Petitioner (s)***

-versus-

Sk. Kamaluddin & Ors. **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Smita Ranjan Patnaik, Adv*

For Opposite Party (s) : *Mr. Rajeet Roy, Adv.*
Mr. S. Sourav, Adv.

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-03.09.2026
DATE OF JUDGMENT:-30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner has instituted the present Civil Miscellaneous Petition under Article 227 of the Constitution of India assailing the legality, propriety, and correctness of the order dated 23.04.2026 passed by the learned Civil Judge, Senior Division, Bhubaneswar, in C.S No. 2375 of 2022, whereby the learned Court below without duly considering the facts and materials available on record and the applicable provisions of law, rejected the application dated 24.12.2025 filed by the

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Petitioner/Plaintiff under Order XVIII Rule 17 of the Code of Civil Procedure, 1908, seeking recall of P.W.2 for further examination-in-chief for the purpose of exhibiting a subsequent document, namely, the Resolution dated 10.11.2025, which is relevant and material for the just and proper adjudication of the suit.

2. The Petitioner, being aggrieved by and dissatisfied with the aforesaid order, therefore, seeks interference by this Hon'ble Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, in the interest of justice.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The petitioner, Rajdhani Bus Owners' Association, Baramunda, Bhubaneswar, is a registered society under the Societies Registration Act, 1860 and has its own Bye-laws governing the constitution and functioning of its Executive Committee.

(ii) Under the Bye-laws, the Executive Committee of the Association is to be constituted periodically through election/selection/nomination. A General Body Meeting was held on 28.09.2022, whereafter 11.10.2022 was fixed for constitution of a new Executive Committee.

(iii) On 11.10.2022, according to the petitioner, a new Executive Committee was constituted in the presence of the majority members. Surendra Kumar Pradhan was elected President, Sunil Kumar Mohanty and Ranjan Mahala as Vice-Presidents, and

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Tusharkanta Acharya as General Secretary, along with other Executive Committee members.

(iv) The petitioner alleges that Opposite Party Nos.1 to 3, who had held office in the previous Executive Committee, were not elected to the newly constituted Committee and thereafter created disturbance in the functioning of the Association. It is further the petitioner's case that Opposite Party Nos.4 to 6 supported Opposite Party Nos.1 to 3 and that attempts were made to interfere with the administration and affairs of the Association.

(v) On account of the alleged interference and dispute concerning the management of the Association, the petitioner instituted C.S. No.2375 of 2022 before the learned Civil Judge (Senior Division), Bhubaneswar, seeking, inter alia, permanent injunction and other consequential reliefs.

(vi) The defendants entered appearance and filed their respective written statements. The Trial Court also passed an interim order restraining the opposite parties from creating disturbance in the smooth administration of the Association till final disposal of the suit. Subsequently, the plaintiff amended the plaint in view of the stand taken by the defendants regarding the alleged formation of another Executive Committee. The defendants thereafter filed additional written statements.

(vii) During the pendency of the suit, the petitioner-Association claims to have constituted another Executive Committee on 10.11.2025 for the period 2025–2028. According to the

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petitioner, a Resolution dated 10.11.2025, together with a communication to the Additional District Magistrate, Bhubaneswar, was sought to be brought on record as subsequent material relevant to the adjudication of the dispute.

(viii) The petitioner filed an application dated 20.12.2025 seeking to bring the aforesaid subsequent resolution and communication on record and thereafter filed an application dated 24.12.2025 under Order XVIII Rule 17 CPC seeking recall of P.W.2, namely, Tusharkanta Acharya, General Secretary of the Association, for further examination-in-chief and for proving the said documents.

(ix) The petitioner asserts that the documents had come into existence only on 10.11.2025 and 11.11.2025, after the evidence of the plaintiff had been closed, and therefore could not have been produced during the original stage of evidence.

(x) The Trial Court, however, rejected the application dated 24.12.2025 by order dated 23.04.2026. The present CMP has consequently been filed invoking Articles 226 and 227 of the Constitution of India, seeking quashing of the order dated 23.04.2026 and consequential relief in favour of the petitioner.

(xi) The record further discloses that an earlier application concerning the same subject had been rejected by the Trial Court on 20.01.2026, and the opposite parties contend that the subsequent application under Order XVIII Rule 17 was substantially similar.

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Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by way of the present Civil Miscellaneous Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The petitioners assert that the learned Trial Court committed an error of law and jurisdiction in rejecting the application dated 24.12.2025 under Order XVIII Rule 17 CPC.

(ii) The petitioner submits that the Resolution dated 10.11.2025 is a subsequent document which came into existence during the pendency of the suit and was therefore not available at the time when the plaintiff's evidence was being recorded. According to the petitioner, the subsequent Resolution relates directly to the constitution of the Executive Committee of the Association and is relevant for proper adjudication of the dispute involved in the suit.

(iii) The petitioner contends that the subsequent Resolution and the connected communication had already been sought to be brought on record through the petition dated 20.12.2025. Since the documents came into existence after closure of the plaintiff's evidence, the petitioner submits that there was sufficient justification for recalling P.W.2 for the limited purpose of proving and exhibiting the subsequent documents.

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(iv) It is argued that the recall of P.W.2 was necessary for the ends of justice and that refusal to permit such evidence would cause serious prejudice to the petitioner. The petitioner further submits that the Trial Court failed to appreciate the relevance of the subsequent Resolution and rejected the application without properly considering the facts and materials placed before it.

(v) The petitioner alleges non-application of mind on the part of the Trial Court, particularly because the applications dated 20.12.2025 and 24.12.2025 were closely connected and concerned the subsequent constitution of the Executive Committee.

(vi) The petitioner further submits that the Trial Court proceeded to decide the application dated 24.12.2025 despite the petitioner's request for adjournment in view of the pendency of D-CMP No.7403 of 2026, which challenged the earlier order dated 20.01.2026.

(vii) The petitioner therefore seeks exercise of the supervisory jurisdiction of this Court to quash the order dated 23.04.2026 and permit recall of P.W.2 for proving the subsequent Resolution. The petitioner also seeks protection against further proceedings in the suit, contending that otherwise it would suffer irreparable prejudice.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

5. *Per contra*, the learned counsel for the Opp. Party earnestly made the submission that the present CMP deserves to be rejected in limine.

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(i) The Opp. Party submits that the suit was instituted in 2022 and that the pleadings had already been completed and evidence had been adduced by both sides. According to the respondents, upon completion of evidence, the suit had been posted for final arguments on 05.05.2026.

(ii) The Opp. Party contend that the petitioner thereafter sought to recall P.W.2 for the purpose of exhibiting the Resolution dated 10.11.2025. The respondents further contends that the Trial Court rightly rejected the application on the ground that the document sought to be exhibited had no relevance to the issues involved in the pending suit.

(iii) It is specifically contended that an earlier application seeking substantially the same relief had already been rejected by the Trial Court on 20.01.2026, and that order had not been successfully challenged before the higher forum. The Opp. Party therefore contend that the subsequent application under Order XVIII Rule 17 was an attempt to reopen an issue which had already been considered and rejected.

(iv) The Opp. Party further submit that Order XVIII Rule 17 CPC cannot be invoked as a matter of right merely to fill up omissions or lacunae in the evidence already adduced. It is contended that the application was misconceived in law and that the power under Order XVIII Rule 17 is discretionary and is intended for clarification by the Court rather than for permitting a party to reopen its evidence as a matter of course.

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(v) The Opp. Party submit that the Resolution dated 10.11.2025 is a lis pendens/subsequent document and that there are no corresponding pleadings in the plaint concerning the said document or the subsequent event. According to the Opp. Party, a fact or document which is not founded upon the pleadings cannot be indirectly introduced into the suit merely through an application for recall of a witness.

(vi) The Opp. Party allege that the present CMP has been filed primarily to delay and prolong the proceedings, particularly when the suit had already reached the stage of arguments. It is also submitted that the suit was subject to an earlier direction for expeditious disposal and that further reopening of evidence would unnecessarily delay its conclusion.

IV. COURT'S REASONING AND ANALYSIS:

6. Heard learned counsel for the parties and perused the materials placed on record.

7. The principal question which falls for consideration is whether the learned Civil Judge (Senior Division), Bhubaneswar was justified in rejecting the petitioner's application dated 24.12.2025 filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908, seeking recall of P.W.2 for the purpose of exhibiting the Resolution dated 10.11.2025.

8. The petitioner's case, in substance, is that during the pendency of the suit the Association constituted a new Executive Committee on 10.11.2025 and that the Resolution relating thereto, along with the connected communication, was a subsequent document which came

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into existence after closure of the plaintiff's evidence. It is therefore contended that P.W.2 ought to have been recalled to prove and exhibit the said documents.

9. The power under ***Order XVIII Rule 17 CPC*** is undoubtedly available to the Court to recall a witness who has already been examined. However, such power is discretionary and is to be exercised for a legitimate judicial purpose. The provision cannot be treated as conferring an unfettered right upon a party to reopen its evidence whenever it considers it convenient or desirable to introduce further material.

10. The object of ***Order XVIII Rule 17*** is to enable the Court to recall a witness for the purpose of clarification or for such other purpose as may be necessary for the proper adjudication of the dispute. The provision cannot ordinarily be employed to permit a party to fill up an omission in its evidence or to introduce fresh evidence merely because such evidence was not produced at the appropriate stage.

11. In the present case, it is not in dispute that the plaintiff's evidence had already been completed and that the suit had proceeded to the stage of arguments. The application for recall was therefore made at a highly advanced stage of the proceeding. The Court is consequently required to examine not merely whether the proposed document exists, but whether its reception at that stage is necessary for determining the real controversy in the suit and whether the exercise of power under ***Order XVIII Rule 17*** is justified in the facts and circumstances of the case.

12. The petitioner places reliance upon the fact that the Resolution dated 10.11.2025 was subsequent to the institution of the suit. Mere

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subsequent creation of a document, however, does not ipso facto establish its relevance to the issues already framed and tried. The Court must examine the nature of the suit, the pleadings of the parties and the issues requiring adjudication.

13. The substantive dispute in the suit concerns the constitution and functioning of the Executive Committee of the Association and the alleged interference by the defendants with its administration. The petitioner seeks to introduce the Resolution dated 10.11.2025 relating to a subsequent Executive Committee constituted for the period 2025-2028.

14. The Opp. Party, on the other hand, specifically contend that the said Resolution constitutes a subsequent event which was neither pleaded in the plaint nor the subject matter of the original controversy and that the document has no material bearing upon the issues which had already been tried. The respondents further point out that an earlier application seeking similar relief had already been rejected on 20.01.2026.

15. In such circumstances, the Court is required to maintain the distinction between a document which is genuinely necessary for determining an existing issue and a document which seeks to introduce a subsequent development so as to enlarge or alter the scope of the controversy after completion of evidence.

16. It is a settled principle of civil procedure that evidence must ordinarily be confined to the pleadings and the issues arising therefrom. A party cannot, by resorting to an application for recall of a witness, indirectly

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introduce a new factual foundation which was not part of the pleadings. The relevance of a subsequent document must therefore be tested with reference to the existing pleadings and issues.

17. In the present matter, the petitioner has not demonstrated, to the extent necessary for exercise of the discretionary power under Order XVIII Rule 17, that the Resolution dated 10.11.2025 is indispensable for deciding an issue already arising for adjudication in the suit. The mere assertion that the document relates to the subsequent constitution of the Executive Committee is insufficient to establish such necessity.

18. The stage at which the application was filed is also of considerable significance. The evidence had already been completed and the suit had reached the stage of arguments. The procedural scheme under the Code contemplates an orderly progression of the trial from pleadings to issues, evidence and arguments. Permitting a party to reopen evidence at the stage of final arguments, without demonstrating compelling necessity, would defeat the principle of expeditious adjudication and may cause corresponding prejudice to the opposite parties.

19. The contention of the petitioner that the document was not available earlier because it came into existence on 10.11.2025 cannot, by itself, be regarded as sufficient ground for allowing the application. Even where a document is subsequent in point of time, the Court must still be satisfied that its reception is legally permissible and materially necessary for adjudication of the dispute.

20. Further, the record indicates that an earlier application concerning the same subject had already been rejected on 20.01.2026. The subsequent

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application, though presented on the footing of Order XVIII Rule 17, was substantially directed towards reopening the plaintiff's evidence for the purpose of bringing the same subsequent development on record. The petitioner has therefore failed to demonstrate any compelling circumstance warranting a different conclusion from the one already reached by the Trial Court.

21. The Court also finds substance in the respondents' objection that ***Order XVIII Rule 17*** cannot be used as a device for filling up lacunae in the evidence. The provision is procedural and discretionary in character; it cannot be converted into a substantive mechanism for enabling a party to improve its case after completion of evidence.

22. The submission that refusal to recall P.W.2 would cause irreparable prejudice to the petitioner also cannot, by itself, justify interference. Prejudice must be assessed with reference to the issues which the Court is required to determine. Where the proposed material has not been shown to be indispensable for deciding the existing controversy, the mere possibility of prejudice cannot outweigh the requirement of finality and orderly conduct of the trial.

23. The fact that the petitioner has challenged the order dated 23.04.2026 does not enlarge the scope of the supervisory jurisdiction of this Court. The question before this Court is not whether the Resolution dated 10.11.2025 exists or whether it may have some bearing upon subsequent events, but whether the Trial Court committed such an error in refusing to recall P.W.2 as would warrant interference under Article 227 of the Constitution.

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24. The supervisory jurisdiction under Article 227 of the Constitution is also circumscribed. This Court does not exercise such jurisdiction as an appellate court for substituting its own view merely because another view may also be possible. Interference is warranted where the subordinate Court has acted without jurisdiction, failed to exercise jurisdiction vested in it, or has committed a patent error of law resulting in manifest injustice.

25. In the present case, the learned Trial Court had jurisdiction to consider the application under Order XVIII Rule 17 and exercised that jurisdiction by examining the relevance of the document and the stage of the proceeding. The rejection of the application, in the facts placed before this Court, cannot be characterised as an exercise of jurisdiction in an arbitrary or perverse manner.

V. CONCLUSION:

26. In view of the foregoing analysis and upon an anxious and careful consideration of the material facts and circumstances of the case, this Court is of the considered opinion that, having regard to the nature of the proposed evidence, the advanced stage of the suit, the earlier rejection of a similar application, and the limited scope of Order XVIII Rule 17 of the CPC, the petitioner has failed to make out any ground warranting interference by this Court.

27. The impugned order dated 23.04.2026, therefore, does not suffer from any jurisdictional error, patent illegality or manifest perversity warranting interference in exercise of the supervisory jurisdiction of this Court.

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28. It is, however, made clear that the observations made herein are confined to the prayer for recall of P.W.2 under Order XVIII Rule 17 CPC and shall not be construed as an adjudication upon the ultimate merits of the substantive dispute pending before the learned Trial Court.

29. Accordingly, the C.M.P stands **dismissed.**

30. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30TH October, 2026.

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