2026:AHC:230295

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 12156 of 2026

Kishor Kumar Agrawal

…..Petitioner(s)

Versus

Sri Ashok Kumar Varshney and 4 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Pankaj Agarwal
Counsel for Respondent(s)	:	Akanksha Gaur

AFR

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Pankaj Agrawal, learned counsel for the petitioner and Ms. Akanksha Gaur, learned counsel appearing for the respondent. The record of the petition, including the orders impugned herein, has been perused.

2. The present petition under Article 227 of the Constitution of India is directed against the orders dated 09.03.2026, passed by the Judge, Small Causes Court, Aligarh, in SCC Suit No.16 of 2015, and 13.08.2026, passed by the Rent Tribunal/Special Judge (E.C. Act), Aligarh, in SCC Revision No.46 of 2026. By the first order, the petitioner's application, Paper No. 216-*Ga*, seeking recall of the order dated 31.07.2025 and permission to examine a handwriting expert, was rejected. The revision preferred against the said order has been dismissed by the second order.

3. The dispute arises out of SCC Suit No.16 of 2015, instituted by the respondent-landlord seeking eviction of the petitioner-tenant on the ground of default in payment of rent in respect of a shop bearing Municipal No. 3/456, situated at Ramghat Road, opposite Gandhi Eye Hospital, Aligarh. The shop in question was stated to have been let out to the petitioner at a monthly rent.

4. The petitioner contested the suit by filing a written statement and proceeded to lead evidence in support of his defence. In the course of the proceedings, the petitioner filed a list of witnesses, which included Sameer Sharma, a handwriting expert. The petitioner thereafter examined four witnesses, designated as D.W.-1 to D.W.-4, between 22.04.2025 and 24.07.2025.

5. On 31.07.2025, an endorsement was made on behalf of the petitioner stating that no further evidence was required to be adduced. Acting upon the said endorsement, the trial court closed the petitioner's evidence and fixed the suit for arguments. The handwriting expert included in the list of witnesses was, however, not examined.

6. Subsequently, the petitioner moved an application, Paper No. 216-*Ga*, seeking recall of the order dated 31.07.2025 and permission to examine Sameer Sharma, the handwriting expert. The ground taken in the application was that the omission to examine the said witness had occurred inadvertently on account of a mistake on the part of the petitioner's counsel. It was asserted that the testimony of the handwriting expert was necessary to establish that the rent receipts relied upon by the respondent-landlord were forged and that his examination was material for the proper adjudication of the dispute.

7. The respondent-landlord opposed the application, contending that the petitioner had already been afforded sufficient opportunities to adduce evidence and had himself made an endorsement that no further evidence was required. It was further contended that the application had been moved at a belated stage, after the proceedings had reached the stage of final arguments, and was intended to delay the disposal of the suit despite the direction issued for its expeditious conclusion.

8. The trial court, by order dated 09.03.2026, rejected the application. It noticed that the petitioner's witnesses had already been examined and that, on 31.07.2025, the petitioner had expressly stated that no further evidence was required to be adduced. It further took note of the fact that, after the suit had been fixed for arguments, various applications moved by the petitioner and the revisions arising therefrom had been dealt with. Significantly, the application seeking permission to adduce further evidence was moved only after the respondent's counsel had concluded arguments on 21.02.2026. Finding no sufficient justification for reopening the evidentiary stage at that juncture, the trial court rejected the application.

9. Aggrieved by the order dated 09.03.2026, the petitioner preferred SCC Revision No. 46 of 2026. The revisional court, by order dated 13.08.2026, dismissed the revision and declined to interfere with the order passed by the trial court.

10. The revisional court noticed that the handwriting expert had already been included in the list of witnesses filed by the petitioner on 21.04.2025, but had not been produced for examination despite the opportunities afforded to the petitioner. It further took note of the fact that the petitioner had himself closed his evidence on 31.07.2025 and that the application seeking permission to examine the handwriting expert had been moved only after the respondent had concluded final arguments and submitted written arguments.

11. The revisional court also noticed the admissions made by the petitioner in his written statement and reply to the legal notice with regard to the relationship of landlord and tenant. Having regard to the aforesaid circumstances, it found that the necessity of examining the handwriting expert had not been sufficiently demonstrated. Placing reliance upon the principles laid down by the Supreme Court in **K.K. Velusamy v. N. Palanisamy**[1], the revisional court observed that procedural powers could not ordinarily be invoked to enable a party to fill lacunae in its evidence after having been afforded sufficient

1 (2011) 11 SCC 275

opportunities to lead the same. It also distinguished the decision of this Court in **Syed Ashraf Ali v. Onkar Singh**[2], observing that the case before it did not involve denial of an effective opportunity of cross-examination, but a situation where the petitioner had himself closed his evidence.

12. The revisional court further took note of the direction issued by this Court for expeditious disposal of the suit and observed that reopening the evidence after the proceedings had reached the stage of final arguments would occasion further delay. Finding no illegality, material irregularity or jurisdictional error in the order passed by the trial court, it dismissed the revision and directed the parties to appear before the trial court on 18.08.2026. The trial court was directed to make every endeavour to decide the suit within one month, with the parties extending their cooperation for its expeditious disposal.

13. Learned counsel for the petitioner submits that the impugned orders have been passed without properly appreciating the circumstances in which the petitioner's evidence came to be closed. It is contended that the endorsement dated 31.07.2025, recording that no further evidence was required to be adduced, was made inadvertently on account of a mistake on the part of the petitioner's counsel, notwithstanding that the handwriting expert had already been included in the list of witnesses.

14. It is further submitted that the examination of the handwriting expert is material to the controversy, inasmuch as the petitioner disputes the genuineness of the rent receipts relied upon by the respondent-landlord and seeks to establish that the same are forged. According to learned counsel, refusal to permit examination of the expert would deprive the petitioner of an opportunity to substantiate his defence with regard to the disputed documents.

15. Learned counsel further submits that the omission to examine the handwriting expert was neither deliberate nor intended to delay the proceedings. It is contended that the petitioner's advanced age and physical disability were also relevant circumstances which ought to have

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2 2005 (1) ARC 546

been taken into consideration while examining the explanation furnished for the omission. The mere fact that the application was moved at an advanced stage of the proceedings could not, by itself, constitute a ground for refusing permission to adduce further evidence, particularly where such evidence is claimed to be material for the fair adjudication of the dispute.

16. It is also contended that any prejudice or inconvenience likely to be caused to the respondent by permitting examination of the handwriting expert could have been adequately addressed by imposing appropriate costs and affording the respondent a limited opportunity to meet the evidence so adduced. Learned counsel submits that the courts below have adopted an unduly technical approach and failed to strike a proper balance between the requirement of procedural fairness and the need for expeditious disposal of the suit.

17. On the aforesaid grounds, learned counsel prays that the impugned orders dated 09.03.2026 and 13.08.2026 be set aside and the petitioner be permitted to examine the handwriting expert in support of his defence.

18. Learned counsel for the respondent opposes the petition and supports the impugned orders. It is submitted that the petitioner had been afforded sufficient opportunities to adduce evidence and that the handwriting expert had already been included in the list of witnesses filed on 21.04.2025. Despite being aware of the proposed witness and having an opportunity to produce him, the petitioner failed to do so and thereafter made an express endorsement on 31.07.2025 that no further evidence was required to be adduced.

19. It is further submitted that the application seeking permission to examine the handwriting expert was moved only after the proceedings had advanced to the stage of final arguments and the respondent's counsel had concluded the arguments and submitted written arguments. According to learned counsel, no satisfactory explanation has been furnished for the failure to produce the witness at the appropriate stage of the proceedings.

20. Learned counsel submits that the plea of an inadvertent mistake on the part of the petitioner's counsel does not, in the facts and circumstances of the case, furnish sufficient justification for reopening the evidentiary stage after the petitioner had himself expressly closed his evidence. It is further contended that the petitioner has also failed to demonstrate the necessity of examining the handwriting expert in the context of the controversy requiring adjudication, particularly in view of the admissions made in the written statement and reply to the legal notice with regard to the relationship of landlord and tenant and the rent payable.

21. It is urged that permitting the petitioner to adduce further evidence at this stage would occasion further delay in the disposal of a suit instituted in the year 2015 and would frustrate the objective of expeditious adjudication. Learned counsel submits that the revisional court has duly considered the relevant facts and circumstances and that no jurisdictional error or other infirmity warranting interference under Article 227 of the Constitution of India has been made out. On the aforesaid submissions, learned counsel prays for dismissal of the petition.

22. The principal question that arises for consideration is whether, and in what circumstances, a party who has expressly closed its evidence can subsequently seek reopening of the evidentiary stage to examine a witness already included in its list of witnesses. This also requires examination of the scope and limits of the powers exercisable by a Court under Section 151 read with Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), in relation to reopening of evidence and permission to adduce further evidence at the instance of a party.

23. The controversy, therefore, is not confined to the existence of the power of the Court to permit reopening of evidence in an appropriate case. The question is whether, having regard to the circumstances in which the petitioner's evidence was closed, the explanation furnished for not examining the proposed witness at the appropriate stage, and the

stage at which the application came to be filed, sufficient grounds existed for exercise of such power in favour of the petitioner.

24. Order XVIII Rule 17 of CPC empowers the Court to recall a witness who has already been examined and to put such questions to him as the Court may consider necessary. The provision is primarily intended to enable the Court to clarify any doubt or ambiguity arising from the evidence already on record. It is not intended to confer upon a party an independent right to seek recall of a witness or to reopen the evidentiary stage for the purpose of introducing further evidence.

25. The power to recall a witness under Order XVIII Rule 17 CPC is distinct from the power to reopen evidence or permit a party to adduce further evidence. While the former enables the Court to recall a witness already examined for the purpose of clarifying any doubt or ambiguity, it does not confer upon a party an independent right to seek recall or introduce further evidence. The power to reopen evidence or permit a party to adduce additional evidence may, in an appropriate case, be exercised by the Court in exercise of its inherent jurisdiction under Section 151 CPC. Such power, however, is discretionary and has to be exercised judicially, having regard to the circumstances of the case and the requirements of justice.

26. The distinction between the power to recall a witness under Order XVIII Rule 17 CPC and the inherent power of the Court to reopen evidence under Section 151 CPC has been considered by this Court in **Dr. Ravi Bhushan v. Nitin Kumar**[3], wherein the Court examined the principles laid down by the Supreme Court in **Vadiraj Naggappa Vernekar (Dead) through LRs. v. Sharadchandra Prabhakar Gogate**[4]; **K.K. Velusamy v. N. Palanisamy**[5]; **Bagai Construction v. Gupta Building Material Store**[6]; and **Ram Rati v. Mange Ram (Dead) through LRs**[7]**.** The Court considered the scope of these provisions and observed that the power to reopen evidence or permit further examination at the instance

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3 2026:AHC:216624
4 (2009) 4 SCC 410
5 (2011) 11 SCC 275
6 (2013) 14 SCC 1
7 (2016) 11 SCC 296

of a party is required to be exercised judicially, having regard to the purpose for which such evidence is sought to be introduced, its relevance to the controversy, the stage of the proceedings and the explanation furnished for the earlier omission.

27. In **Dr. Ravi Bhushan** (supra), this Court further emphasised that the power to reopen evidence cannot be exercised as a matter of course to enable a party to fill lacunae in its case or to improve upon the evidence already adduced, particularly where the relevant material was within the party's knowledge and the necessary steps could have been taken at the appropriate stage. The Court is required to examine whether the proposed evidence would materially assist in the just adjudication of the dispute or whether the request is merely an attempt to secure a further opportunity to make good an omission which could have been addressed during the original course of evidence.

28. The exercise of the power to reopen evidence is intended to advance the cause of justice and prevent a failure of justice. At the same time, the mere assertion that the omission to produce a particular witness was inadvertent does not, by itself, furnish sufficient justification for reopening the evidentiary stage. The Court must examine whether the proposed evidence has a material bearing upon an issue requiring adjudication, whether the necessity for its production has been adequately demonstrated, and whether the applicant has furnished a satisfactory explanation for not producing it at the appropriate stage. The bona fides of the request must also be assessed in the context of the stage of the proceedings at which the application is made.

29. A distinction has to be maintained between a case where a party has been denied a reasonable opportunity to adduce evidence and one where the party, despite having been afforded such opportunity, has itself expressly closed its evidence. In the former situation, the question may arise whether the party was afforded a fair and effective opportunity to present its case. In the latter, the Court must additionally examine the circumstances in which the party seeks to resile from its earlier position and the explanation furnished for not availing of the opportunity already

available. An express closure of evidence does not, by itself, operate as an absolute bar to reopening, but it is a material circumstance which calls for a satisfactory explanation before the Court exercises its discretion to permit further evidence.

30. The fact that a proposed witness had already been included in the list of witnesses is also a relevant circumstance. It may indicate that the party was aware of the witness and had identified the evidence which it intended to produce. However, prior inclusion in the list of witnesses does not, by itself, preclude permission to examine such witness at a later stage. The circumstances explaining the failure to produce the witness at the appropriate stage have to be examined. Where the omission is attributable to circumstances beyond the party's control, or where the proposed evidence is shown to be of substantial significance for the just adjudication of the controversy, the Court may consider permitting its examination, subject to appropriate safeguards. Conversely, where the witness was known and available, an opportunity to produce him had been afforded, and no satisfactory explanation for the omission is forthcoming, the request for reopening calls for closer scrutiny.

31. The requirement of expeditious disposal is another relevant consideration, particularly where the proceedings have remained pending for a considerable period. The need for expedition cannot, however, by itself, justify refusal of an opportunity to adduce evidence which is demonstrably necessary for a fair adjudication. Equally, the requirement of a fair opportunity cannot be invoked as an unrestricted basis for reopening evidence whenever a party notices an omission after its evidence has been closed. The Court must strike a balance between the relevance and necessity of the proposed evidence, the explanation furnished for its earlier non-production, the stage at which the request is made and the likely effect of reopening the evidence upon the progress of the proceedings.

32. The exercise of discretion in such matters, therefore, requires a cumulative assessment of the relevant circumstances and cannot be

governed by any single consideration in isolation. The applicant must demonstrate not merely that the proposed witness may furnish evidence in support of his case, but that the proposed evidence has a material bearing upon the controversy and that sufficient justification exists for permitting its introduction at the stage when the application is made. The power to reopen evidence cannot be permitted to become a means of keeping the evidentiary stage open indefinitely or of securing successive opportunities to produce material which was available and could have been produced during the original course of evidence.

33. The legal position that emerges from the aforesaid principles is that the power to reopen evidence or permit a party to adduce further evidence under Section 151 CPC is discretionary and is to be exercised sparingly, where the circumstances of the case so warrant in the interests of justice. Neither the prior inclusion of a witness in the list of witnesses nor the subsequent closure of evidence operates as an absolute bar to his examination. However, where a party, despite having identified the witness and having been afforded an opportunity to produce him, expressly closes its evidence and thereafter seeks to introduce such witness at a belated stage, the Court must examine whether a satisfactory explanation has been furnished for the earlier omission and whether the proposed evidence is sufficiently material for the just adjudication of the controversy. The stage at which the application is made, the bona fides of the request, the possibility of prejudice to the opposite party and the impact on the progress of the proceedings are also relevant considerations. The power cannot be invoked as a matter of course merely to fill an evidentiary lacuna or to afford a party another opportunity to improve its case.

34. Examined in the light of the aforesaid principles, the chronology of the proceedings assumes significance. The petitioner filed his list of witnesses on 21.04.2025, which included Sameer Sharma, the handwriting expert. Thereafter, the petitioner examined D.W.-1 to D.W.-4 between 22.04.2025 and 24.07.2025. On 31.07.2025, an endorsement was made on his behalf stating that no further evidence was

required to be adduced. The trial court thereupon closed the petitioner's evidence and fixed the matter for arguments.

35. It is not in dispute that the handwriting expert had been included in the list of witnesses before the petitioner's evidence was closed. The proposed witness was, therefore, known to the petitioner during the course of the proceedings, and his examination was not sought on account of any subsequent discovery or the availability of material which had come to light only after the closure of evidence. The petitioner had an opportunity to produce the witness before making the endorsement dated 31.07.2025.

36. The petitioner's explanation is that the omission occurred inadvertently on account of a mistake on the part of his counsel. An omission attributable to counsel cannot be rejected merely on the ground that it was a consequence of inadvertence. At the same time, the assertion of inadvertence must be examined in the context of the proceedings as a whole and the circumstances in which reopening was sought. A general assertion of mistake, without sufficiently explaining why the identified witness was not produced despite the opportunity available, and why the omission was not addressed before the matter advanced to final arguments, does not, by itself, furnish sufficient grounds for reopening the evidence.

37. The petitioner has also relied upon his advanced age and physical disability. Such circumstances may be relevant in assessing the explanation furnished for a procedural omission. Their significance, however, has to be considered in relation to the particular omission sought to be rectified. The material placed before the Court does not establish how these circumstances prevented the petitioner from producing the handwriting expert before expressly closing his evidence, or otherwise explain the stage at which the application came to be filed. These circumstances, therefore, do not, by themselves, furnish sufficient justification for reopening the evidentiary stage.

38. The stage at which the application was moved is another relevant consideration. The trial court recorded that the petitioner's evidence had

been closed on 31.07.2025 and that the matter had thereafter been fixed for arguments. Various applications and revisions arising in the course of the proceedings were subsequently dealt with. The application seeking permission to examine the handwriting expert was ultimately filed after the respondent's counsel had concluded final arguments on 21.02.2026 and submitted written arguments.

39. Mere delay in making an application does not, in every case, justify its rejection. Where the proposed evidence is materially necessary for the just adjudication of the controversy and the omission is satisfactorily explained, the Court may, even at an advanced stage, consider reopening the evidence, subject to appropriate safeguards. In the present case, however, the delay assumes significance when considered cumulatively with the fact that the proposed witness had already been included in the list of witnesses, the petitioner had an opportunity to produce him, and his evidence had been expressly closed before the matter proceeded to final arguments.

40. The petitioner's contention is that the testimony of the handwriting expert is necessary to establish that the rent receipts relied upon by the respondent-landlord are forged. The question concerning the genuineness of those receipts may be relevant to the controversy between the parties, subject to the pleadings and evidence on record. However, the relevance of a disputed document does not, by itself, establish that examination of a particular witness must necessarily be permitted after the evidentiary stage has concluded. It was also necessary for the petitioner to demonstrate the materiality and necessity of the proposed evidence and furnish a satisfactory explanation for not producing the witness at the appropriate stage.

41. In the present case, the petitioner had identified the handwriting expert in his list of witnesses but did not examine him before closing his evidence. The explanation of an inadvertent mistake on the part of counsel was considered by the courts below but was not found sufficient to justify reopening the evidence at the stage when the application came to be filed. The material placed before this Court does not disclose any

subsequent development or circumstance which rendered the proposed examination necessary only after the closure of evidence. Nor does it sufficiently explain why the omission could not have been rectified before the petitioner expressly stated that no further evidence was required.

42. The revisional court also took note of the petitioner's admissions concerning the relationship of landlord and tenant and the monthly rent in the written statement and reply to the legal notice. That circumstance was considered while assessing the necessity of examining the handwriting expert in the context of the controversy before the trial court. The significance of those admissions, and the extent to which they bear upon the issues requiring determination in the suit, remain matters to be assessed by the trial court in accordance with law. For the limited purpose of examining the procedural order impugned herein, it is sufficient to observe that the revisional court found that the necessity of the proposed examination had not been established in the circumstances of the case.

43. Learned counsel for the petitioner has further submitted that any prejudice to the respondent could have been addressed by imposing costs and granting a limited opportunity to respond to the expert's testimony. The imposition of costs or the grant of a limited opportunity to the opposite party may, in an appropriate case, serve as safeguards when further evidence is permitted. Such measures, however, do not dispense with the threshold requirement of establishing sufficient grounds for reopening the evidence. The availability of safeguards against prejudice cannot, by itself, justify reopening the evidentiary stage in the absence of a satisfactory explanation for the omission and a demonstrated need for the proposed evidence.

44. The revisional court has also referred to the direction issued by this Court for expeditious disposal of the suit. A direction for expeditious disposal cannot, by itself, constitute a ground for refusing an otherwise justified request to adduce material evidence. At the same time, the stage already reached in the proceedings and the consequences of reopening

the evidence are relevant considerations in assessing whether the request is sufficiently justified. In the present case, the direction for expeditious disposal was considered along with the voluntary closure of evidence, the prior availability of the proposed witness, the explanation furnished for the omission, and the timing of the application. The rejection of the application is, therefore, not being sustained merely on the ground that the suit was required to be decided expeditiously.

45. The distinction drawn by the revisional court between the present case and **Syed Ashraf Ali** (supra) also has to be understood in the context of the procedural issue arising for consideration. The present case concerns a request to reopen evidence after the petitioner had expressly stated that no further evidence was required to be adduced. It is not a case in which the petitioner seeks to remedy the denial of an effective opportunity to cross-examine a witness. The principles applicable to a denial of opportunity to test evidence, therefore, do not govern the present controversy in the same manner, having regard to the distinct circumstances in which the petitioner's evidence came to be closed.

46. The trial court considered the application in the context of the opportunities afforded to the petitioner, the endorsement dated 31.07.2025, and the stage reached in the suit. The revisional court, in turn, examined the relevant circumstances, including the prior identification of the handwriting expert, the closure of evidence, the belated filing of the application, the explanation furnished by the petitioner, and the requirement of expeditious disposal. Both courts found that the circumstances did not furnish sufficient justification for permitting further evidence at that stage.

47. The petitioner's plea of inadvertence has, thus, been considered in the context of the entire sequence of proceedings. The procedural power to reopen evidence is not exercisable merely upon an assertion that the omission was accidental, particularly where the proposed witness had already been identified and the party had an opportunity to produce him before expressly closing its evidence. In the absence of a satisfactory explanation for the omission, and having regard to the stage at which the

application was made, the discretion exercised by the courts below cannot be said to be arbitrary or legally unsustainable.

48. The conclusion reached by the courts below does not amount to a determination that the disputed rent receipts are genuine or that the petitioner's objections concerning their genuineness are devoid of merit. The controversy before this Court is confined to the legality of the orders refusing permission to examine the handwriting expert after the closure of evidence. The merits of the underlying dispute, including the evidentiary value of the rent receipts and the respective claims of the parties, remain matters to be decided by the trial court on the basis of the pleadings and evidence on record and in accordance with law.

49. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that subordinate courts and tribunals act within the bounds of their authority and exercise their jurisdiction in accordance with law. It is not an appellate jurisdiction permitting reassessment of every procedural order merely because another view may be possible. Interference is warranted where a subordinate court has acted beyond its jurisdiction, failed to exercise jurisdiction vested in it, or committed a material illegality or procedural irregularity warranting supervisory correction.

50. In the present case, the trial court exercised its discretion after considering the circumstances in which the petitioner's evidence had been closed and the stage at which the application for adducing further evidence was made. The revisional court thereafter examined the order and found no illegality, material irregularity or jurisdictional error warranting interference. The reasons recorded by the courts below are consistent with the principles governing the reopening of evidence. The material placed before this Court does not disclose any infirmity warranting interference under Article 227 of the Constitution of India.

51. For the reasons recorded above, this Court finds no jurisdictional error, material illegality or procedural irregularity in the orders dated 09.03.2026 and 13.08.2026 warranting interference in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

52. The petition is, accordingly, **dismissed**.

53. The trial court shall proceed with the suit in accordance with law and endeavour to decide the same expeditiously, having regard to the direction already issued by the revisional court. The decision shall be based on the pleadings and evidence on record, uninfluenced by any observation made in this judgment touching upon the merits of the respective claims of the parties.

54. There shall be no order as to costs.

(Dr. Yogendra Kumar Srivastava,J.)

November 04, 2026
RKK/-

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad