



than one year of closure of her evidence, the plaintiff moved an application under Section 151 CPC for recalling PW2, citing oversight on the part of her counsel. The trial Court, despite opposition by the defendants, allowed the application subject to payment of ₹1,000 as costs.

Submission of learned counsel for the petitioner

3. Learned counsel for the petitioner/defendants has submitted that the trial Court acted illegally in permitting the recall of PW2, as the plaintiff was granted nearly 30 effective opportunities spread over a period of more than five years. It is argued that the deliberate and conscious act of closing the evidence cannot be undone under the garb of oversight. Reliance has been placed on *K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275*, wherein it was held that the inherent powers of the Court under Section 151 CPC cannot be exercised to fill up lacunae in evidence and recalling of a witness is permissible only in exceptional circumstances.

Findings

4. I have heard learned counsel for the petitioner and perused the record of the case in hand.

5. A perusal of the zimni orders placed on record reveals that on the very date when PW2's affidavit-in-chief was tendered, her cross-examination was deferred at the request of the defendants' counsel. The record further discloses that thereafter the case kept pending for plaintiff's evidence, and during certain periods, particularly during the outbreak of COVID-19, the case could not progress in the normal course. On some dates, the statements of other witnesses, namely PW4 and PW5, were recorded. Finally, on 17.09.2024, the evidence of the plaintiff was closed, which appears to have been a result of oversight by counsel.



6. It is trite that cross-examination is a valuable right in the hands of the opposite party, but it is equally settled that evidence of a witness who has already tendered examination-in-chief cannot be discarded without affording opportunity of cross-examination. PW2 is none other than the General Power of Attorney holder of the plaintiff and is a material witness to substantiate the plaintiff's case. Non-availability of her cross-examination would undoubtedly prejudice the proper adjudication of the controversy. The law on the subject, including the ratio in *K.K. Velusamy (supra)*, makes it clear that while lacunae in evidence cannot be permitted to be filled, yet where the ends of justice so demand, the Court is empowered to exercise its inherent jurisdiction to recall a witness to ensure that the dispute is adjudicated on its merits.

7. In the present case, though the plaintiff was negligent in availing repeated opportunities, part of the delay can be attributed to intervening circumstances, including COVID-19. The act of counsel in closing the evidence without cross-examination of PW2 appears to be an inadvertent lapse. In such circumstances, the trial Court rightly exercised its discretion in allowing the application under Section 151 CPC, subject to costs. To balance the equities, the defendants can be compensated with heavy costs, which would sufficiently address any prejudice caused to them on account of delay.

8. This Court, therefore, finds no illegality or perversity in the order dated 25.08.2025 warranting interference under Article 227 of the Constitution of India. The impugned order is in consonance with the settled principles of law that justice should not be defeated on account of technicalities or lapses of counsel, particularly where a material witness is involved and the opposite party's right of cross-examination can still be secured.

**Conclusion**

9. Accordingly, the revision petition stands dismissed. The order of the trial Court recalling PW2, namely, Ms. Saroj Garg, for cross-examination is upheld, subject to the condition that the plaintiff/respondent No. 1 shall pay an enhanced cost of ₹10,000 to the defendants before the next date of hearing. The trial Court shall then ensure that the cross-examination of PW2 is concluded expeditiously, and no unnecessary adjournment is granted thereafter.

10. Pending application(s), if any, also stand disposed of.

September 16, 2025

tripti

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No

(MANDEEP PANNU)
JUDGE