

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No: CM(M) No.3/2025

*Reserved on : 15.09.2026
Pronounced on : 26.09.2026
Uploaded on: 26.09.2026*

Mangat Ram

...Petitioner(s)/Appellant(s)

Through: Mr. Abhishek Wazir, Adv. with
Mr. Rajat Sudan, Adv.

Vs.

Shano Devi

.... Respondent(s)

Through: Mr. Subodh S. Jamwal, Adv.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of the present petition, the petitioner has challenged order dated 11.12.2024 passed by Additional Principal Judge, Family Court, Jammu (hereinafter referred to as "the trial court"), whereby the application filed by the respondent under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, for summoning/recalling of the witnesses and for producing additional evidence, has been allowed.
2. It appears that the petitioner has filed a petition under Section 13 of the Hindu Marriage Act against the respondent, seeking dissolution of marriage on the grounds of desertion and non-compliance with the decree passed against her under Section 9 of the Hindu Marriage Act.

The petitioner has also alleged that he has been treated with cruelty by the respondent.

3. The petition has been contested by the respondent by filing objections thereto. The learned trial court on the basis of pleadings of the parties, framed the following issues:-

“1. Whether the respondent has treated the petitioner with ‘cruelty’ within the meaning of Section 13(1) of the J&K Hindu Marriage Act.

(OPP)

2. Whether the respondent has deserted the petitioner constituting the ground of ‘desertion’ as defined in the relevant provisions of Section 13(I)(iii) of the J&K Hindu Marriage Act.

(OPP)

3. Relief, to which the petitioner is entitled?

(OPP)

4. It seems that the petitioner, in order to prove his case, besides examining himself as a witness, examined PWs Prem Nath, Beli Ram and Sansar Chand as witnesses in support of his case. On the other hand, the respondent, besides examining herself as a witness, examined RWs Darshal Lal, Parshotam Kumar and Sunita Devi as witnesses in support of her case.
5. After conclusion of evidence of the parties, when the case was set down for final arguments, the respondent came up with an application under Order XVIII Rule 17 read with Section 151 CPC, with a prayer that the petitioner, Mangat Ram, and his witnesses, PWs Prem Nath, Beli Ram and Sansar Chand, may be recalled for their further cross-examination and that she may be allowed to examine witnesses,

namely, Raman Kumar and Priya Rani, in support of her case. In the application, it was pleaded by the respondent before the trial court that recalling/examining the aforesaid witnesses is material for the purposes of just decision of the case because only a few days back, she has come to know that the petitioner had, during the subsistence of his first marriage, entered into wedlock with one Laxmi Devi, from whom he has three children. This fact was disclosed to her when she met one Raman Kumar, who happens to be the son-in-law of the petitioner from his daughter, namely, Priya Rani, who was born to him through his second wife, Laxmi Devi.

6. The aforesaid application was resisted by the petitioner by filing objections thereto. However, the learned trial court has, vide impugned order dated 11.12.2024, proceeded to allow the said application, thereby permitting the respondent to recall the petitioner and PWs Sansar Chand and Prem Nath. Besides this, she has also been permitted to examine Raman Kumar and Priya Rani as witnesses.
7. The petitioner has challenged the impugned order on the grounds that there was no need to reopen the evidence in the facts and circumstances of the case. It has been contended that it was not open to the trial court to burden the petitioner with costs of Rs. 10,000/- without finally deciding as to whether the petitioner had, in fact, entered into wedlock with Laxmi Devi. It has also been contended that the impugned order, on the face of it, is illegal and the same has been passed without application of mind.

8. I have heard learned counsel for the parties and perused record of the case.

9. The learned trial court, while passing the impugned order, has seemingly exercised its jurisdiction under Order XVIII Rule 17 CPC read with Section 151 CPC. For the purpose of examining the issue with regard to the validity of the impugned order, the scope and power of the Court to recall witnesses under Order XVIII Rule 17 CPC and to reopen the evidence under Section 151 CPC needs to be understood.

10. Order 18 Rule 17 of the CPC for the sake of reference is reproduced as under:-

“ 17. Court may recall and examine witness

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

11. From a plain reading of the aforesaid provision, it appears that the Court is vested with the power to recall any witness who has been examined, and the Court may put such questions to the said witness as it thinks fit. The main purpose of the Rule is to enable the Court, while trying the suit, to clarify any doubt which it may have with regard to the evidence led by the parties.

12. The Supreme Court has, in the case of **Vadiraj Naggappa Vernekar (dead) through LRs. Vs. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410**, interpreted the provisions contained under Order XVIII Rule 17 CPC, in the following manner:-

“28. The power under the provisions of [Order 18 Rule 17 CPC](#) is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-

examination would not cause any prejudice to the parties. That is not the scheme or intention of [Order 18 Rule 17 CPC](#).

29. It is now well settled that the power to recall any witness under [Order 18 Rule 17 CPC](#) can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

30. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in- chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case.

31. Some of the principles akin to [Order 47 CPC](#) may be applied when a party makes an application under the provisions of [Order 18 Rule 17 CPC](#), but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

13. The scope and power of the Court under Order XVIII Rule 17 CPC

was elaborately discussed by the Supreme Court in the case of **K.K.**

Velusamy Vs. N. Palanisamy, 2011 (11) SCC 275, in the following

words:-

“8. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide [Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate](#) - 2009 (4) SCC 410]. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in- chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling

the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

14. From the foregoing analysis of the legal position with regard to the scope and power under Order XVIII Rule 17 CPC, it is clear that the said power can be used by the Court trying a suit only to clarify any doubt which it may have with regard to the evidence led by the parties. The provision cannot be used to fill up the lacunae or omissions in the testimony of a witness who has already been examined. It is also clear that the power under Order XVIII Rule 17 CPC has to be used sparingly, in appropriate cases and with circumspection, and it cannot be used to reopen the evidence of a party.

15. Section 151 CPC, provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The said provision can be pressed into service to take care of a situation which is not otherwise provided for anywhere in the Code of Civil Procedure. Thus, while a situation which warrants recall of a witness is covered by the provisions contained under Order XVIII Rule 17 CPC, but a situation where the Court feels the necessity to reopen the evidence is not covered by any provision in the Code. The question arises as to whether the Court can exercise its power under Section 151 CPC to take care of such a situation.

16. The answer to the aforesaid issue has been rendered by the Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy** (supra).

While dealing with this issue, the Supreme Court has observed thus:-

“9. There is no specific provision in the Code enabling the parties to re- open the evidence for the purpose of further examination-in-chief or cross- examination. [Section 151](#) of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under [section 151](#) of the Code, subject to its limitations, can be invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

17. After making the aforesaid observations, the Supreme Court has held that Section 151 CPC can certainly be used for reopening of evidence or for recalling witnesses, but the said power cannot be routinely invoked. The Supreme Court further summarized the principles governing the exercise of power under Section 151 CPC in the following manner:-

“(a) [Section 151](#) is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is ‘right’ and undo what is ‘wrong’, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, [section 151](#) recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of [Section 151](#) of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in [Section 151](#) of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.

(f) The power under [section 151](#) will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

18.In the same judgment, the Supreme Court illustrated the situations in which the Court can exercise its inherent powers under Section 151 CPC for permitting the production of fresh evidence, by laying down as under:-

“12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the

arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under [section 151](#) of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

19. From the foregoing analysis of the legal position, it is clear that while

Order XVIII Rule 17 CPC takes care of a situation where the Court finds it necessary to clarify any doubt which it may have with regard to the evidence led by the parties, the said provision cannot be used to enable the parties to recall any witness for further examination-in-chief and cross-examination or to place additional material or evidence which could not be produced when the evidence was being led. It is also clear that, for the purposes of producing any additional evidence which a party comes across after the evidence was closed, the Court has the power under Section 151 CPC to permit such party to lead additional evidence in an appropriate case, if it is necessary in the interests of justice.

20. Keeping the aforesaid legal position in mind, let us now advert to the facts of the present case. The case of the respondent is that she has recently come to know that the petitioner had, during the subsistence of his first marriage, entered into wedlock with one Laxmi Devi and that out of the said wedlock, one daughter, Priya Rani, was born, who has been married to one Raman Kumar. According to the respondent, this fact came to her knowledge when she recently met Raman Kumar in the Court Complex, Jammu while he was pursuing his case against Priya Rani in the Court.

21. Learned counsel for the petitioner has contended that the fact relating to the second marriage of the petitioner was well within the knowledge of the respondent even during the pendency of the proceedings, as she had filed a complaint under Section 494 RPC against the petitioner before the Court of learned 1st Additional Sessions Judge, Jammu, which came to be dismissed by the said Court in terms of judgment dated 31.05.2014. Thus according to the petitioner, it is not a case where the respondent has come to know about the second marriage of the petitioner recently, as has been alleged by her.

22. In the above context, it is to be noted that it is the admitted case of the parties that the respondent had filed a complaint under Section 494 RPC against the petitioner before the learned 1st Additional Sessions Judge, Jammu. However, a perusal of the judgment passed in the said complaint would reveal that the respondent had alleged that the petitioner had solemnized marriage with one Bholi Devi, daughter of Balak Ram, which fact was not proved. Now, the respondent alleges that the petitioner had entered into wedlock with one Laxmi Devi, who is not the same lady with whom the petitioner was alleged to have entered into wedlock at the time when the respondent made the complaint under Section 494 RPC in the year 1997.

23. To support her contention that petitioner has entered into wedlock during the subsistence of first marriage, the respondent has, along with the application filed before the trial court, placed on record a copy of the Aadhaar Card of Priya Rani reflecting the name of the petitioner as her father with same residence. She has also placed on

record a copy of the petition under Section 12 of the Hindu Marriage Act filed by the said Priya Rani against Raman Kumar, seeking annulment of her marriage. In the said document, Priya Rani has reflected her parentage as daughter of Mangat Ram. A copy of the marriage agreement between Raman Kumar and Priya Rani has also been placed on record, which also shows Mangat Ram as the father of Priya Rani. Several other documents have been placed on record by the respondent along with her application, which prima-facie go on to show that Priya Rani is the daughter of the petitioner, who had entered into wedlock with one Raman Kumar, from whom the respondent is alleged to have obtained information with regard to the second marriage of the petitioner, Mangat Ram, with Laxmi Devi.

24.If, after the trial of the case, it is established that, in fact, the petitioner, Mangat Ram, had entered into wedlock during the subsistence of his marriage with the respondent, it would have a bearing upon the outcome of the issue as to whether the respondent was justified in not joining the company of the petitioner and it would also be a good defence to the respondent against the evidence led by the petitioner to prove the allegations of cruelty. The evidence sought to be led by the respondent pertains to the conduct of the petitioner and, as such, the Court, in exercise of its power under Section 151 CPC, would be justified in permitting production of such evidence, as it is relevant and necessary in the interests of justice to do so.

25.Since important and relevant evidence is sought to be produced by the respondent, it would be necessary for the Court to recall the petitioner, Mangat Ram, to elicit the requisite information and to clarify the

doubts arising from the evidence led by the parties on this aspect of the matter, by exercising its power under Order XVIII Rule 17 CPC. However, so far as recalling of other witnesses of the petitioner, PWs Sansar Chand and Prem Nath, is concerned, the same would be an unnecessary exercise, as the said persons, during their cross-examination, have clearly stated that they are not aware of the second marriage of the petitioner. To that extent, the impugned order passed by the learned trial court is not sustainable in law.

26. So far as the direction of the learned trial court for imposition of costs of Rs. 10,000/- upon the petitioner for concealing information with regard to his second marriage is concerned, the same is also not sustainable in law, because the second marriage of the petitioner with Laxmi Devi is a fact which is yet to be established. It is only after the respondent produces Raman Kumar and Priya Rani as witnesses and the petitioner is recalled by the Court for their examination that the Court would be in a position to record a finding with regard to the second marriage of the petitioner. Without recording such a finding, it cannot be stated that the petitioner has concealed the fact with regard to his second marriage. The direction of the learned trial court to this extent is not sustainable in law.

27. For what has been discussed hereinabove, the petition is partly allowed, and the impugned order, to the extent of imposition of costs of Rs. 10,000/- upon the petitioner and to the extent of the direction regarding recall of witnesses, namely, PWs Sansar Chand and Prem Nath, is set aside. However, the impugned order, to the extent of recall of the petitioner for his examination and grant of permission to the

respondent to produce Raman Kumar and Priya Rani as witnesses, is upheld.

28.Learned trial Court shall proceed further in the matter in accordance with the observations made by this Court in this order.

29.Disposed of as above.

(Sanjay Dhar)
Judge

Jammu
26.09.2026
Madan Verma-Secy

Whether order is speaking? Yes
Whether order is reportable? Yes

