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

Reserved on: 20.08.2026
Date of Decision: 15.09.2026
Date of Uploading: 15.09.2026

\# **CNR No. DLHC010390072026**

\+ CM(M) 1849/2026 & CM APPL. 56273/2026

RAJINDER KUMAR .....Petitioner
Through: Mr. Sandeep Sharma, Sr. Adv. with Mr. Abhijeet Vikram Singh, Adv.

versus

RAJENDER KUMAR KAUSHIK & ANR. .....Respondents
Through: Mr. Pankaj Vivek, Mr. A.N. Aggarwal and Mr. Tarun Kumar, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present petition has been preferred by the petitioner/decree holder assailing the order dated 05.08.2026 as well as the subsequent order dated 17.08.2026 passed by the learned District Judge (Commercial Court)-01, South-West District, Dwarka Courts[1], New Delhi in Execution (Comm.) 68/2024[2] titled *"Rajinder Kumar v. Ram Gopal"*.

2. The facts relevant for adjudication of the present petition are that the underlying execution arises from a commercial suit bearing CS (Comm.) 25/2023 titled *"Rajinder Kumar v. Ram Gopal"* for possession, permanent

[1] Hereinafter "Executing Court"
[2] Hereinafter "execution proceedings"

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injunction, mesne profits and arrears of electricity charges, instituted by the petitioner against respondent no. 2/judgment debtor, in respect of Godown bearing No. 14, Khasra No. 32/27, Mahesh Garden, Najafgarh, New Delhi-110043.

3. Due to repeated absences by respondent no. 2, the learned Trial Court *vide* order dated 20.01.2024 proceeded ex-parte against respondent no. 2 and ultimately, the suit was decreed in favour of the petitioner on 30.01.2024. The reliefs granted to the petitioner *vide* order dated 30.01.2024 are reproduced hereunder:

> "12. In view of the aforesaid discussions, plaintiff is able to partly prove its case and thus following reliefs follows:
>
> (i) The suit of the plaintiff is decreed against the defendant for the recovery of possession of suit property i.e. Godown bearing no. 14, khasra no. 32/27, Mahesh Garden, near Anaj Mandi, Main Bahadurgarh Road, Opposite wine shop, Najafgarh, New Delhi-110034.
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> (ii) Plaintiff is also awarded damages/mesne profit @ Rs. 50,000/- per month w.e.f. 10.07.2021 (Rs. 1 lakh to be adjusted) against the defendant, till the recovery of possession of the suit property.
>
> (iii) Cost of the suit is also awarded."

4. In April 2024, seeking to execute the decree, the petitioner instituted the underlying execution proceedings. On 15.05.2024, the learned Executing Court issued warrants of possession and attachment against respondent no.2.

5. In the interregnum, one Ms. Jyoti filed an objection application under Order XXI Rule 58 read with Section 151 of the Code of Civil Procedure, 1908[3] but this application was dismissed as withdrawn *vide* order dated 26.07.2024, with liberty to file afresh as per law. Subsequently, respondent

[3] Hereinafter "CPC"

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no. 1/objector moved an objection application through Ms. Jyoti, this application was also dismissed as withdrawn *vide* order dated 02.08.2024 with liberty to file afresh as per law.

6. On 02.08.2024, respondent no. 1 moved another application under Order XXI Rules 97 and 101 read with Section 151 of the CPC through Ms. Jyoti, contending that respondent no. 1 was the rightful owner and in settled possession of the suit property. To counter these objections, the petitioner filed a short reply dated 29.08.2024 raising the plea of its ownership of the suit property.

7. After arguments were heard, the learned Executing Court, on 18.11.2025 disposed of the objections filed by respondent no. 1 by framing certain issues and observing that the said issues shall be disposed of only after the evidence and trial. The issues framed by the learned Executing Court are reproduced hereunder for ready reference:

> "Whether the ex-parte decree dated 30.01.2024 passed in CS (Comm) No. 25/2023 titled as Rajinder Kumar Vs. Ram Gopal is not executable and binding upon the Objector? Onus of Proof on the Objector.
>
> Whether the Objector Mr. Rajinder Kumar Kaushik is in possession of the suit property bearing Plot No. 14, situated at Khasra No. 32/27, Mahesh Garden, near New Anaj Mandi, Main Bahadurgarh Road, opposite Wine Shop, Najafgarh, New Delhi in his own independent right? Onus of Proof on the Objector.
>
> Whether the possession of the above said suit property was handed over by the JD / defendant to the Objector after the passing of the ex-parte decree dated 30.01.2024 or during the pendency of the above said suit as argued by the DH / plaintiff? Onus of Proof on the DH / plaintiff."

8. The aforesaid order dated 18.11.2025 was challenged by the petitioner before the Division Bench of this Court in EFA (Comm) 14/2026, titled *"Rajinder Kumar v. Rajender Kumar Kaushik & Anr."*. This appeal was

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dismissed as withdrawn *vide* order dated 06.05.2026. But, considering the facts and circumstances of the case, this Court *vide* the same order, directed the learned Executing Court to decide the objections of respondent no. 1 within a period of three months from the passing of the order and the petitioner was granted liberty to canvass the issue of maintainability *qua* the objections before the learned Executing Court. The concerned directions are reproduced hereunder:

> "3. As regards the issues which are framed by the Executing Court are concerned qua the objection of the respondent, we direct that those objections in any case be decided within a period of three months from today.
>
> 4. The contention of the appellant that the issue as regards the maintainability of objection is open to be canvassed before the Executing Court."

9. Pursuant to the liberty granted by this Court, the petitioner preferred an application under Order XIV Rule 5 of the CPC, which came to be allowed by the learned Executing Court *vide* order dated 26.05.2026, and an additional issue namely, *"Whether the objection application dated 02.08.2024 filed by the Objector Rajinder Kumar Kaushik through his power of attorney holder Ms. Jyoti is maintainable in law?"* was framed. Through the same order, the learned Executing Court allowed an application filed by respondent no. 1 under Section 151 of the CPC seeking to place on record *fards/khatonis* pertaining to the suit property.

10. Subsequently, the evidence on behalf of respondent no. 1 stood closed on 13.07.2026, however, the petitioner only filed its evidence by way of affidavit on 27.07.2026.

11. At this juncture, respondent no. 1 filed an application under Order XIX Rules 4 and 5 of the CPC seeking rejection of the entire affidavit by

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way of examination-in-chief of the petitioner and/or redaction of paras 3 to 13 of such affidavit. Through the same application, respondent no. 1 also sought rejection of the entire affidavit of Sh. Anand, the petitioner's witness. Meanwhile, the petitioner filed an application under Order VIII Rule 1 A (3) read with Section 151 of the CPC seeking to place on record the title chain of the suit property, electricity bills, demand note and payment receipt for security deposit and a photograph of the suit property during the tenancy of respondent no. 2 etc. on the ground that these documents were handed over to the previous counsel but were not placed on record.

12. Due to a number of miscellaneous applications being filed by both parties, the learned Executing Court could not record the evidence of the petitioner. Therefore, the learned Executing Court wrote a request letter dated 28.07.2026 to this Court seeking extension of time. The said request was allowed and on 10.08.2026 by way of last chance, this Court granted an extension of two months to the learned Executing Court.

13. Thereafter, the learned Executing Court *vide* the common impugned order dated 05.08.2026, partly allowed the application of respondent no.1 under Order XIX Rules 4 and 5 of the CPC and dismissed the application of the petitioner under Order VIII Rule 1A (3) read with Section 151 of the CPC. The relevant portion of the impugned order dated 05.08.2026 is reproduced hereunder:

> "45. In the light of the above said discussion, the application filed by the DH under Order VIII Rule 1A of CPC is dismissed. The application filed by the Objector under Order XIX Rules 4 & 5 of CPC is partly allowed to the extent that the affidavit of DH is hereby rejected but the evidence by way of affidavit of Sh. Anand is hereby taken on record."

14. Thus paras 3 to 13, which contained contentions of the petitioner with

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respect to the title chain, electricity bills, inaccuracy in the description of the *Khasra* number, creation and subsistence of the tenancy and the loss of original title documents, also stood redacted.

15. Further, the learned Executing Court *vide* the impugned order dated 17.08.2026 took the evidence affidavit of Sh. Mukesh Kumar off the record and closed the right of the petitioner to file evidence on the behalf of its remaining witnesses. The relevant portion of the impugned order dated 17.08.2026 is reproduced hereunder:

> "The evidence by way of affidavit of rest of the witnesses as per the list has not been placed on record. In these circumstances, since evidence by way of affidavit of two witnesses on behalf of DH, one that of Mr. Anand and other that of Mr. Mukesh Kumar are there on record and evidence of none of other witnesses as per list on behalf of the DH are there on record. Accordingly, the right of the DH to file the evidence on behalf of the affidavit of rest of the witnesses as per the list is hereby closed.
>
> XXX
>
> It has to be seen that the present matter has arisen out of a decree passed in a commercial suit and since the documents annexed with the affidavit of the witness Sh. Mukesh Kumar were not filed earlier, the evidence by way of affidavit of Sh. Mukesh Kumar is hereby taken off the record."

16. Aggrieved thereby, the petitioner has preferred the present petition.

17. Mr. Sandeep Sharma, the learned senior counsel appearing for the petitioner submits that the documents which were sought to be placed on record through the application under Order VIII Rule 1A (3) read with Section 151 of the CPC namely, the title chain of the suit property, BSES payment receipts, and electricity bills generated in the name of the petitioner, as well as, the contentions which were sought to be made out by the petitioner in paras 3 to 13 of the evidence affidavit, are all essential to determine the question of right, title and interest of the petitioner in the suit

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property.

18. Mr. Sharma asserts that disallowing the documents and redacting the paras, effectively shut out the defence of the petitioner, who has, from the very inception of the suit, taken the stand that he is the owner of the suit property. Furthermore, no prejudice would have be caused to the respondent no. 1 had these documents and contentions been taken on record.

19. In support of the aforesaid submissions, the learned senior counsel places reliance on the decision of the Hon'ble Apex Court in ***Sugandhi v. P. Rajkumar***[4], to contend that leave ought to be granted to produce documents vital for arriving at a just decision, even at a belated stage. Further reliance is placed on an order of this Court dated 04.01.2024 in ***Waterbridge Capital Management LLP v. Asian Hotels (North) LLP***[5] to contend that documents which are essential for adjudication of issues, ought to be accepted and taken on record.

20. Lastly, it is contended that the learned Executing Court committed an error *vide* the impugned order dated 17.08.2026 by taking the evidence affidavit of the petitioner's witness Sh. Mukesh Kumar off the record, closing the petitioner's right to lead evidence on behalf of its remaining witnesses, and scheduling the matter for final arguments on the objections of the respondent no. 1, as the same effectively rendered the petitioner defenceless against the objections.

21. *Per Contra*, Mr. Pankaj Vivek, the learned counsel appearing for the respondent no.1 submits that the petitioner failed to plead or place on record

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[4] **(2020) 10 SCC 706**
[5] **CS(Comm) 279/2020**

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any document evidencing title or flow of ownership, despite respondent no. 1 repeatedly raising a specific challenge to the petitioner's title.

22. It is further submitted that it was only on 29.07.2026, after respondent no. 1's evidence stood closed, that the petitioner moved its application under Order VIII Rule 1A (3) read with Section 151 of the CPC, solely as an afterthought. The documents sought to be relied upon by the petitioner were rightly not taken on record, as these documents were already within the custody and control of the petitioner but remained undisclosed with the initial pleadings and no reasonable cause was put forth by the petitioner for such non-disclosure.

23. In support of the aforesaid submission, respondent no. 1 has placed reliance on the decision of the Hon'ble Apex Court in ***Sudhir Kumar @ S. Baliyan Vs Vinay Kumar G.B.***[6] to argue that documents already within a party's power, possession, and control cannot be introduced belatedly at the stage of evidence without establishing a genuine reasonable cause, and mere inadvertence cannot serve as a valid ground to grant leave.

24. Heard. Perused the record.

25. The primary question which arises for determination herein is whether the learned Executing Court committed an error by dismissing the petitioner's application under Order VIII Rule 1 A (3) read with Section 151 of the CPC, partly allowing the respondent's application under Order XIX Rules 4 and 5 of the CPC, taking the evidence affidavit of the petitioner's witness Sh. Mukesh Kumar off the record and closing the right of the petitioner to file evidence by way of affidavit of its remaining witnesses,

[6] **(2021) 13 SCC 71**

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vide the impugned orders dated 05.08.2026 and 17.08.2026, respectively.

26. Given that both parties assert ownership over the suit property, an effective adjudication of the controversy necessitates that the documents of title from both parties are taken on record. While the learned Executing Court *vide* order dated 26.05.2026 permitted respondent no. 1 to place *fards/khatonis* on record after an inordinate delay on a plea of inadvertence, it invoked the rigours of commercial jurisprudence against the petitioner and dismissed its application under Order VIII Rule 1A (3) read with Section 151 of the CPC *vide* the impugned order dated 05.08.2026.

27. Although the documents relied upon by the petitioner were introduced at a later stage, it cannot be denied the said documents formed the foundation of the petitioner's case. Consequently, the dismissal of the petitioner's application under Order VIII Rule 1A (3) read with Section 151 of the CPC caused irreparable prejudice to the petitioner, whereas no prejudice would have been caused to respondent no. 1 had the said documents been taken on record.

28. Additionally, a bare perusal of the petitioner's evidence affidavit reveals that it merely elaborated upon the plea of ownership already taken by the petitioner in the underlying suit as well as in the short reply dated 29.08.2024. It is clear that no new fact or controversy was introduced by way of the petitioner's affidavit so as to take respondent no. 1 by surprise. The relevant portion of the said reply is reproduced hereunder for ready reference:

> "18. That the Decree holder is the owner of the property in question from past several years."

29. It is trite that an evidence affidavit can expand on the factual

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assertions taken in the plaint but diverting from those assertions is not permissible. However, in the case at hand, the petitioner merely added on to its pleas already taken in the plaint. In light of the aforesaid discussion, it is essential to emphasize upon the observations made by this Court in ***Brij Praksh Gupta v. Ashwini Kumar***[7], whereby it was observed:

> **14.** In daily practice, it is noticed that the affidavits in evidence are a *'cut and paste'* from the plaint, which is not how they are supposed to be. The affidavit should contain facts which are to the personal knowledge of the deponent and the same cannot be a verbatim copy of the plaint. **The affidavit in evidence can factually expand on a plea taken in the plaint, it can also support factual assertions made in the plaint but it cannot contradict or state facts which cannot be derived from the plaint**. The practice of filing affidavits in evidence which replicate the plaint is incorrect and ought not to be permitted by Courts. Some guidance can be taken from the Delhi High Court (Original Side) Rules, 2018, which, in Rule 2 of Chapter XIX, specifically bar affidavits in evidence from reproducing pleadings/documents on file:
>
> *"**2. Evidence by affidavit. -** The Court may upon any application of either party showing sufficient cause, order attendance, for cross examination of the deponent, and such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs. Affidavits by way of evidence shall not merely reproduce pleadings and documents already filed."*

30. The contention of respondent no. 1 that the documents sought to be relied upon by the petitioner should not be taken on record because the said documents were not filed with the plaint or the reply dated 29.08.2024, is devoid of merit. It is settled under Order VI Rule 2 of the CPC, that a party is only required to plead material facts and not the evidence corresponding to it and as iterated above, the petitioner had specifically pleaded ownership

[7] **2020 SCC OnLine Del 1759**

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in its plaint as well as in its reply.

31. Insofar as the impugned order dated 17.08.2026 is concerned, the learned Executing Court by taking the evidence affidavit of the petitioner's witness Sh. Mukesh Kumar off the record, closing the petitioner's right to file evidence on behalf of its remaining witnesses and listing the matter for final arguments on respondent no. 1's objections on a short notice of two days, effectively shut the right of the petitioner to substantiate its case.

32. At this stage, this Court deems appropriate to emphasize that procedure is the handmaid of justice, and procedural hurdles cannot be allowed to obstruct a party from substantiating its case. In view thereof, it is pertinent to refer to the principles laid down by the Hon'ble Apex Court in *Sugandhi (supra).* The said principles are reproduced hereunder for ready reference:

> "9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

33. Thus, this Court is of the considered view that the impugned orders dated 05.08.2026 and 17.08.2026 cannot be sustained and are accordingly set aside.

34. At the same time, this Court cannot lose sight of the fact that there has been an undeniable delay on the part of the petitioner in placing the title chain and supporting documents on record at the initial stage. While

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substantive justice must prevail over procedural hurdles, the delay caused by the petitioner cannot go unaddressed. To balance equities, the indulgence granted to the petitioner to place the additional documents on record and tender its evidence is made subject to payment of cost of Rs. 25,000/- to the Delhi High Court Bar Association, Account bearing No. 15530100000478 (IFSC Code: UCBA0001553) maintained with the UCO Bank, Delhi High Court, New Delhi, payable by petitioner within a period of one week from today.

35. Accordingly, the application of the petitioner under Order VIII Rule 1A (3) read with Section 151 of the CPC is allowed, the evidence affidavit of the petitioner stands restored, and the evidence affidavits accompanied with supporting documents, of the remaining witnesses of the petitioner including Sh. Mukesh Kumar, are taken on record in the aforesaid terms.

36. In view of the repeated extensions already granted by this Court, the learned Executing Court is directed to conduct the underlying execution proceedings as expeditiously as possible in accordance with the order dated 10.08.2026 passed by the Division Bench of this Court in EFA(COMM) 14/2026.

37. The petition, along with pending applications, if any, stands disposed of in the aforesaid terms.

38. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J

SEPTEMBER 15, 2026/ar/as

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