

RECALL OF WITNESS IN CIVIL SUITS: STATUTORY SCOPE, INHERENT POWERS, AND JUDICIAL TRENDS

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ABSTRACT

*The recall of witnesses in civil trials presents a perennial challenge in Indian jurisprudence, requiring courts to delicately balance the competing interests of litigants while ensuring speedy justice. This paper critically examines the statutory framework governing witness recall under Order XVIII, Rule 17 of the Code of Civil Procedure, 1908, read in conjunction with the inherent powers of civil courts under Section 151 of the CPC. Through a comprehensive analysis of landmark Supreme Court precedents—including *Vadiraj Nagappaa Vernekar*, *K.K. Velusamy v. N. Palanisamy*, *Ram Rati v. Mange Ram*, and the recent *K. Bharathamma v. Bandaru Sakku Bai*—the paper establishes that witness recall is purely a discretionary power vested in the court, not a statutory right of litigants. The study delineates the judicial parameters governing such discretion: due diligence on the applicant's part, essentiality of the proposed evidence for just decision-making, and assessment of probable prejudice to the opposing party. The paper particularly examines the transformative contribution of *K.K. Velusamy*, which reconciled the interplay between Order XVIII, Rule 17 and Section 151 CPC, establishing a structured framework that balances expeditious trial with substantive justice. The analysis reveals that while courts possess inherent jurisdiction to recall witnesses in bonafide cases where vital evidence was unavailable despite due diligence, such power must be exercised sparingly and with caution to prevent dilatory tactics. The paper concludes by proposing that the recall mechanism serves as a crucial safety valve in civil jurisprudence, provided courts adhere to the established judicial parameters and impose appropriate costs to deter abuse of process.*

Keywords: Recall of Witness, Order XVIII Rule 17 CPC, Section 151 CPC, Civil Procedure Code 1908, Discretionary Power, Inherent Powers of Court, Speedy Trial, Due Diligence, Evidentiary Lacunae, Indian Civil Jurisprudence, K.K. Velusamy, Witness Examination, Cross-Examination, Judicial Discretion, Abuse of Process, Substantive Justice, Procedural Law, Evidence Law.

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INTRODUCTION

It has been a tantalising question in the minds of the courts and the Jurists and the learned lawyers as to how to balance the rights of both the sides of a suit while recording the evidence of the parties. The examination and cross-examination of witnesses form the evidentiary core of a civil trial. In civil jurisprudence governed by the Code of Civil Procedure, 1908 (CPC), the general rule requires parties to produce their evidence and examine witnesses in a structured sequence without repetitive or fragmented recording. However, situations arise where a witness must be recalled to clarify ambiguities or bring crucial, newly discovered evidence on record. Ample opportunity to the litigants for prosecuting and defending their case are the hallmark of a litigation in Original Side of a civil court. It is equally true and competing interest of litigants that justice must not be defeated in order to secure the opportunity of a litigating party. Speedy trial is hallmark of justice. *Justice delayed-Justice denied; justice hurried- justice buried*. The balance in the competing interest of the parties is the true justice delivery of the judicial system. In Indian civil jurisprudence, the statutory provision involved to address the circumstances of “recall of witness” appears to be *prima facie* in the Order 18 Rule 17 of the Code of Civil Procedure, 1908. Considering the competing interest of the litigants, need of the hour is to revisit the statutory provisions in the Code of Civil Procedure, 1908 in the backdrop of the precedents of the Hon’ble Supreme Court of India and High Court of various Judicatures. In Indian civil litigation, a trial relies heavily on documentary evidence and witness testimony. Once a witness has been examined, cross-examined, and discharged, their evidence is generally considered to have been completed. However, civil suits rarely follow a straight path—new documents surface, crucial questions are omitted, or facts require clarification. To prevent injustice from such oversights, the Code of Civil Procedure, 1908 (CPC) provides mechanisms for the court to recall and re-examine witnesses. The primary statutory provision governing this mechanism is Order XVIII, Rule 17 of the CPC, read in conjunction with the inherent powers of the court under Section 151 of the CPC.

Order XVIII, Rule 17, CPC:

“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.”

The Key Features of Order 18 Rule 17 of the CPC:

- **Court-Centric Power:** The provision exists primarily for the court’s convenience, enabling it to clear doubts or ambiguities in evidence before delivering judgment.
- **Stage of the Suit:** The power can be exercised “*at any stage of a suit*” prior to pronouncing judgment.

At the very outset, the first issue comes to mind of the law practitioners as to whether the Recall of Witness is statutory right of the litigant?

In this regard, it is fairly settled that the litigants in Indian civil suits do not have a statutory or absolute right to recall a witness. Under Indian civil law, the recall of a witness is purely a discretionary power vested in the trial court, intended primarily for the court’s own assistance

and clarification, rather than a right granted to parties to reopen evidence at will. On perusal of the statutory wording in Rule 17 of the Order 18 of CPC, there is the use of term “**may**”. This shows the legislative intent enshrined in the governing provision, Order 18 Rule 17 of the Code of Civil Procedure, 1908 (CPC), reproduced herein:

“The Court **may** at any stage of a suit recall any witness who has been examined and **may**... put such questions to him as the Court thinks fit.”

The deliberate use of the word “**may**” by the legislature makes it clear that the power is discretionary, not mandatory. It does not confer an enforceable right on either the plaintiff or the defendant to demand that a witness be recalled. The Hon’ble Supreme Court of India has settled the position on litigants’ claims and has explicitly rejected the argument that *recall is a litigant’s right* in several landmark precedents:

In *Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate*¹, the Apex Court categorically held that Order 18 Rule 17 is primarily for the convenience of the court to clarify any doubts that may have arisen during the examination of a witness. In fact, it does not give a right to a party to re-examine any witness to cover up omissions or fill lacunae (gaps) in their evidence.

Subsequently, in the decision of *K.K. Velusamy Vs. N. Palanisamy*² the Supreme Court reiterated that: A party cannot claim recall of a witness as a matter of routine or right. Even when a party invokes the inherent powers of the court under Section 151 CPC to request recall, the court is not bound to accept it. The power must be exercised sparingly and only to prevent a grave failure of justice.

Similarly, in the decision of *Ram Rati v. Mange Ram (2016)*³ the Supreme Court reversed a High Court order that had permitted recall, holding that:

“Litigants cannot use Order 18 Rule 17 to ask “**left-out questions**” or elaborate on points missed during initial examination. Permitting recall as a right would make trial proceedings endless”

In a recent decision of August 04, 2026, in *K. Bharathamma v. Bandaru Sakku Bai*⁴ the Apex Court has reiterated in different words that the Order XVIII Rule 17 is a discretionary power vested strictly in the court to clarify evidence or doubts; it is not meant to allow parties to reopen evidence at the final arguments stage to fill omissions or introduce belated documents. The Court clarified that this provision does not empower a court to recall a witness simply to afford a party another opportunity for cross-examination.

In the backdrop of the above precedents, it is clear that the litigants in Indian civil suits do not have a statutory or absolute right to recall a witness rather the recall of a witness is purely a discretionary power vested in the trial court. However, another question is left in the mind that what if any litigant approaches the court for any bonafide and genuine cause for recall of the witness under the inherent powers of the Civil Court what would the legal stand be. In this regard, as a matter of law, there is no statutory provision in the CPC, rather, the litigant can only resort to the civil court by invoking the powers of the court under section 151 of the CPC exercised under the regulated cannons embedded in the *ratio decidendi* of the

precedents passed by the Constitutional Courts. In such circumstance, the Court should be left with no option than to be guided by the judicial precedents. The first decision in Indian judicial system, the decision of *Sultan Saleh Bin Omer Vs Vijayachand Sirimal*⁵ passed by the Andhra Pradesh High Court has clarified the court's powers regarding the recall of witnesses and the inherent jurisdiction under Section 151 of the Civil Procedure Code (CPC). In the said decision, the Hon'ble Andhra Pradesh High Court has held that a close reading of this Rule makes it obvious that the right under that Rule to put questions at any stage of a suit, or recall any witness for that purpose, is given to the Court. The Court can put questions to the witness re-called, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave. The right to act under this Rule is not restricted to the Court on its own motion, but may be exercised at the instance of a party. It cannot, therefore, be said that an opportunity to a party to re-call any witness for the purpose of examining, cross-examining or re-examining is governed by Order 18, Rule 17 C. P. C. I, therefore, hold that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under section 151 C. P. C. However, in the decision of *Sultan Saleh Bin Omer(Supra)*, the modalities of allowing the re-call a witness for examining, cross-examining or re-examining is not prescribed by the Court.

But, in *K.K. Velusamy(Supra)* the Apex Court has categorically laid down the modalities to recall the witness exercising the powers of the Civil Court U/s 151 CPC in a manner with limited scope and held with word of caution that:

*"16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence." However, the Apex court observed how the process should be closely guided to avoid protracted litigation. The Apex Court Stated: "**But** if it does so, it should ensure that the process does not become a protracting tactic. The court should **firstly** award appropriate costs to the other party to compensate for the delay. **Secondly**, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. **Thirdly** if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the*

application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

17. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.”

The **K.K. Velusamy**(supra) decision, is a path breaking one and it has balanced the speedy trial and the competing interest of the rival litigant in a civil suit by bridging gap of the long adjournments by continuous dates for recording of evidence of the witness, limiting the time and compensating the hardship with adequately burdening the applicant party with appropriate cost followed by fixing the short dates for the arguments in the Suit. In the same decision, it has also been held that the Section 151 can be invoked to recall a witness for further cross-examination/ examination by a party if relevant, non-manufactured evidence was unavailable earlier despite due diligence. Subsequently, in the decision of **Shubhkaran Singh Vs Abhayraj Singh & Ors**⁶ also the Hon'ble Supreme Court has reiterated and dominantly adopted the law laid down in the **K.K. Velusamy** (supra) and came to the similar proposition. The decision of **K.K. Velusamy**(supra) has also made a distinction between the Rule 17 of Order XVIII CPC and the Section 151 CPC and held that Order 18 Rule 17 is strictly meant for the court to clarify its own doubts regarding evidence already on record. It also observed that when a party seeks to reopen evidence to produce new material or further cross-examine a witness, the trial court must invoke its inherent powers under Section 151 CPC. In another decision of **Bagai Construction v. Gupta Building Material Store** ⁷ the Supreme Court has discussed the role of the trial courts on an application at late stages of trial and cautioned against allowing recall applications filed at the stage of final arguments and held that the applications to recall witnesses or produce additional documents after evidence is closed should not be entertained casually. Unless compelling reasons and due diligence are demonstrated, granting late recall applications defeats the objective of expeditious trials introduced by CPC amendments. In the same decision, the Supreme Court has also put a control over indiscriminate abuse by the litigants of the provisions of the recall of witness and held that the inherent powers cannot be exercised routinely to allow production of documents or recall of witnesses after evidence is closed, especially if the party possessed those materials throughout the trial. On another tangent, the Supreme Court in the decision of **Gayathri v. M. Girish**⁸ on the repression of dilatory tactics condemned the practice of using repetitive recall applications to delay trials and observed that filing repeated interlocutory applications under Order 18 Rule 17 to stall proceedings constitutes an abuse of the judicial process, warranting dismissal with exemplary costs. In another precedent of the Supreme Court in **Ram Rati**(supra), the Apex Court reversed lower court orders that had permitted witness recall to elaborate on points omitted during the initial examination and the Court has held that recalling a witness to elaborate on “left-out points” amounts to filling lacunae, which is impermissible under Order 18 Rule 17 CPC.

This shows that the Supreme Court of India has reconciled the interplay of section 151

of CPC and the Order XVIII Rule 17 of the CPC in **K.K. Velusamy**(supra) delineating the following parameters:

- i. **Inherent Powers Complement the Code:** Order XVIII, Rule 17 is not exhaustive regarding the recalling of witnesses. Where a bonafide circumstance is not covered by Rule 17, the court may invoke Section 151 to reopen evidence or permit recall for further examination/cross-examination in the interest of justice.
- ii. **High Threshold for Exercise:** Such inherent power should be exercised sparingly, with extreme caution, and only in exceptional cases where non-recall would cause grave injustice.
- iii. **Prevention of Abuse of Process:** Courts must ensure that applications under Section 151 are not dilatory tactics designed to protract litigation, harass the adversary, or introduce tutored evidence.

THE CLOSING NOTE

A litigant can only **request** the court to exercise its discretion to recall a witness. The court will entertain such a request only if the party demonstrates that despite exercising due diligence, vital evidence was omitted, and that non-recall would result in a miscarriage of justice. It can never be claimed as a matter of statutory right. The power to recall a witness under Order 18 Rule 17 read with Section 151 CPC acts as a balancing mechanism in Indian civil jurisprudence. While it empowers judges to seek clarifications and prevent miscarriages of justice, Supreme Court precedents strictly guard against its misuse as a tool for filling evidentiary gaps or delaying trials. The Apex Court has laid down that Section 151 CPC can be invoked for recall only if the applicant had exercised due diligence and could not produce the evidence earlier. The evidence is crucial to decide the real matter in controversy and non-recall would lead to a grave failure of justice. In nutshell, in recall of witness, the first judicial parameter is due diligence with an objective to ensure bonafide intent on the judicial standard to find out as whether the applicant failed to bring the evidence earlier, despite reasonable diligence. The second judicial parameter is essentiality with an objective to assist the court on the judicial standard to find out a whether the testimony of the proposed witness is indispensable for a just decision on the core issues. The third judicial parameter is the probable prejudice caused to the rival side with an objective to maintain fairness on the judicial standard of finding out the fact whether any inconvenience to the opposing side can be compensated through costs or cross-examination either.

ENDNOTES

1. *Vadiraj Nagappaa Vernekar v. Sharadchandra Prabhakar Gogate*, (2009) 4 SCC 410.
2. *K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275
3. *Ram Rati v. Mange Ram*, (2016) 11 SCC 296
4. *K. Bharathamma v. Bandaru Sakku Bai*, 2026 SCC OnLine SC 795 (decided Aug. 4, 2026).
5. *Sultan Saleh Bin Omer v. Vijayachand Sirima*, AIR 1966 AP 295
6. *Shubhkaran Singh v. Abhayraj Singh & Ors.*, (2025) SCC OnLine SC 628
7. *Bagai Construction v. Gupta Building Material Store*, (2013) 14 SCC 1
8. *Gayathri v. M. Girish*, (2018) 8 SCC 745