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

% Judgment delivered on: 28/02/2026

\+ **CM(M)-IPD 47/2025**

INNOVATIVE DERMA CARE .....Petitioner

versus

VARDHAMAN SKINCARE PVT LTD & ANR. .....Respondents

Advocates who appeared in this case

For the Petitioner : Ms. Aastha Sharma, Mr. Pramod Kumar Singh & Ms. Jahanvi Sharma, Advocates.

For the Respondent : Mr. Ajay Amitabh Suman, Mr. Shravan Kumar Bansal, Mr. Rishi Bansal & Mr. Risabh Gupta, Advocates for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Petition has been filed under Article 227 of the Constitution of India, 1950 seeking setting aside of the order dated 21.11.2025

("**Impugned Order**") passed by the learned District Judge (Commercial), West District, Tis Hazari Courts, New Delhi ("**Trial Court**") in CS(COMM) No. 403/2019 ("**Suit**") titled as '*Innovative Derma Care v. Vardhaman Skin Care Pvt. Ltd. & Anr.*', whereby the learned Trial Court dismissed an application ("**Subject Application**") filed by the Petitioner under Order XVI Rule 1 read with Section 30 and Section 151 of the Code of Civil Procedure, 1908 ("**CPC**") by way of which the Petitioner had sought permission of the learned Trial Court to bring on record an additional list of witnesses.

FACTUAL BACKGROUND:

2. The Petitioner claims in the present petition that it is engaged in the business of marketing and selling skin care products under the Trade Mark 'Clariwash' ("**Subject Mark**"), which is owned by the Petitioner. In the month of July 2018, the Petitioner discovered that the Respondents are engaged in manufacturing and selling face wash products under the Subject Mark. Accordingly, the Petitioner instituted the Suit before the learned Trial Court.

3. During the course of proceedings in the Suit, the learned Trial Court *vide* order dated 10.09.2024 referred the matter to the Delhi Mediation Centre, Tis Hazari. Thereafter, the Mediation proceedings did not culminate into any resolution of the dispute between the Parties and the matter was referred back to the learned Trial Court.

4. The Petitioner moved an application under Order XIIIA of the CPC, which was dismissed by the learned Trial Court *vide* order dated 04.02.2025. Further, the learned Trial Court framed Issues in the Suit and adjourned the same for filing of list of witnesses and the appointment of Local

Commissioner. In view of the same, the Petitioner filed a list of witnesses on 10.02.2025, which sought to examine Mr. Rajesh Kumar Taneja, sole proprietor of the Petitioner as PW-1.

5. *Vide* order dated 11.02.2025, a Local Commissioner was appointed by the learned Trial Court for recording of evidence. Subsequently, the Petitioner filed an application before the learned Trial Court to examine three additional witnesses under Order XVI Rule 1 of the CPC. *Vide* order dated 06.03.2025, the learned Trial Court allowed the said application, thereby permitting the Petitioner to examine three additional witnesses namely, Mr. Sunil Bhambhari as PW-2, Mr. Shyam Sundaram as PW-3 and Mr. Vikas Chopra as PW-4.

6. Thereafter, on 22.04.2025, the Petitioner moved the Subject Application under Order XVI Rule 1 of the CPC to bring on record two additional witnesses namely, Mr. Amit Chopra, proprietor of Mediwings as PW-5 and Mr. Gulshan Kumar, proprietor of GM Medicine Centre as PW-6.

7. Subsequently, the Petitioner preferred an application under Section 151 of the CPC seeking early hearing of the Subject Application. On 21.11.2025, the said early hearing application was heard by the learned Trial Court and *vide* the Impugned Order of even date, the Subject Application was dismissed by the learned Trial Court.

8. Being aggrieved by the Impugned Order, the present Petition has been filed by the Petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

9. The learned Counsel for the Petitioner advanced the following submissions:

9.1 The learned Trial Court failed to appreciate that under Order XVI Rule 1A of the CPC, parties are at liberty to produce any witness without applying for summons, and that no prior permission of the Court is required when the witness is its own witness. The said provision expressly allows parties to bring and examine its witness directly.

9.2 The learned Trial Court has erred in dismissing the Petitioner's Application purely on the ground that the Suit is old and that the Petitioner had earlier also added witnesses, as the said considerations are irrelevant and had no nexus with the requirements provided for under Order XVI Rule 1 of the CPC.

9.3 The Impugned Order suffers from a non-application of mind as the learned Trial Court has failed to differentiate the spirit of Order XVI Rule 1 and Order XVI Rule 1A of the CPC.

9.4 The learned Trial Court has completely ignored the binding law laid down by the Supreme Court in ***Mange Ram v. Brij Mohan***, (1983) 4 SCC 36. It is well-settled in law that a party cannot be shut out from examining material witnesses merely based on technicalities or delays.

9.5 The learned Trial Court has failed to appreciate that the Petitioner's evidence was still ongoing and was not closed when the Subject Application was filed. The learned Trial Court has also not recorded any finding of prejudice that may be caused to the Respondent if the Petitioner is permitted to examine two additional witnesses.

9.6 The learned Trial Court failed to consider that the earlier application adding three witnesses was allowed upon judicial satisfaction of necessity and, therefore, filing a subsequent application upon emergence of further material cannot automatically be construed as dilatory and that each application shall be construed on its own merits.

9.7 The evidence of additional witnesses sought to be added in the Subject Application, namely, Mr. Amit Chopra and Mr. Gulshan Kumar, is necessary for the just adjudication of the Suit. Mr. Amit Chopra could not be incorporated earlier in the list of witnesses on account of his deteriorating health condition, which rendered him medically unfit to appear before the learned Trial Court, however, he is currently fit to appear before the learned Trial Court. Mr. Gulshan Kumar could not be incorporated in the list of witnesses earlier as he resides out of station and was unavailable due to his frequent travel and work commitments.

10. In view of the foregoing submissions, it is prayed that the present Petition be allowed and the Impugned Order be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2:

11. The learned Counsel for Respondent No. 2 submitted that the stage of Plaintiff's evidence is over and that the addition of the two witnesses, as sought in the Subject Application, is an attempt to derail the Suit proceedings and constitutes dilatory tactics on the part of the Plaintiff.

12. The learned Counsel for Respondent No. 2 submitted that the name of the said witnesses, Mr. Amit Chopra and Mr. Gulshan Kumar, could have been

added in the earlier lists of witnesses regardless of their deteriorating health condition or work commitments. It is further submitted that there was no medical document on record, which established the claim of deteriorating health condition of Mr. Amit Chopra, due to which his name could not be incorporated in the list of witnesses earlier.

13. In view of the foregoing submissions, it was prayed that the present Petition be dismissed and the Impugned Order be upheld.

ANALYSIS AND FINDINGS:

14. Heard the learned Counsel for the Parties and perused the material placed on record.

15. It is the Petitioner's case that the Subject Application ought to have been allowed by the learned Trial Court, in accordance with Order XVI Rule 1A of the CPC, which is reproduced as under:

> "***1. List of witnesses and summons to witnesses.—***
> *(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.*
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> *(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.*
>
> *(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*
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> *(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court*

or to such officer as may be appointed by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]

1A. Production of witnesses without summons.—
Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents."

16. The learned Counsel for the Petitioner has primarily placed reliance on the decision in ***Mange Ram*** (*Supra*), the relevant portion of which is extracted hereunder:

"***7.*** *The neat question of law is: where a party to a proceeding does not wish to have the assistance of the court for the purpose of procuring the attendance of a witness or witnesses, could he be denied the privilege of examining witnesses kept present by him on the date fixed for recording his evidence, on the sole ground that the names of the witnesses and the gist of evidence have not been set out in the list which may or ought to have been filed in compliance with Order 16, Rule 1 of the Code of Civil Procedure?*

8. *Sub-rule (1) of Rule 1 of Order 16 casts an obligation on every party to a proceeding to present a list of witnesses whom it proposes to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in court. Sub-rule (2) requires that the parties seeking the assistance of the court for procuring the attendance of a witness must make an application stating therein the purpose for which the witness is proposed to be summoned. Sub-rule (3) confers a discretion on the court to permit a party to summon through court or otherwise any witness other than those whose names appear in the list submitted in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. Rule 1-A in its amended form in force since 1977 enables a party to bring any witness to give evidence or to produce documents but this enabling provision is subject to the provision contained in sub-rule (3) of Rule 1 of Order XVI. If a reference to Rule 22 of the High Court Rules is recalled at this stage, it merely re-enacts sub-rule (1) and sub-rule (2) of Rule 1 of Order XVI.*

9. *If the requirements of these provisions are conjointly read and properly analysed, it clearly transpires that the obligation to supply*

the list as well as the gist of the evidence of each witness whose name is entered in the list has to be carried out in respect of those witnesses for procuring whose attendance the party needs the assistance of the court. When a summons is issued by the court for procuring the presence of a witness, it has certain consequences in law. If the summon is served and the person served fails to comply with the same, certain consequences in law ensue as provided in Rule 10 of Order 16. The consequence is that where the witness summoned either to give evidence or to produce documents fails to attend or to produce the documents in compliance with such summons, the court on being satisfied of the service as provided therein and is further satisfied that the person has without lawful excuse failed to honour the summons, the court may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed in the manner therein provided. Simultaneously, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property for such amount as it thinks fit. Even if thereafter the witness fails to appear, the court may impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part, thereof, to be attached and sold as provided in Rule 12 of Order XVI. In view of this legal consequence ensuing from the issuance of a summons by the court and failure to comply with the same, the scheme of Rules 1, 1-A of Order 16 and Rule 22 of the Rules framed by the High Court clearly envisaged filing of a list only in respect of witnesses whom the parties desire to examine and procure presence with the assistance of the court. There, however, remains an area where if the party to a proceeding does not desire the assistance of the court for procuring the presence of a witness, obviously the party can produce such witness on the date of hearing and the court cannot decline to examine the witness unless the court proposes to act under the proviso to sub-section (1) of Section 87 of the '1951 Act' which enables the court for reasons to be recorded in writing, to refuse to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. It, therefore, unquestionably transpires that the obligation to supply the list of witnesses within the time prescribed

under sub-rule (1) of Rule 1 of Order 16 is in respect of witnesses to procure whose presence the assistance of the court is necessary. And this ought to be so because the court wants to be satisfied about the necessity and relevance of the evidence of such witness whose presence will be procured with the assistance of the court. This not only explains the necessity of setting out the names of witnesses in the list but also the gist of evidence of each witness. If mere omission to mention the name of a witness in the list envisaged by sub-rule (1) of Rule 1 of Order 16 would enable the court to decline to examine such witness, Rule 1-A of Order 16 would not have omitted to mention that only those witnesses kept present could be examined whose names are mentioned in the list envisaged by sub-rule (1) and who can be produced without the assistance of the court. Viewed from this angle, Rule 1-A becomes wholly redundant. If it is obligatory upon the party to mention the names of all witnesses irrespective of the fact whether some or all of them are to be summoned and even the names of those whom the party desires to produce without the assistance of the court are also required to be mentioned in the list on the pain that they may not be permitted to be examined, Rule 1-A would have given a clear legislative exposition in that behalf and the marginal note of Rule 1-A clearly negatives this suggestion. Marginal note of Rule 1-A reads as 'Production of witnesses without summons' and the rule proceeds to enable a party to bring any witness to give evidence or to produce documents without applying for summons under Rule 1. If it was implicit in Rule 1-A that it only enables the party to examine only those witnesses whose names are mentioned in the list filed under sub-rule (1) of Rule 1 whom the party would produce before the court without the assistance of the court, it was not necessary to provide in Rule 1-A that the party may bring any witness to give evidence or to produce documents without applying for summons under Rule 1. Rule 1-A of Order 16 clearly brings to surface the two situations in which the two rules operate. Where the party wants the assistance of the court to procure presence of a witness on being summoned through the court, it is obligatory on the party to file the list with the gist of evidence of witness in the court as directed by sub-rule (1) of Rule 1 and make an application as provided by sub-rule (2) of Rule 1. But where the party would be in a position to produce its witnesses without the assistance of the court, it can do so under Rule 1-A of Order 16 irrespective of the fact whether the name of such witness is mentioned in the list or not.

> ***10.*** *It was, however, contended that Rule 1-A is subject to sub-rule (3) of Rule 1 and therefore, the court must ascertain how far sub-rule (3) would carve out an exception to the enabling provision contained in Rule 1-A. There is no inner contradiction between sub-rule (1) of Rule 1 and Rule 1-A of Order XVI. Sub-rule (3) of Rule 1 of Order 16 confers a wider jurisdiction on the court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under Rule 1-A and in such a situation the party of necessity has to seek the assistance of the court under sub-rule (3) to procure the presence of the witness and the court may if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under sub-rule (1) of Rule 1, still extend its assistance for procuring the presence of such a witness by issuing a summons through the court or otherwise which ordinarily the court would not extend for procuring the attendance of a witness whose name is not shown in the list. Therefore, sub-rule (3) of Rule 1 and Rule 1-A operate in two different areas and cater to two different situations.*"

17. Perusal of the above quoted extract in ***Mange Ram*** (*supra*) makes it clear that the enabling provision contained in Order XVI Rule 1A of the CPC is subject to Order XVI Rule 1(3) and, therefore, in order to procure the presence of a witness, the Court has to be satisfied that a party has sufficient cause for the omission to mention the name of such witness in the list filed under Order XVI Rule 1(1). Therefore, the Petitioner ought to have satisfied the learned Trial Court that there was sufficient cause for the omission of the names of the witnesses sought to be included by way of the Subject Application, in the earlier lists of witnesses.

18. In the present case, the Petitioner contends that the names of Mr. Amit Chopra and Mr. Gulshan Kumar were not added in the list of witnesses earlier as Mr. Amit Chopra was suffering from poor health and Mr. Gulshan Kumar

resides out of station and had work commitments, due to which they would be unable to give evidence as witnesses.

19. The learned Trial Court in the Impugned Order dismissed the Subject Application filed by the Petitioner and held as under:

> "*Heard.*
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> *The case in hand is the oldest pending case in this Court.*
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> *In respect of the case in hand, the issues were framed vide order dated 04.02.2025 and in terms of the order dated 11.02.2025, the Court Commissioner so appointed for recording of evidence was expected to conclude the evidence of both parties within two months reckoned from the date of order i.e. 11.02.2025. However, the case is still lingering on at the stage of Plaintiff Evidence itself.*
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> *Admittedly, the Plaintiff had initially asserted and intended to examine only one witness in support of its case i.e. the Proprietor himself. However, later on, an application u/o XVI rule 1 CPC (along with two more applications) was filed for seeking permission to add the names of three more witnesses as the Plaintiff Witnesses. The said earlier application was though opposed by the Defendant, yet, it was disposed of as allowed vide detailed order dated 06.03.2025. Thus, as a matter of fact, the number of witnesses on behalf of the Plaintiff rose from 1 to 4; as was initially intended to.*
>
> *Again, the Plaintiff has approached the Court with another similar application seeking addition of two more witnesses as the Plaintiff Witnesses. The case in hand being the oldest pending matter and also in the light of afore-reflections, no ground for grant of any further leverage is made out. It appears that it is the Plaintiff himself who has been lingering on his case. No one had stopped him from inserting the names of as much witnesses as were desired to be examined in support of his case. He reflected his intention that he would be examining himself as the 'sole witness' in support of his case. After a while, he further intended to add three more persons as witnesses. The same was also allowed. Again, the leverage is being sought without assigning any cogent reason. Accordingly, the application in hand is hereby disposed of as dismissed.*"

20. Perusal of the Impugned Order reveals the learned Trial Court's apprehension that the Petitioner itself was trying to delay the proceedings in the Suit and that there was no pressing reason for the Petitioner for not including the names of the witnesses sought to be included by way of the Subject Application, in the earlier lists of witnesses.

21. Having considered the contentions of the Parties and the reasoning of the learned Trial Court in the Impugned Order, this Court is of the view that the Petitioner has not been able to make out a case for allowing the present Petition for the following reasons:

22. *Firstly*, the cause shown by the Petitioner for not including the names of the witnesses sought to be included by way of the Subject Application, i.e., deteriorating health condition and work commitments, is unfounded as the perusal of the material placed on record does not establish the same. There is no documentary evidence on record to support such averment made by the Petitioner.

23. *Secondly*, in any event, the names of the witnesses sought to be included by way of the Subject Application, could have been included in the earlier lists of witnesses even if the said witnesses were not in condition to give evidence on an immediate basis.

24. *Lastly*, the Suit was pending before the learned Trial Court for a period of around 6 years and the learned Trial Court was correct in observing that the Petitioner himself was responsible for lingering on the proceedings in the Suit as the Petitioner after filing an initial list of one witness, had already filed another application for inclusion of three more witnesses, which was allowed by the learned Trial Court.

25. In view of the above, the Petitioner has failed to justify any sufficient cause for the omission of the names of the witnesses sought to be included through the Subject Application, in the earlier list of witnesses filed under Order XVI Rule 1(1) of the CPC.

26. Accordingly, there is no infirmity with the Impugned Order passed by the learned Trial Court and no interference is warranted with the Impugned Order. As a result, the present Petition stands dismissed.

TEJAS KARIA, J

FEBRUARY 28, 2026
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