



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.871 OF 2025**

Shri. Laxman Kisan Chavan,
Age: 53 years, Occu: Agri,
R/o. Khokar,
Tal: Shrirampur, Dist: Ahmednagar

..Petitioner
(Orig. Plaintiff)

Versus

1. Shri. Nandkumar Kisanrao Chvan,
Age: 45 years, Occ: Agri,
2. Sau. Meera Nandkumar Chavan,
Age: 40 years, Occ: Agri,
3. Sau. Neelam Nandkumar Chavan,
Age: 22 years, Occ: Agri,
4. Nilesh Nandkumar Chavan,
Age: 20 years, Occ: Agri,
5. Sau. Mangal Machindra Kale,
Age: 55 years, Occ: Agri,
6. Sau Hirabai Dattatraya Kale,
Age: 45 years, Occ: Agri,
7. Sau. Chhaya Rajendra Kale,
Age: 32 years, Occ: Agri,
8. Smt. Bebi Karbhari Chavan,
Age: 50 years, Occ: Agri,
9. Shri. Aniket Karbhari Chavan,
Age: 30 years, Occ: Agri,
10. Shri. Abhijeet Karbhari Chavan,
Age: 28 years, Occ: Agri,
11. Sau. Manisha Aniket Chavan,
Age: 27 years, Occ: Agri,
12. Sau. Deepali Abhijeet Chavan,
Age: 27 years, Occ: Agri,
All R/o. Khokar,

Tal: Shrirampur, Dist: Ahmednagar

..Respondents
(Orig. Defendants)

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Mr. R. A. Tambe, Advocate for Petitioner.

Mr. M. K. Bhosale, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 16th JULY, 2025.

Pronounce On : 31st JULY, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.
2. The petitioner/original plaintiff impugns order dated 16.12.2024 passed by Civil Judge Senior Division, Shrirampur below Exhibit-197 in Regular Civil Suit No.108/2013, by which prayer of petitioner/plaintiff to direct defendants to conclude argument before plaintiff has been rejected.
3. The plaintiff instituted Regular Civil Suit No.108/2013 before Civil Judge Senior Division, Shrirampur claiming relief of declaration, perpetual injunction and fixation of boundaries. The defendants appeared in suit and refuted contents of plaint. Eventually, issues were framed. The plaintiff recorded his evidence and filed Evidence Close Pursis dated 07.07.2024 below Exhibit-185. Thereafter, respondents/defendants recorded their evidence and filed Evidence Close Pursis dated 07.08.2024 below Exhibit-189.

4. At this stage, petitioner filed application below Exhibit-197 contending that petitioner has recorded his evidence first. Thereafter, evidence of respondents is recorded. The matter is at the stage of arguments. Therefore, as per provisions of sub-clauses (2) and (3) of Rule 2 of Order XVIII of Code of Civil Procedure, defendants who have closed their evidence last in order are required to conclude arguments. Thereafter, plaintiff would have right to put his final submissions on entire case. Accordingly, directions were sought against defendants to conclude arguments before plaintiff. The learned Trial Court rejected petitioner's contentions observing that there is no mandate under law to direct defendants to conclude arguments first. The defendants cannot be compelled to begin with their arguments reserving rights of plaintiff to argue on whole case. According to Trial Court, application tendered by plaintiff is an attempt to protract litigation.

5. Mr. Tambe, learned Advocate appearing for petitioner invites attention of this Court to Rule 2 of Order XVIII of Code of Civil Procedure and contends that plaintiff, who has right to begin once states his case and produce his evidence in support of issues, then other party/defendant is under obligation to state his case and produce his evidence and address Court generally on whole case. In last, plaintiff/party beginning may reply generally on whole

case. According to Mr. Tambe, defendants have recorded their evidence after plaintiff. Therefore, defendants are under obligation to argue matter first. The plaintiff can reply thereafter generally on whole case. He would, therefore, urge that application tendered before Trial Court at Exhibit-197 was in tune with aforesaid provisions, which ought to have been allowed. In support of his contentions he relies upon judgment of Single Judge of this Court in case of ***Gajanan Dhondu Dalvi Vs. Trishul Construction Company and another***¹ and judgment in case of ***Sharanappa Alias Sharanabasappa Tipama Vs. Veerappa R. Maranbassari***².

6. Per contra, Mr. Bhosale, learned Advocate appearing for respondents submits that provisions of Rule 2 of Order XVIII of Code of Civil Procedure are not mandatory. According to him, sub-clauses (2) and (3) of Rule 2 of Order XVIII are enabling provisions and no party has right to seek direction from Court against other party to argue matter first, in point of time, converse to chronology of right to begin. In support of his contentions he relies upon judgments of Supreme Court of India in cases of ***Jami Venkata Suryaprabha and Another Vs. Tarini Prasad Nayak and Others***³ and ***Shivaji Laxman Palaskar and Ors. Vs. Sau.***

Kamal Raosaheb Shipalkar and Ors.⁴.

¹ 1995 (1) Mh.L.J. 695.

² 1968 Mh.L.J. 629.

³ 2024 SCC OnLine SC 3862.

⁴ 2019 (1) ABR 159.

7. Having considered submissions advanced, question that arises for consideration before this Court is whether provisions of sub-clauses (2) and (3) of Rule 2 of Order XVIII of Code of Civil Procedure are mandatory in nature and whether any party can insist upon other party to begin first or argue matter first. The relevant part of Rule 2 of Order XVIII of Code of Civil Procedure reads thus:

“2. Statement and production of evidence-

(1) On the day fixed for hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.”

8. Plain reading of aforesaid provision would show that generally plaintiff has right to begin. However, in exceptional case where defendant has admitted contents of plaint and puts his defence on the point of law or other additional facts, defendant has right to begin. Rule 2 of Order XVIII deals with stage of hearing and stipulates that party having right to begin shall produce his evidence in support of issues, then other party shall state his case

and produce his evidence and **may then address the Court generally on the whole case.** Sub-clause (3) of Rule 2 of Order XVIII prescribes that party beginning may reply generally on whole case. Plain reading of sub-clauses (2) and (3) of Rule 2 of Order XVIII shows that provisions are for convenience and does not put any obligation upon any party so far as chronology of addressing Court on continuation of evidence. Generally it is true that defendant, who laid evidence later in point of time, is expected to argue matter in continuation of evidence and plaintiff/party beginning may reply generally on whole case. Therefore, looking to the chronology under sub-clauses (2) and (3) of Rule 2 of Order XVIII, contention of petitioner is acceptable that defendants may have argued their case in continuation of their evidence leaving right in favour of petitioner/plaintiff to reply generally on whole case. Mr. Tambe has rightly relied upon judgment of Single Judge of this Court in case of ***Gajanan Dhondu Dalvi*** (supra), wherein this Court observed in paragraph no.6 as under:

“6. In the present case, I am concerned with Rule 2, which lays down the general rule that the one, which has right to begin, must "address the Court generally on the whole case". It further provides that the party beginning may then "reply generally on the whole case". A careful reading of Rule 2 clearly shows that the said Rule proceeds on the principle that the party, which has involved in the evidence first must address the Court last. Thus, on a plain reading of the provisions of the said Rule, it is the defendant, who has to open the argument first.”

9. Further in last paragraph Single Judge of this Court observed as under:

“9. As already indicated, Rule 2 of Order 18 clearly stipulates that the party giving the evidence first has the right to address the Court last and the defendant having led his evidence last, he is required to address the Court first. In the result, the Civil Revision Application succeeds. The order dated January 13,1995 passed by the City Civil Court is set aside. The parties are directed to appear before the City Civil Court on February 16,1995. Needless to say that the defendant shall open his argument first and thereafter the plaintiff shall address the Court in accordance with Rule 2 of Order 18. Civil Revision Application is disposed of accordingly with no order as to costs.”

10. In view of aforesaid legal position, second issue that arises for consideration is whether plaintiff can insist upon defendants to argue matter first and whether Court can issue such directions. The aforesaid issue is no more *res-integra*. The Supreme Court of India in case of **Jami Venkata Suryaprabha and Another** (supra) observed in paragraph no.18 as under:

“18. Order XVIII Rule 1 indeed provides for plaintiff's right to begin the evidence but not the court's obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes of the root of the case, there would be no hitch in asking him/her to prove such plea first which can lead to disposal of the case. There can be no watertight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.”

11. In light of aforesaid observations of Supreme Court of India, none of the party can insist upon other party to address argument first. Even wording of sub-clauses (2) and (3) of Rule 2 of Order XVIII of the Code of Civil Procedure uses the term '*may*'. Therefore, it is difficult to hold that petitioner could have insisted defendants to argue first and secure such directions from Trial Court. However, in facts of each case Court would have discretion to pass orders in tune of law discussed in foregoing paragraphs.

12. Perusal of reasons in impugned order do not depict that Trial Court applied mind to the factual matrix in tune with legal position that subsists. In that view of the matter, this Court deems it fit to relegate matter to Trial Court by setting aside impugned order for reconsideration of application in light of law holding the field and pass appropriate orders in exercise of discretion in judicious manner.

13. In result, Writ Petition is partly allowed and disposed of in above terms.

14. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE