



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.4337/2024

1. Smt. Shobha wd/o Kishor Khatri,
Aged about 58 years, Occ.- Agriculture and Household.
2. Ku. Vaishali d/o Kishor Khatri,
Aged about 32 years, Occ.-Agriculture and Education
3. Ku. Ajita d/o Kishor Khatri,
Aged about 30 years, Occ.-Agriculture and Education
4. Mayur S/o Kishor Khatri,
Aged about 27 years, Occ.-Agriculture and Education
through Power of Attorney Holder of Petitioners No. 1 to 4,
Dilip s/o Madanlal Khatri,
Aged about 64 years, All R/o Ramnagar, near LIC Office
Branch-2, Akola, Tq and Dist. Akola. Petitioners

- Versus -

Suresh Pralhadrao Kadale (Patil),
Aged about 65 years, Occ-Agriculture, R/o Near L.I.C. office,
Branch-II, Ram Nagar, Akola, Tq. and Dist Akola. Respondent.

Mr. A.G. Lohiya, Advocate for petitioners.

Mr. A.V. Bhide, Advocate for respondent.

CORAM : R.M. Joshi, J.

DATE : 13-06-2025.

ORAL JUDGMENT

By consent of both the sides, heard finally at the stage of admission.

2. This petition takes exception to the order dated 17-01-2024 passed by the learned trial Court in Special Civil Suit

No.3/2018, whereby the plaintiff is directed to seek permission under Order XVIII Rule 3-A of the Code of Civil Procedure.

3. This order is preceded by a Pursis filed by the defendant vide Exhibit-61 stating that the plaintiff to file a pursis that plaintiff personally himself would not be examined at a later stage of the suit. Learned trial Court passed order on this pursis, calling upon the plaintiff to seek permission to examine other witness before he examines himself.

4. Learned Counsel for the petitioner/original plaintiff has placed reliance on the judgment of the Coordinate Bench of this Court in Care Hospital, Nagpur vs D. Nilesh s/o Digambar Thakare, reported in 2019(3) Mh.L.J. 955, wherein it is held thus-

"7. Under Rule 3-A of Order XVIII, it is ordinarily necessary for a party to examine himself first before he examines any other witness on his behalf. A discretion has been conferred on the Court to permit such party to appear as his own witness at a later stage. The words 'at a later stage' would have to be given the ordinary meaning to mean that there is no prohibition for a party to seek such permission even after other witnesses have examined on his behalf. Restricting the application of Rule 3-A to situations only where prior permission of the Court is taken by a party for examining himself before other witnesses on his behalf have been examined would amount to reading such restriction in Rule 3-A of the Code which has not been provided. It is ultimately for the Court to grant such permission in the facts of the case. There could be a situation as the present case where the plaintiff was unavailable when he was required to lead evidence and after his Power of Attorney holder was examined as his witness, the plaintiff was available for leading his evidence. The Court if it finds it necessary to permit such

party to be examined after his other witnesses have been examined can always permit such examination subject to the rider that such examination would not be for the purposes of filling in any lacuna that is sought to be filled in by such subsequent WP 447/19 9 Judgment examination. It does not appear from a plain reading of Rule 3-A of Order XVIII that only if a party seeks prior permission before any other witness on his behalf has been examined that the Court can consider such request and that the hands of the Court would be tied if such request is made later on. The fact that the power to grant such permission at a later stage by exercising discretion and permitting a party to examine himself as a witness at a later stage is conferred on the Court would imply that such permission could be sought in a given case after other witnesses on his behalf have been examined. The discretion having been conferred on the Court, it goes without saying that such discretion would have to be exercised in a judicious manner in the light of the facts of the case and obviously to prevent any mischief or filling up of any lacuna on the part of such party by examining himself at a later stage. The Court is also empowered to restrict such evidence in a given case as the facts demand. It is therefore not possible to agree with the position that if no application is made under provisions of Order XVIII Rule 3-A of the Code seeking permission by the party prior to other witnesses being examined by such party, the opportunity is lost forever. On the other hand, the trial Court in exercise of its discretion can regulate the manner in which as well as the extent to which such party can be permitted to appear as his own witness at a later stage."

5. It is his submission that in view of the provisions of Order XVIII Rule 3-A of the CPC, it is open for the party to seek permission to examine himself even at a later stage of the trial.

6. Learned Counsel for the respondent tried to support the impugned order.

7. At the outset, it is to be recorded that since there was no application filed by the defendant and a simple pursis was filed, it was

not necessary for the trial Court to pass any orders thereon. In any case the trial Court considers the said pursis as an application and passes the order impugned. The order passed by learned trial Court is contrary to the view taken by this Court in the judgment of Care Hospital, Nagpur (supra). This Court is in respectful concurrence with the said view.

8. In view of the provisions of Order XVIII 18 Rule 3-A of the CPC, the situation would arise for the plaintiff to seek permission if he wants to examine himself after examination of other witnesses. In view of this, the impugned order deserves to be set aside. Accordingly, it is set aside.

9. All issues sought to be raised by the parties in respect of the competency of the witness etc. are kept specifically open.

(R.M. Joshi, J.)