



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6603 OF 2025

Anilkumar Mahadev Chaware, Aged 56 years, Occ: Service,
R/o Flat no.C/6, NIT Gharkul Parisar, Venkatesh Nagar,
Nandanwan, Nagpur – 440024.

PETITIONER

VERSUS

Sunita Ghanshyam Daware, Alias Sunit Anilkumar Chaware,
Maiden name – Sunita Sukhdevrao Gavai, Aged 41 years,
Occ: Household, R/o Nagesh Tailor Galli, Sanjay Gandhi
Nagar no.2 (Rajapeth), Amravati - 444606.

RESPONDENT

Shri G.C. Khond, counsel for the petitioner.
Smt. M.P. Khsirsagar, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : MARCH 10, 2026

DATE ON WHICH JUDGMENT IS PRONOUNCED : APRIL 29, 2026

JUDGMENT

Heard. **RULE.**

2. By this petition, the petitioner has challenged an order dated 14.10.2025 passed by the Family Court Nagpur, by which an application (Exhibit 73) filed by the respondent under Order XVIII Rule 17 of Code of Procedure, 1908 (for short, 'the Code') for permission to reopen the evidence and to examine additional witness, is allowed at the stage of judgment of the petition seeking nullity of marriage.

3. The husband/petitioner herein has filed a petition under Sections 11 and 12 of the Hindu Marriage Act, 1955 (for short, 'the Act') for decree of divorce by nullity of marriage, bearing petition no. A-102/2018. The petition is contested by the wife who has filed her written statement and examined witnesses in support of her case. After the evidence of both the parties was over, they advanced final arguments and the petition was

listed for judgment on 18.09.2025. However, it was adjourned on four occasions and on 08.10.2025, the respondent-Wife filed an application under Order XVIII Rule 17 and Section 151 of the Code, at Exhibit 73, for grant of permission to reopen evidence of the respondent for examining an additional witness, viz. the President of Triratna Buddha Var Vadhu Suchak Mandal Amravati. The petitioner-Husband filed reply to this application on 13.10.2025 and by order dated 14.10.2025, the Family Court allowed the application subject to costs of Rs.1000/-. This order is subjected to challenge by way of instant petition.

4. While assailing the impugned order, Shri Gaurav Khond, learned counsel for petitioner submitted that the application under Order XVIII Rule 17 of the Code deserved to be rejected since the respondent has attempted to reopen the evidence to examine additional witness, which is beyond the purport of the said provision. He submitted that the petition was listed at the stage of judgment and the application for reopening the evidence is clearly an attempt to fill up the lacunae which is not permissible. He further submitted that after examining herself as witness along with two other witnesses, the respondent has voluntarily closed her evidence and has even advanced final arguments and as such under these circumstances, the application for reopening the evidence to examine a new witness is an abuse of process of law. He thus submitted that the Family Court has adopted an erroneous approach in allowing the application under Order XVIII Rule 17 of the Code for permitting the respondent to examine a new witness at the stage of judgment of the petition.

5. Smt. Meera Kshirsagar, learned counsel for the respondent, however opposed the petition and submitted that the Family Court has rightly allowed the application to enable the respondent to examine the witness to prove certain relevant facts. She submitted that since the respondent has earlier failed to contact the witness who is now traced and needs to be examined and therefore, the respondent needs to be granted an opportunity to lead evidence. She submitted that the evidence of the said witness is material for deciding the actual controversy involved in the petition and in the interest of justice, the respondent's application deserved to be allowed. In support of her submission, she placed reliance on the judgment of the Hon'ble Supreme Court in ***Shubhkaran Singh Versus Abhayraj Singh & Others*** [S.L.P.(C) nos.12012-12013/2025] dated 05.05.2025 and the Judgment in ***K.K. Velusamy Versus N.Palanisamy*** [(2011) 11 SCC 275] and submitted that the powers under Order XVIII Rule 17 of the Code can be exercised by the Court at any stage of the proceedings, including the stage of judgment of the matter. She submitted that the respondent has made out a case under Order XVIII Rule 17 of the Code and the impugned order warrants no interference.

6. Rival contentions thus fall for my consideration.

7. While considering the controversy involved in the instant petition, it has to be noted that undisputedly, the petition for divorce on the ground of nullity of marriage has reached the stage of judgment. The parties to the petition had examined witnesses in support of their case and had

voluntarily closed their evidence. After the final arguments were advanced, the petition was listed for judgment. The petition was adjourned for judgment on four dates and at that stage, the respondent filed the application, at Exhibit 73, under Order XVIII Rule 17 of the Code seeking permission to lead additional evidence. In her application, the respondent has stated that although the evidence was led by her, she was able to contact the additional witness only after the evidence was over. She argued that the examination of the said witness is necessary to prove the fact that her first marriage was dissolved and thereafter she had performed the second marriage, which is thus valid and cannot be considered as nullity.

8. The reasons mentioned in the application at Exhibit 73 are that the respondent was not able to contact the said witness since due to ill health of the said witness, he was unable to receive her call. After mentioning the reasons in paragraph 2 of the application, the respondent has mentioned certain circumstances to show that the evidence of said witness by name Shri Anand Gambhir, the President of Var Vadhu Suchak Mandal is necessary and he is a material witness.

9. It has to be noted that the divorce petition was filed in the year 2018, in which the respondent had filed her written statement in July-2019. Although there is a reference to the document of divorce-deed in the written statement, the respondent has not taken any steps to examine the said witness during the course of her evidence. It is not the

respondent's case that at the stage of her evidence, she has sought for any permission to examine the said witness after establishing contact with him. This apart, even after voluntarily closing her evidence, the respondent has advanced the final arguments and the matter was listed for judgment on 18.09.2025. A perusal of the order-sheet placed on record clearly reveals that the matter was adjourned for judgment on several dates and the respondent has not at all filed any application, before the matter was listed for judgment for the first time. As such, there is nothing to show any attempt on the part of the respondent to examine the said witness and thus, the bare statement in the application (at Exhibit 73) that the witness was not examined because the respondent was not able to contact the said witness, cannot constitute due diligence on her part for examining the said witness in support of her case.

10. It is crucial to note that after the final arguments were advanced by both the parties, the petition for divorce was listed for judgment on 18.09.2025, on which day it was adjourned to 25.09.2025 for judgment and thereafter to 04.10.2025 and lastly to 08.10.2025. On all these four dates, the judgment was not pronounced. Thus, at the stage of judgment of the petition, the respondent filed application (at Exhibit 73) on 08.10.2025 seeking permission to examine the additional witness in support of her case. Thus, the issue is as to whether at the stage of judgment, the respondent or any of the parties could file an application to examine additional witness.

11. In this regard, provision of **Order XX Rules 1 to 3 of the Code**, need to be taken note of, which is reproduced below:-

*“Order XX Rule 1:- Judgment when pronounced.--
(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:*

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment.

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record.”

Thus, it is clear that there is no stage of the suit after closing of the arguments and pronouncement of judgment. A bare perusal of this provision shows that after the final arguments of the suit are over, the matter has to be listed for judgment and it is for the Court to pronounce the judgment on the next date or to postpone the pronouncement for further date. As such, there is no stage of the suit or proceedings after the final arguments are concluded and before judgment is pronounced. It has to be noted that the parties to the litigation cannot invoke as of right any provision to seek permission to lead additional evidence at the stage of judgment or to make any kind of submissions after the matter is listed for judgment.

12. In this regard, it is beneficial to refer to the authoritative pronouncement of Three-Judge Bench of the Hon'ble Supreme Court in the matter of ***Arjun Singh Versus Mohindra Kumar & Others*** [AIR 1964 SC 993], in which the Hon'ble Supreme Court has observed that there is no hiatus in between two stages of reservation of judgment and pronouncement of judgment. The pertinent observations of the Hon'ble Supreme Court as reflected in paragraph 19 are reproduced below:-

“19. In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the hearing is completed. Where the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that O. XX R. 1 permits, judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by O. IX, R. 7 is passed the next stage is only the passing of a decree

which on the terms of O. IX R. 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under O. IX R. 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of O. IX R. 7. We are, therefore, of the opinion that the Civil Judge was not competent to entertain the application dated May 31, 1958 purporting to be under O. IX R. 7; and that consequently the reasons given in the order passed would not be res judicata to bar the hearing of the petition under O. IX R. 13 filed by the appellant.”

Albeit, these observations are made while considering the provisions of Order IX Rule 7 of the Code but the scheme of the Code with respect to Order XX Rule 1 has been precisely clarified. It is thus clear that a party cannot claim a right to seek reopening of evidence at the stage of judgment.

13. In order to delve further into the controversy, it is also necessary to have a look at provisions of **Order XVIII Rule 17** of the Code, which are reproduced below:-

“17.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.”

Further, the position of law as laid down by Hon’ble Supreme Court with respect to this provision also needs to be considered for deciding the controversy involved in the instant petition. In support of her submissions, the learned counsel for respondent has relied on the judgment in **Shubhkaran Singh** and **K.K. Velusamy** (supra). These judgments indeed deal with the provision of Order XVIII Rule 17 of the

Code and has clarified the position by observing that the powers of Order XVIII and Rule 17 of the Code are to be exercised by the Court for removing the ambiguity, for clarifying the statement and not for the purpose of allowing a party to fill up the lacunae.

Pertinently, highlighting the legal position, in paragraph 8 of the judgment in ***Shubhkaran Singh*** (supra), the Hon'ble Supreme Court has observed that under this rule, a witness cannot be recalled at the instance of a party for the purpose of examining, cross, examining or re-examining and the rule is not intended to serve such purpose. Even the judgment in ***K.K. Velusamy*** (supra) has elucidated the legal position with regard to Order XVIII Rule 17 of the Code and in paragraph 10, it has observed that the provision is not intended to enable the parties to recall any witnesses for further examination-in-chief or cross-examination or to place additional material or evidence, which could not be produced when the evidence was being recorded. It is also observed that the provision of Order XVIII Rule 17 of the Code is primarily a provision enabling the Court to clarify any issue or doubt. Paragraph no. 10 of the judgment in ***K.K. Velusamy*** (supra) is reproduced below:-

“10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

14. As such, after considering the position of law, as laid down by the Hon'ble Supreme Court in the above said judgments, it has to be noted that these judgments do not lay down the position of law that any of the parties can seek reopening of the evidence at the stage of judgment by invoking provisions of Order XVIII Rule 17 of the Code. It is also crucial to note that the provision of Order XVIII Rule 17 of the Code indeed enable the Court to recall any witness who has been examined and may put such questions to him as the Court thinks fit, pertinently it is for enabling the Court to pronounce the judgment effectively and not for the parties to reopen their entire evidence. In a given case, a party to the litigation can make out a case for invoking powers of Order XVIII Rule 17 of the Code, however, at the stage of judgment, a party cannot claim any right to reopen the evidence to examine additional witness. In this regard, the observations recorded at paragraph 9 of the judgment in **K.K. Velusamy** (supra) needs to be noted, which are reproduced below:-

“9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts It may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate.)”

In the case in hand, the issue is as to whether the respondent has made out a case for invoking the powers under Order XIII Rule 17 of the Code, at the stage of judgment.

15. While applying the legal position in the instant case, it has to be noted that the respondent has filed the application under Order XVIII Rule 17 read with Section 151 of the Code for the purpose of examining a new witness in support of its case. It has to be noted that the Court has not recorded any finding that the Court wants to examine any new witness for clearing any ambiguity, which would enable it to decide the controversy completely and finally. Even the respondent has clearly stated in its application that the said witness was not earlier examined. It has to be noted that the respondent has earlier examined three witnesses in support of her case and has voluntarily closed her evidence. As such, allowing the respondent to examine a new witness will definitely amount to granting her permission to introduce new case through the said witness which would ultimately result in filling up the lacunae, and it will definitely cause prejudice to the petitioner. The reason mentioned by the trial Court in the impugned order about availability of an opportunity to the petitioner to cross-examine the said witness, in my respectful opinion, is not at all sufficient to allow the respondent to examine new witness at the stage of judgment. Another reason mentioned in the impugned order that the additional witness be permitted to be examined for getting clarified, the situation and for meeting ends of justice, cannot constitute a justified reason to allow a party to reopen evidence at the stage of judgment.

Pertinently, the respondent has mentioned in the application that the said person who was the President of the said mandal is holding the same post as on today, and despite this, there are no sufficient reasons as to why the said witness who is now shown to be a material witness, was not examined earlier. As such, the reasons put forth in the application are not sufficient to invoke the provisions of Order XVIII Rule 17 or Section 151 of the Code of Civil Procedure, 1908 and the reasons stated in the impugned order are not justified. Further, considering the reasons mentioned in the application, the prayer for reopening the entire evidence cannot be granted even by invoking Section 151 of the Code as the same would allow the wife to reopen the entire evidence and lead fresh evidence which opportunity was available to her during her evidence. Such a course by invoking inherent powers, at the stage of judgment, would cause prejudice to the other side and hence cannot be permitted.

16. After giving anxious consideration to the entire controversy involved in the instant petition, I am of the firm opinion that the reasons mentioned by the respondent in the application are not sufficient to establish any due diligence for invoking powers under Order XVIII Rule 17 of the Code. Further, I am also of the considered opinion that at the stage of judgment, a party cannot as of right file an application for reopening the evidence and examine new witness, as it will amount to filling up the lacunae pointed out by the opponent during the course of arguments. Such a course will definitely cause prejudice to the other side.

17. In view of the above mentioned factual and legal aspects of the matter, I am of the considered opinion that the impugned order passed by the Family Court is unsustainable in law and deserve to be quashed and set aside. Hence, I pass the following order:-

- I. The writ petition is allowed.
- II. The order dated 14.10.2025 passed by the Family Court, Nagpur on the application at Exhibit 73 in Petition no.A-102 of 2018 is quashed and set aside.
- III. The application filed by the respondent at Exhibit 73 in Petition no.A-102 of 2018 is rejected.

18. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)