
**UNDERSTANDING THE TRIAL PROCEEDINGS UNDER ORDER 18 OF CIVIL
PROCEDURE CODE, 1908**

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ABSTRACT

Trial stage in civil matters is governed by Order 18 of the CPC, 1908, which prescribes the claims and evidence to be presented before the court. The trial begins after pleadings are complete and issues are duly framed. Generally speaking, the plaintiff puts in evidence first, and afterward proceeds the defendant. It deals with the examination, cross-examination, and re-examination of witnesses. The judge may ask questions at any time or call for witnesses if deemed necessary. It further records the evidence either in writing or through electronic means, to avoid ambiguity and ensure the evidence is properly recorded. Understanding facts and arguments are of paramount importance to allow both parties to establish their case fairly. In simple terms, Order 18 plays a crucial role in ensuring order and fairness in civil trials and helping the court to arrive at a just decision on the basis of evidence presented and duly recorded.

UNDERSTANDING OF THE LEGAL PROVISION:

Order 18 of the Civil Procedure Code of 1908 deals with the procedure to be followed in the hearing of a civil suit. In my opinion, this is of the utmost importance that somehow creates a balance for the fair, effective, and public proceedings of a trial. The section is mainly concerned with evidence, the examination of witnesses, and the overall administration of justice during the trial after the framing of issues. One of the most important elements of Order 18 is that it sets down the order of presentation to the court. The general rule states that, as a rule, the Plaintiff (the person

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bringing the action) has to begin presenting his or her case. This implies giving evidence and cross-examining witnesses. Thereafter, the Plaintiff closes the case, while the Defendant presents his or her case in a similar manner. That order gives the two parties an equal opportunity to plead their claims or defences.

Order 18 provides various rules concerning the questioning of witnesses.

The calling party must conduct questioning of a witness-in-chief. The opposing party is entitled to cross-examine. If anything, new is brought in through cross-examination, the original witness can then be examined again by the original party. The method serves to enable the court to distinguish between the truth and credibility of the evidence. One more principal aspect would involve the recording of evidence. Evidence is admissible under Order

18 to be recorded on hard paper or via the most modern technological means i.e., audio or video recordings, thus lending precision and speed to the trial process.

Furthermore, the judge actively intervenes in the hearing. The court may put questions to any party or to a witness so that facts may be elucidated. The judge may order the calling back of or questioning of any witness if this is deemed necessary in the interests of justice. Lastly, as far as Order 18 of the CPC is concerned, it provides for an orderly trial procedure by which the trial is fair to both parties so that they may present their respective claims. The order emphasizes fairness, simplicity, and expedition, all elements necessary to justice. The understanding of this order more clearly shows us how the courts conduct hearings and why certain procedures are followed during any civil trial.

MY SUGGESTED AMENDMENTS IN ORDER 18:

Rule 4A has been added following Rule 4 and is called the 'Time Limit for Filing Examination-in-Chief Affidavits'

RULE 4A: The party conducting the evidence shall file affidavits for the examination-in-chief of all its witnesses within thirty (30) days from the trial commencement date, extendable by a further fifteen (15) days on application to the Court for reasons recorded in writing.

Justification:

This amendment assures that written witness affidavits are filed on time, thus avoiding any undesirable delay in the proceedings and ensuring an effective, streamlined trial operation. -The amendment postulates the filing of written affidavits of witnesses on time to avoid any unwarranted delay and to redress linearity and propriety in the whole trial operation.

SUBSTITUTION OF RULE 5 – RECORDING OF CROSS-EXAMINATION AND RE-EXAMINATION

Witnesses shall be cross examined and re-examined in open court, such proceedings being recorded manually, electronically or by video/audio means, subject to such security measures as may be prescribed by High Court Rules.

Justification:

In the process of investigating, law enforcement would need to have recourse to advanced technology to record the statements of informants and witnesses or to accumulate photographs, videos, audio recordings, recorded calls and other evidence.

AMENDMENT TO RULE 17 – POWER TO RECALL AND RE-EXAMINE WITNESSES²

Rule 17: No matter at what stage in the suit, the Court may call back any witness who has given evidence and, on good grounds, stated in writing, ask him or her any questions which the Court considers fit for the purposes of clarifying evidence. This power shall not be exercised for enabling the parties to fill gaps in the evidence.

Justification:

² (Feb. 7, 2022), <https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf>.

This amendment clarifies the ambit and limitations of the exercise of judicial discretion under Rule 17, and it seeks to prevent such discretion from being otherwise abused.

INSERTION OF A NEW RULE- RULE 18: DUTY TO PROVIDE WITNESS LIST IN ADVANCE

Rule 18 prescribes that in each party's motion of evidence, every witness to be examined by those parties must be in the accompanying list, along with a summary of the anticipated testimony of the witness.

Justification:

This will increase transparency and enable better planning by the opposing party, resulting in fewer unnecessary adjournments.

ADD A SECTION TO PERMIT HYBRID AND REMOTE HEARINGS

The aforementioned Rule 19, in so far as it is subject to the agreement and discretion of the court, lays down that the examination of witnesses or taking of evidence may take place by means of video conferencing or other electronic utilities, following procedural safeguards as may be prescribed.

Justification:

The recognition of changes in practice toward digital platforms, with the COVID-19 pandemic being the turning point in coalescing this, comes with higher efficiency and access to justice.

CASE LAWS RELATED TO ORDER 18:

AMEER TRADING CORPORATION LTD. V. SHAPOORJI DATA PROCESSING LTD. (2004):³

It has been held by the Supreme Court that the very initial testimony of a witness (examination-in-chief) should be deposited in the form of a written affidavit in compliance with Order 18 Rule 4. However, cross-examination and re-examination will take place before the judge.

RASIKLAL MANIKCHAND DHARIWAL V. M.S.S. FOOD PRODUCTS (2012):⁴

The court has power to summon a witness and ask the witness additional questions which may assist the court in reaching a satisfactory conclusion in the case as per Order 18, Rule 17.

FDC LTD. V. FEDERATION OF MEDICAL REPRESENTATIVES' ASSOCIATION OF INDIA (2003):⁵

The court held that the importance of maintaining accurate and complete records of evidence in the cause of a fair trial was stressed by the honorable court herein. Emphasis was laid on the need of complying with the requirements of Order 18 of the CPC, so that witness statements are protected and examinations recorded without being recorded in ambiguous or illegal terms.

SALEM ADVOCATE BAR ASSOCIATION V. UNION OF INDIA (2005):⁶

In Salem Advocate Bar Association v. Union of India (2005), the Apex Court validated some alterations in Civil Procedure Code, that included installation of use of technology like video

³ Ameer Trading Corporation Ltd. v/s Shapoorji Data Processing Ltd | Indian Case Law | Law, (July21,2015), <https://www.casemine.com/search/in/Ameer%20Trading%20Corporation%20Ltd%28DOT%29%20v%28SLAS%29s%20Shapoorji%20Data%20Processing%20Ltd>.

⁴ Supreme Today AI, Supreme Today AI <https://supremetoday.ai/doc/judgement/00100050626>.

⁵ <https://indiankanoon.org/doc/1513152/>

⁶ Digital Supreme Court Reports, https://digiscr.sci.gov.in/view_judgment?id=MjM4NzI

conferencing for presentation of evidence in a case. The Court held that all changes introduced in relation to the Order 18 must work towards making civil cases more efficient, saving time and fair, as well as upholding the very foundations of justice.

K.K. Velusamy v. N. Palanisamy (2011):

The Supreme Court held that Order 18 Rule 17 permits only a limited power of recalling witnesses, and that is for the very purpose of clarifying something. This rule cannot be invoked for improvement of the case after the closure of the evidence stage. The power of recall should, therefore, be exercised with due care and circumspection only when it is very necessary to clarify facts on the record.

CONCLUSION:

The Order 18 of the Code of Civil Procedure, 1908 is a vital article which lays procedure for the hearing of civil cases. It is necessary therefore for the stage of trial to be conducted justly, openly, and uniformly. Order provides rights and duties of both sides throughout the hearing, from the presentation of evidence to the interrogation of witnesses. It is the plaintiff who leads evidence, followed by the defendant. Witnesses are examined in chief, cross-examined, and re-examined according to the procedure laid down in this Order. This assists the Court in effectively understanding the facts of the case. The other crucial aspect of Order 18 deals with the position of the judge. If required to remove any ambiguity or uncertainty, the court may elicit questioning and summon witnesses. The Order also provides for using newer methods such as videoconferences and affidavits to ensure expediency in trials.

In conclusion, it is ensured under Order 18 that civil hearings occur in justice and equity. The rights of both parties are safeguarded, enabling the court to make a just and fair judgment, making evidence duly laid before it.