

Order-18 Hearing of the Suit and Examination of Witnesses

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1. Right to begin :-

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence :-

(1) On the day fixed (or the 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.

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(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

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(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

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(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

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(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.";

5[(4) [****6** *]

1. In rule 2 after sub-rule 3, Sub-rule 3(a), 3(b),3(c) and 3(d) Inserted by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002,[22 of 2002] published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002

5. Ins. by Act 104 of 1976, Sec. 69 (w.e.f. 1st February, 1977).

6. Omitted for "Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.)", vide " Order-18 Hearing of the Suit and Examination of Witnesses" Dt.December30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

3. Evidence where several issues :-

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his

option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply especially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

3A. Party to appear before other witnesses :-

Where as party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, (or reasons to be recorded, permits him to appear as his own witness at a later stage.]

4. Recording of Evidence :-

(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule."

5. How evidence shall be taken in appealable cases :-

In cases in which an appeal is allowed, the evidence of each witness shall be,-

(a) taken down in the language of the Court,-

(i) in writing by, or in the presence and under the personal direction and superintendence of the Judge, or

(ii) from the direction of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.]

6. When deposition to be interpreted :-

Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

7. Evidence under Sec. 138 :-

Evidence taken down under Section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. Memorandum when evidence not taken down by Judge :-

Where the evidence is not taken down in writing by the Judge ¹ [or from his dictation in the open Court, or recorded mechanically in his presence,] he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes and such memorandum shall be written and signed by the Judge and shall form part of the record.

1. Ins. by Act 104 of 1976, Sec.. 69, (w.e.t, 1st February, 1977).

9. When evidence may be taken in English :-

(1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.

(2) Where evidence is not given in English but all the parties who appear in person and the pleaders of such of the parties by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.]

10. Any particular question and answer may be taken down :-

The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11. Questions objected to and allowed by Court :-

Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. Remarks on demeanor of witnesses :-

The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

13. Memorandum of evidence in unappealable cases :-

In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at

length; but the Judge, as examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.]

14. 14 :-

]Omitted by Act No. 104 of 1976, Sec. 69 for the former rule, (w.e.f. 1st February, 1977).

15. Power to deal with evidence taken before another Judge :-

(1) Where a Judge is prevented by death; transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under Section 24 .

16. Power to examine witness immediately :-

(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and sign it, and it may then be read at any hearing of the suit.

17. Court may recall and examine witness :-

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.

17A. Production of evidence not previously known or which could not be produced despite due diligence :-

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1. Omitted for "Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.]", vide " Order-18 Hearing of the Suit and Examination of Witnesses" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

18. Power of Court to inspect :-

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or things it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.]

19. Power to get statements recorded on commission :-

1 .-Notwithstanding anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under rule 4A of Order XXVI.

1. Inserted vide " Order-18 Hearing of the Suit and Examination of Witnesses" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59,dated December 30, 1999