

ORDER BELOW EXH.NO.125

This is an application filed by the plaintiff , under order XVIII Rule 16(1) Of the code of civil procedure Seeking recording of her evidence on priority on the ground of old age and medical condition.

2] It is the contention of plaintiff that, she is about 90 years old and it suffering from blood pressure and other age-related ailments. It is therefore prayed that her evidence be recorded immediately before deciding other pending interlocutory application so as to avoid the possibility of losing material evidence due to her advanced age and health condition.

3] The defendant has opposed the application contending that, the provision of order XVIII Rule 16(1) Of the code of civil procedure Is applicable only to witnesses and not to the parties to the suit, and therefore the plaintiff is not entitled to seek such relief. The defendant has further contended that, though the plaintiff has alleged that she is 90 years old and suffering from blood pressure, no documentary proof regarding her age or medical condition has been produced on record alongwith application and therefore the application deserves to be rejected.

4] Perused the application and say. Heard both the learned advocates. Before arriving at any conclusion, order XVIII Rule 16(1) Of the Code of Civil Procedure needs to be taken into consideration. The object of order XVIII Rule 16(1) Of the Code of Civil Procedure is to preserve evidence where there is a reasonable apprehension that the witness may not be available at a later stage due to reason such as advance the age, sickness or other sufficient cause. The provision intended to safeguard the valuable evidence from being lost.

5] Marley because the person seeking such relief is a party to the suit, the benefit of the provision cannot be denied if the circumstances justify early recording of evidence. A party to the suit is also a competent witness and the Court in appropriate circumstances, may permit recording of such evidence in advance to secure the ends of justice. The court is required to adopt a pragmatic approach so that the material evidence is not lost on account of delay.

6] So far as objection regarding the proof of age and medical condition is concerned, it is true that the plaintiff has not produced a documentary evidence regarding her age or medical condition along with the present application. However the advance the age of the plaintiff has been specifically pleaded and the same has not been seriously disputed by the defendant except by raising a technical objections regarding absence of documents. Considering the very advanced age of the plaintiff, even in absence of formal medical documents, this court finds that the apprehension regarding delay in recording her evidence cannot be ignored. So far as the reliance placed by defendant on the judgment of Hon'ble Rajasthan High court in Aaditya Vs. Tulsibai is concerned, the same does not assist the defendant. In the said decision, Hon'ble High court waws dealing with the different factual situation.

7] Therefore, in the given circumstances, the witnesses of 90 years old. As the witness is age old person, there is possibility that the witness may not be available due to illness or otherwise when the case will posted for her evidence. This reason for seeking immediate recording of evidence before deciding other pending interlocutory

application seems to be reasonable satisfactory and sufficient to grant permission for the same. Therefore, the application deserves to be allowed. Hence I pass the following order;

**ORDER**

1. The application (Exh.125) is allowed.
2. Evidence of the plaintiff shall be recorded on priority before deciding other pending interlocutory application on the next date fixed by this court without fail.
3. The defendant shall be at liberty to cross-examine the plaintiff.
4. Both the parties to take note.

(Dictated and pronounced in open Court)

Date : 12.03.2026  
Place : Umarkhed

(Jaykranti H. Panchal)  
3<sup>rd</sup> Jt. Civil Judge Junior Division,  
Umarkhed Dist. Yavatmal.