

Precedent No. 26

EVIDENCE BY WAY OF AFFIDAVIT IN A SUIT FOR RECOVERY

IN THE COURT OF SENIOR CIVIL JUDGE,

In

Civil Suit No.....of 20

IN THE MATTER OF:

A.B

.....PLAINTIFF

VERSUS

B.C

...DEFENDANT

AFFIDAVIT

I, D/o, agedyears,
presently residing in.....

The deponent abovenamed hereby solemnly affirms and states as follows:

1. That the deponent herein is the Director of the plaintiff company incorporated under the Companies Act, 1956, having its registered office atand has been authorised by the resolution passed by the plaintiff to sign, verify, adduce evidence, file plaint and to do all such necessary acts for the recovery of amount from the defendants *vide* its resolution datedThe deponent is well conversant with the facts and circumstances of the case and stands fully competent to swear to this affidavit. The deponent will be referred to as the plaintiff hereinafter.
2. That, although, the defendant No. 1 is a proprietorship firm and the defendant No. 2 is its proprietor, by way of abundant caution, the suit referred to above is drafted to take care of the situation that the suit may not fail or suffer for any irregularity if by surprise the defendant No. 1 is claimed to be a concern of any other nature.
3. That, the defendant No. 2 is a resident of Delhi and is doing business as well as residing and works for gain at
4. That, during the course of the business, the plaintiff supplied goods to the defendants *vide* two bills dated, for Rsand dated , for Rs amounting to a total of Rs.....
5. That, in discharge of the whole of liability, the defendants issued two cheques bearing nos dated..... for Rsand no, dated....., for Rs, both drawn onbank. Both the aforesaid cheques, on their due presentment, were dishonored.
6. That, after a rigorous follow up by the plaintiff, the defendants paid a sum of Rsagainst the above liability, leaving an outstanding balance of Rs in favour of the plaintiff and against the defendant.

7. That, the payment of Rs.....was made to the plaintiff by the defendants vide cheques dated, for Rs....., no; dated, for Rsand no.....
8. That "Form H" was also issued by the defendants dated.....for the total amount of Rs, in discharge of their liability and also by way of acknowledgement of liability and receipt of goods by the defendants from the plaintiff.
9. That various reminders were sent by the plaintiff to the defendants, telephonically, personally and also in writing, for the recovery of balance amount of Rs, with interest, as per the terms and conditions of the contract between the parties, but no heed was paid by the defendants thereon.
10. That, the defendants are liable to pay interest on the outstanding amount at the rate of 24% per annum after expiry of 15 days from the date of dispatch of goods. Thus, goods being dispatched on....., by the plaintiff to the defendants, the defendants have made themselves liable to pay interest @ 24% per annum from till the date of filing of this suit which in any case is more than two years.
11. That, as a last resort, the plaintiff served on the defendants with legal notice for the said purpose through its counsel....., dated, which was dispatched by way of Registered post, UPC and also courier on
12. That, the above notice was perfunctorily replied to by the defendants vide their letter dated, wherein the defendants took a belated and frivolous defense of 'defective goods', which they had never taken earlier inspite of various correspondences between the parties and payments were also issued in part without any demur from the side of defendants. Form H was also issued much after the supply of goods showing clear acknowledgment of liability by the defendants in favour of the plaintiff. It is needless to state that the defendants, in their reply, have clearly admitted the claim of the plaintiff and their false cry of 'defective goods' is most conspicuously a disguised afterthought.
13. That, be that as it may, the plaintiff served with their rejoinder notice dated to the defendants.
14. That, the defendants are liable to payin principal and Rsby way of interest at the rate of 24% per annum for two years as stated above totaling RsBesides, the defendants have made themselves liable for legal costs, past, present and future and also interest for the future till the actual recovery of amount.
15. That, the suit for the purpose of court fee is valued at Rson which appropriate court fees has been paid.
16. That, for the purpose of pecuniary jurisdiction also, the suit is valued similarly as parallel to as valued for the purpose of court fees as stated above and therefore this Hon'ble Court is having pecuniary jurisdiction to deal with this case and pass decree as prayed by the plaintiff.
17. That this Hon'ble court has territorial jurisdiction also as the defendants works for gain and also resides in Delhi and thus is within the jurisdiction of this Hon'ble Court and also in view of the fact that cause of action arose also at Delhi.

18.It is therefore respectfully prayed in the interest of justice that this Hon'ble Court may kindly be pleased to decree this suit in favour of the plaintiff and against the defendants for a sum of Rs..... together with litigation costs and other expenses and also may kindly be pleased to pass decree for future interest at the same rate from the date of filing of this suit till the actual realization of the above amount. Any other relief may also be granted in favour of the plaintiff and against the defendants as this Hon'ble Court may find fit and proper in these facts and circumstances of this case.

Sd./

Deponent.

Verification

Verified aton this the..... of 20..... that the contents of the above affidavit are true and correct to the best of my knowledge, belief and information received and believed to be correct, and nothing material has been concealed therefrom.

Sd./

Deponent.

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the day of....., 20

Sd./

Counsel for the deponent.

Note: Affidavit to be attested by the appropriate authority prescribed under law. Prayer be avoided and only facts be stated.