

**Precedent No. 21**

**EVIDENCE BY WAY OF AFFIDAVIT: DURING TRIAL IN A SUIT FOR  
DISSOLUTION OF PARTNERSHIP FIRM**

BEFORE THE HON'BLE SUBORDINATE JUDGES COURT,

In

O.S. No..... of 20

**IN THE MATTER OF:**

A.B.

....PETITIONER/APPLICANT

VERSUS

B.C

....RESPONDENT/DEFENDANT

**AFFIDAVIT**

I, ....., S/o....., aged about..... years, presently residing in ....., do hereby solemnly affirm and state as follows:

1. That I say, that I am the petitioner in the Original Suit referred to above and being well conversant with the facts and circumstances of the case, I am fully competent to swear to this affidavit.
2. That I say, that the aforesaid suit is filed, *inter alia*, for obtaining a decree of dissolution of the partnership firm.
3. That I say, that on ....., with a view to carry on a partnership business, I and defendant Nos. 2 to 5 executed a partnership deed incorporating the terms and conditions of the said partnership. The partnership business was agreed to be carried on under the name and style of..... The place of business of the partnership firm is .....and its registered office is at.....The partnership firm carries on the business of manufacture and sale of garments and defendant No. 3 is the Managing partner and the other defendants are its partners.
4. That I say, that the defendant No. 1 is a partnership firm duly registered under the Indian Partnership Act, 1932. The initial capital of the said firm is Rs.....The aforesaid initial capital was equally contributed by me and defendant Nos. 2 to 5 at the rate of Rs..... each. Further, I and the defendant partners agreed to arrange additional capital as per the requirement and for the benefit of the firm from time to time.
5. That I say, that the objects of the partnership firm are as under:
  - i) To carry on the business of manufacture and sale of garments.
  - ii) To carry on any other business as may be mutually agreed upon by all the partners from time to time.
6. That I say, that as per clause 4 of the Partnership deed, proper books of accounts shall be maintained in respect of all transactions of the firm and all the partners shall always

have access to such accounts and records of the firm. Further, as per the same clause, profit and loss (including capital gains and losses) of the partnership business shall be shared by the partners equally. Defendant No. 3, as the Managing Partner of the partnership firm, is authorized to look after the day-to-day management, supervision and general control of the affairs of the firm. By virtue of clause 6 of the partnership deed, the Managing Partner shall have the power and authority to operate the bank accounts opened in the name of the firm. As per clause 7 of the said deed, the Managing Partner shall have the power and authority to borrow funds or secure guarantee from any bank or banks or other persons or to incur liability in any other firm as per the requirements and for the benefit of the firm.

7. That I say, that the 1st defendant manufactured pieces of garments. On , the 3rd defendant received an amount of Rs .....from me for the manufacture of the said lot of garments. The said amount was invested by me as an additional capital for the business and benefit of the firm. The said lot of garments was sold by the 3<sup>rd</sup> defendant for an amount of Rs However, the aforesaid amount was not accounted for in the accounts of the firm, in clear violation of his duty to keep an account for the same. Consequently, other partners and I started enquiring about the said amount and the details of the way the said amount had been utilised. All these enquiries fell on deaf ears and despite repeated requests by the other partners and me, the 3rd defendant continued to follow his own whims and fancies and perfunctorily assured the other defendants and me that the said amount would not only be accounted for but a meeting of the partners regarding the same would be convened at the earliest. The aforesaid amount has not been accounted for till date and no such meeting was ever convened by the 3rd defendant.
8. That I say, that the 3rd defendant has misappropriated the said amount of Rs..... belonging to the firm and has cheated and defrauded the firm and its partners. Also, the amount of Rs received as an additional capital from me has been misappropriated by the 3rd defendant, thereby causing wrongful loss not only to me but also to all the partners and the firm and wrongful gain to himself.
9. That I say, that by conducting himself in the abovementioned manner, the 3rd defendant is willfully and incessantly committing breach of the terms and conditions relating to the management of the firm as contained in the partnership deed.
10. That I say, that the conduct of the 3rd defendant is absolutely destructive of mutual confidence, which is supposed to be the very foundation of any partnership, and the partnership cannot be continued in this fashion.
11. That I say, that I have neither been paid my dues share in the income from the business of the firm nor the amount availed of from me as loan. As a consequence of this, I was forced to issue a legal notice dated to the defendants, calling upon the 3rd defendant to carry on the rendition of accounts of the firm and also to convene a meeting of the partners within 15 days of the receipt of notice. However, the 3rd defendant did not accept the said notice, which returned unserved. The other defendants and I issued

another legal notice to the 3rd defendant on, calling upon him to cause the rendition of accounts within 15 days from the receipt of the notice. To this notice, the 3rd defendant gave a reply putting forth false, fictitious, frivolous and untenable contentions. It may be mentioned here that the 3rd defendant has not caused the rendition of accounts till date, nor has any meeting of partners been convened.

12. That I say, that the documents produced by me, alongwith the plaint and which are also detailed in the list of documents, will go a long way in establishing my case and enabling me to get a decree in terms of the plaint against the defendants jointly and severally. That it is, therefore, just and necessary that this Hon'ble Court may be pleased to receive the documents mentioned above on file and in evidence and mark it as **Ex. P.1** to **Ex. P.12**, and accepting the contentions taken in the plaint and also sworn in this affidavit, pass a decree in my favour and against the defendants jointly and severally.

*Sd./*

Deponent.

#### VERIFICATION

Verified at ..... on this the ..... day of ....., 20....., that the contents of the above affidavit are true and correct to the best of my knowledge, belief and information 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. Preferably prayer be avoided and only facts be stated.