

Precedent 10

AFFIDAVIT: FOR SETTING ASIDE AN ORDER DECLARING DEFENDANT

EX PARTE

BEFORE THE II ADDL CIVIL COURT,.....

Miscellaneous Application No.....

In

Original Suit No.....

IN THE MATTER OF:

A.B.APPLICANT/DEFENDANT

VERSUS

B.CPLAINTIFF/RESPONDENT

AFFIDAVIT

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

1. That I say, that I am the defendant in the above suit and the applicant in the application. I am well conversant with the facts and circumstances of the case and stand competent to swear to this affidavit.
2. That I say, that the aforementioned suit is for the recovery of an amount of Rs....., allegedly due to the respondent-plaintiff from me, for taking up the construction work of the applicant's official premises bearing No
3. That I say, that notice in the suit was not duly served on me. I happen to be a tenant in the first-floor of the house property bearing NoThe said premises is the abode of two more tenants. The notice was in fact served on my neighbour residing on the ground-floor of the same premises. The said neighbor did not care to inform me about any such service of notice and it was only on enquiry that I came to know that the address was wrongly given into the Process Memo of the summons by the respondent-plaintiff and therefore the notice was returned unserved earlier. Therefore, there was no due or proper service of notice on the applicant.
4. That I say, that it was only from one of my employees, who happened to have a case before this Hon'ble Court last week, that I came to know about the filing of the suit and the declaration of the applicant *ex parte* by this Hon'ble Court, not having appeared before this Hon'ble Court inspite of the alleged service of notice. This has caused great inconvenience and hardship to me. I further came to know that this Hon'ble Court had posted the case to for plaintiff's evidence. If evidence is taken *ex parte* and the suit decreed by this Hon'ble Court, it will cause irreparable loss, injury and hardship to me.

5. That I say, that I have got very serious contentions in the suit and have records to show that all amounts due to the respondent-plaintiff towards the aforementioned construction have been fully paid against proper receipts issued by him and there is no amount due from, and payable by me.
6. That I say, that the case has not reached the trial stage. Even the issues have not been framed. The respondent-plaintiff will not therefore in any way be prejudicially affected by setting aside the *ex parte* order. 7. It is therefore, just and necessary that this Hon'ble Court may be pleased to set aside the order datedpassed by declaring the applicant *ex parte* and to allow me to contest the suit by filing the written statement. It is also necessary that this Hon'ble Court may be pleased not to go ahead with the trial of the suit on the..... namely the next date of hearing.

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.