

Precedent No. 24

**COUNTER-AFFIDAVIT: FOR RESTORATION OF A SUIT DISMISSED FOR
DEFAULT**

BEFORE THE CITY CIVIL COURT,

Interlocutory Application No

In

O.S. Noof20

IN THE MATTER OF:

A.B

....PETITIONER

VERSUS

B.C

....RESPONDENT

COUNTER-AFFIDAVIT

I,W/o....., agedyears,
presently and permanently residing in

The deponent abovenamed, hereby solemnly affirms and declares as follows:

1. The deponent is the respondent in the accompanying Application and the defendant in the Suit referred to above. Being well conversant with the facts and circumstances of the present case, the deponent is fully competent to swear to this affidavit. The deponent will be referred to as the respondent hereinafter.
2. There is absolutely no merit, substance, truth or *bona fides* in the application for restoration or the affidavit accompanying the same and the respondent categorically denies as untrue, incorrect and absolutely baseless all the averments contained therein, save and except those which are specifically admitted hereunder.
3. Being statements of facts, the contents of paragraphs 1 to 5 of the affidavit supporting the application for restoration, deserve no comments.
4. The contents of paragraph 5 are wholly incorrect and true and denied *in toto*. It is submitted that notice for depositing notice and process fee under Order XLI, rule 18 of the Code of Civil Procedure, 1908, was duly sent to the applicant and his local counsel from the Office of the Court Fee Office ofCivil Court *vide* dispatch Nodatedfixingas the date. It

is further submitted that onthe applicant willfully failed to appear in the Court. It is completely incorrect to say that it was fixed for admission and was dismissed on default and the applicant received no information about the date of hearing and that the applicant was totally unaware regarding the same. On the contrary, the applicant had full and complete knowledge of the date fixed *i.e.*,as the notice was sent by the Court Fee Officer but did not appear in the Court on the date fixed.

5. As far as paragraph 6 is concerned, it is submitted that the applicant had full and timely knowledge of the entire proceedings as the revision was recommended by the Court Fee Commissioner, in his and his counsel's presence. It is apparent and adequately clear from the record of this Hon'ble Court that notice *vide* dispatch Nodatedwas sent to the applicant and that the applicant, inspite of the notice and knowledge, willfully failed to appear in this Hon'ble Court on the date fixed.
6. No inspection application to inspect the record of this Hon'ble Court has been filed as alleged in paragraph 7 under reply.
7. In view of the aforementioned facts, the claim made by the applicant is most conspicuously false and fabricated and does not support any recall or review and setting aside of the Order datedor to allow the restoration application.
8. In the circumstances, it is just and necessary that this Hon'ble Court may be pleased to dismiss the application for restoration with compensatory costs.

Sd./

Deponent.

Verification

Verified aton 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. Prayer may be avoided from affidavit and only facts may be stated therein.

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