

**Precedent No. 72**

**EVIDENCE BY WAY OF AFFIDAVIT: DURING TRIAL UNDER SECTIONS 138  
AND 141 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881**

IN THE COURT OF METROPOLITAN MAGISTRATE,

Complaint Case No .....of 20

**IN THE MATTER OF:**

A.B

.....COMPLAINANT

VERSUS

B.C

....ACCUSED

**AFFIDAVIT**

I, .....S/o ....., aged .....years, now  
residing in.....

I, the abovenamed deponent do hereby solemnly affirm and declare as follows:

1. That the Complainant is a Proprietorship firm and is the Sole Proprietor of the said firm and she has appointed the deponent as her attorney-holder to file, institute, sign, verify and lead the evidence of the complaint referred to above. Original S.P.A. is attached herewith as Ex. CWI/1.
2. That the accused No. 1 is a partnership firm and accused No. 2 is the partner of the said firm and dealing with the complainant and is incharge of the day-to-day affairs of that firm.
3. That the accused No. 2 approached the complainant at his office/shop and purchased goods as under:
  - a. Bill No, .....dated, .....for a sum of Rs.....
  - b. Bill No....., dated ....., for a sum of Rs.....
4. That the accused requested the complainant and sought a period of one month for the payment of above said bills and issued a post-dated cheque No ....., dated ....., for a sum of Rs ....., drawn on Carbon copies of the two bills are annexed herewith as Ex. CW1/2 and CW1/3. Original cheque is attached hereto as Ex. CW1/ 4.

5. That the complainant presented the aforesaid cheque through his banker ....., but the same was returned unpaid by the banker of the accused *vide* memo dated , for the reason "ACCOUNT CLOSED". The said cheque was dishonoured despite many assurances and grant of one month period. Original cheque returning memo issued by the drawee bank ....., is attached herewith as Ex. CW1/5 and the Original cheque returning memo issued by the drawer bank ....., is attached herewith as Ex. CW1/6.
6. That the accused have committed the offence under section 138/141 of the Negotiable Instruments Act, 1881, read with section 420 of the Indian Penal Code, by getting the account closed intentionally and deliberately.
7. That the complainant got issued a legal notice herein, dated ....., through his counsel The said notice was sent by Regd. A.D. on .....as well as U.P.C. on .....Carbon copy of the aforesaid notice is attached herewith as Ex. CWI/7. Two original Regd. A.D. booking slips are attached herewith as Ex. CW1/8 and CW1/9. Original U.P.C. is attached herewith as Ex. CW1/10. Two returned Regd. A.D. envelopes are attached herewith as Ex. CW1/11 and Ex. CW1/12. The accused, however, manipulated the service of the Regd. A.D. in collusion with the local authority and one of the registered envelopes returned with the remarks "ADDRESSEE NOT MET INSPITE OF SEVERAL VISITS", which shows the deliberate refusal on the part of the accused. Further, the accused was served with the legal notice at both the addresses through U.P.C, but the accused neither replied to the aforesaid notice, nor made any payment towards the satisfaction of that notice within the statutory period of 15 days. 8. That in the interest of justice, this Hon'ble Court may be pleased to conduct the trial of the accused and punish him according to law.

*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./*

for the deponent.

**Note:** Affidavit to be attested by the appropriate authority prescribed under law.

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