

Affidavits – Order 19

Affidavits are dealt under Order 19 of the Code. It is a sworn statement made by the person who is aware of the facts and circumstances which have taken place. The person who makes and signs is known as 'Deponent'. The deponent makes sure that the contents are correct and true as per his knowledge and he thereby concealed no material therefrom. After signing the document, the affidavit must be duly attested by the Oath Commissioner or Notary appointed by the court of law.

The person who gives attestation to the affidavit shall make sure that the sign of the deponent is not forged. The affidavit shall be drafted as per the provisions of the code. It must be paragraphed and numbered properly.

Even though the "affidavit" has not been defined in the code, it basically means "a sworn statement in writing made specifically under oath or affirmation before an authorized officer or Magistrate."

Essentials

There are some basic essentials which are required to be fulfilled while submitting the affidavit in the court:

It must be a declaration by a person.

It shall not have any inferences, it shall contain facts only.

It must be in the first person.

It must be in writing.

It must be statements which are taken under oath or affirmed before any other authorized officer or a Magistrate.

Contents of affidavit

As per Rule 3, an affidavit shall contain only those facts to which the deponent is aware of as true to his personal knowledge. However, interlocutory applications can be filed wherein he can admit his belief.

Evidence on affidavit

As per section 3 of the Evidence Act, affidavits are not considered as evidence. When there is a need to prove the facts, oral evidence is normally taken into consideration by the court. However, Rule 1 Order 19 is invoked by the Court when it finds that it is necessary to make an order for any particular fact which may be proved by affidavit. If a person provides evidence under the affidavit then the opposing counsel has the right to cross-examine or reply-in-affidavit.

Further, the person who is making an affidavit shall put on those facts only to which he has true personal knowledge. If he gives a statement, not to his personal knowledge then in such case he shall mention the true source. The counsel shall advise the deponent to make sure that he puts facts which he knows rather than what he believes.

The court can reject the affidavit if it is not properly verified and not in conformity with the rules of the code. At the same time the court can also give an opportunity to the party to file the affidavit properly.

In the interlocutory applications like interim injunctions, the appointment of receiver, attachment of property wherein the rights of the parties are not determined conclusively, can be decided on the basis of the affidavit.

False affidavit

Under Section 191, 193, 195, 199 of IPC, 1860, filing a false affidavit is an offence. Giving a lenient view will undermine the value of the document and it will harm the proceedings and will provide no justice to the parties. Criminal contempt of court proceedings can be initiated by the court against the person who files false affidavits in the court of law. Strict actions are taken against public officials who files false affidavits.

As per section 193 of the IPC:

a person who intentionally gives false evidence or fabricates false evidence during a judicial proceeding, he shall be punished with seven years of imprisonment and fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.