
IMPLICATION OF PHOTOCOPY CONTENTS OF AFFIDAVITS



RCBHC

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

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COURT: HON'BLE CHIEF JUSTICE ABDULLAH BALOCH
SUBJECT: CIVIL LAW
DATE: 07 SEPTEMBER 2024
BY: NOOR BAKHSH MENGAL RESEARCH OFFICER

QUERY: WHETHER AN AFFIDAVIT, WITH ITS CONTENTS PRINTED THROUGH PHOTOCOPY, HOLDS LEGAL VALIDITY?

In response to the query presented, it is submitted that what is an affidavit is not defined in any statute, however, in different decisions, the Courts have described affidavit as “**statement of a witness made under oath or affirmation** and submitted in writing, typically in place of oral testimony. In this sense, if submitted in legal proceedings by witnesses, it is fundamentally a **statement of fact** by the deponent and covered by Article 2 (c) (i) of the Qanoon-e-Shahadat 1984, namely a form of oral evidence rather than evidence in the form of document described under Article 2 (c) (ii) of the Order which are **record of a past transactions or a documents that reflect historical events** (like a contract or records).

It is condign to highlight here that form of affidavits is prescribed under Rules and Orders of the Lahore High Court, Lahore Volume IV Chapter 12 Part-B whereas Volume V Chapter 1 Part E of the Rules and Orders of the Lahore High Court, Lahore lays down the procedure for making and filing of affidavits in the High Court. Similarly, Rules 3 of Order XIX Rule deals with the matters which affidavits must be confined to, or in the other words, this rule governs the contents of an Affidavits by confining them to the facts as the deponent is able of his own knowledge to prove, excluding statements on belief except on interlocutory matters provided grounds are also cited in the affidavit. Additionally, other relevant provisions include section 139 and Order VI Rule 14 and 15 of CPC.

Question of validity, authenticity and evidentiary value of affidavits, filed in the legal proceedings, have come under discussion in various cases decided by the Superior Courts. For instance, in case **Mst. SIDDIQA BEGUM and others---Appellants versus IRSHAD ALI SHAH (P L D 1999 Karachi 311)**, the Sindh High Court observed that for an affidavit to be complete, it must be solemnly affirmed before the Oath Commissioner, and its content must be based on facts known to the deponent, except in interlocutory matters. The significant portion of the judgment is reproduced for ready reference:

“17. On a plain reading of the above version, it is clear that the question was confined to only signing of the affidavit and not with regard to other procedural formalities which are essentially followed in completing an affidavit up to the stage of its attestation. According to Black's Law Dictionary (Sixth Edition) an affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the part making it, taken before a person having authority to administer such oath or affirmation. Thus signing of the affidavit by the deponent and its attestation by the Commissioner for taking affidavits are absolutely two distinct features in rendering an affidavit complete in all respects for the purpose of being used in evidence. The most significant aspect of an affidavit for its completion is that the deponent shall solemnly affirm the contents thereof before the Commissioner for taking affidavits provided that contents of such affidavit within the meaning of Order XIX. Rule 3, C.P.C. shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on' which statements of his belief may be admitted- provided that the grounds thereof are stated. In the present case, if such drawbacks were available in the affidavit the learned counsel cross-examining the witness should have specifically put such suggestion to the deponent that after signing the affidavit it was never sworn before a Commissioner for taking affidavits. For the purpose of deriving any benefit from the cross-examination of a witness on material points of fact, a party should ask specifically unreserved questions directly relevant to the issue. In the instant case, the question has been confined to signing of the affidavit to. which the witness has simply replied that it was signed in the Luxmi Building and since there. was no question about its attestation or swearing no plea can be admitted on behalf of the opponent that affidavit was not duly sworn. The case-law cited by the learned counsel for the respondents, therefore, does not help the case of respondents.”

In the case **Master Muhammad Bashir v. Moinuddin (1990 CLC 703)**, the respondent provided affidavits from several witnesses to support his claim, but the credibility of these affidavits was questioned and the Court dealt with the matter in the following manner:

9. Next point arises, if present case is covered by subsection (2) of section 14 of the Ordinance. Although the appellant is residing in first floor of his building but

there is nothing on record to show if he owns any shop like the shop in litigation, which is situated on the ground floor. The appellant in his cross examination denied if he was running the business of ready-made garments at first floor of his house. He denied if he was having a shop at Qasimabad or Liaquatabad. On this point Respondent filed his own affidavit as well as affidavits of his witnesses Ghulam Farid, Mohammad Safdar, Aftab Ali and Abdul Karim. Respondent did not state in his written statement if the appellant was running his business at Liaquatabad or at Qasimabad. Said witnesses of the respondent said in their affidavits that the appellant was doing business in a shop. They admitted in cross that they never appeared before the Oath Commissioner, or before anybody for statement on oath. This shows that their affidavits were not attested in a proper way and the same cannot be relied upon as evidence. Respondent's C witness Mohammad Safdar admitted in cross that he had no knowledge about personal affairs of the appellant and about his source of livelihood. That he was giving evidence at request of the respondent. Respondent's witness Aftab Ali did not give whereabouts of the shop where he had seen the appellant doing business. Aftab Ali admitted in his cross that he was giving evidence at request of the Respondent. In this way the Respondent has not been able to prove that case of the appellant was covered by subsection (2) of section 14 of the Ordinance.

In case HABIB BUX—Appellant versus ZAHOOOR-UL-HASAN—Respondent (1986 C L C 1119) the Hon'ble Sindh High Court also deliberated legal requirements of affidavits for being legally valid. The relevant para is reproduced hereunder for ready reference:

2. Aggrieved by the above-mentioned order passed by the Rent Controller, this appeal has been preferred by the landlord under section 21 of the Sind Rented Premises Ordinance, 1979.

With the assistance of Mr. Z.P. Naqvi, Advocate for the appellant and Mr. Khursheed Ahmed, Advocate for the respondent I have gone through the record and after hearing them find that no exception can be taken to the impugned order passed by the learned Rent Controller. The reasons for reaching the conclusion as above are discussed below:-

At the very outset, it would be observed that the contents of the affidavits in evidence filed by the landlord and his two witnesses and also that by the tenant, verified as they are as true to the knowledge and belief of the deponents without clearly stating how much of the statements are true to the knowledge of the deponents and how much statements have been made on the information or belief and further without stating source of the information or belief with sufficient particularity, being in violating Order XIX, rule 3, C.P.C. and Sind Civil Court Rules, make the said affidavits meaningless and valueless and therefore to be ignored. For the sake of reference Order XIX, rule 3(1), C.P.C. is reproduced below:-

"3. Matters to which affidavits shall be confined. --(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated."

I may next refer here to rules 50 (1) (2), 51 and 62 of the Sind Civil Courts Rules which provide:-

"50. (1) Every affidavit shall express clearly how much is a statement of the deponent's own knowledge and how much is a statement made on his

information or belief and shall also state the source or grounds of the information or belief with sufficient particularity.

(2) When a particular fact is not within the deponent's own knowledge but is stated from information obtained from others, the deponent must use the expression: "I am informed" and should add "and verily believe it to be true" if such be the case. He must also state the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he received such information. When the statement recta in fact disclosed in documents or copies of documents, procured from any Court of justice or other source, the deponent shall state what is the source from which they were procured and his information or belief as to the truth of the facts disclosed in such documents."

(3) ..

51. Every affidavit stating any matter of opinion shall show the qualifications of the deponent to express such opinion by reference to the length of experience, acquaintance with the person or matter as to which the opinion is expressed or other means of the knowledge of the deponent.

62. An affidavit not sworn or affirmed in the manner hereinbefore provided shall not be used in evidence."

The view taken as above by me in the light of the statutory rules reproduced above finds support from the cases reported as, Padmabati v. Rask Lal Dhar I L R 37 Cal. 259, Chandrika Prashad Singh v. Hiralal A I R 1924 Pat. 312, Federal India Assurance Co. Ltd., v. Anandrao Pandurangrao Dixit A I R 1944 Nag. 161, Babu Lal v. Mot! Lal A I R 1953 Mad. 82, Bisakhi Rani Ghose v. Satish Ghandra Roy A I R 1956 Cal. 496, Difendra Nath v. State of Bihar and other AIR 1962 Pat 1101, . The affidavits of the landlord and his two witnesses being not in accordance with the rules are liable to be ignored. Thus there remains no admissible or reliable evidence in support of the plea of the landlord that the tenant had committed default in payment of the rent.

It appears that basically an affidavit is valid if it is in line with the above observed legal requirements, regardless of the fact that its contents are Photostat copy or handwritten, ***what is important is how it is signed and affirmed by the declarant (the person making the affidavit) and whether it follows the required legal procedures, including being sworn before an authorized official.*** If the contents of the affidavit were originally handwritten on plain paper and then photocopied, but **the declarant signed the photocopied version in front of an Oath Commissioner or other authorized official**, it may still be treated as **valid affidavit.**

The End