**Affidavit for Application seeking stay of Execution of Judgment under Order XLI Rule 5 of Code of Civil Procedure.**

**Format of affidavit for Application seeking stay of Execution of Judgment under order xli Rule 5 of CPC.**

When appeal is filed against a Judgment and application is filing for stay of Execution proceedings, Affidavit need to be filed with the Application under Order XLI Rule 5 of Code of Civil Procedure. Where an application is made for stay of execution of an appeal able decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

Sample Format of Affidavit for Application seeking stay of Execution of Judgment under order XLI Rule 5 of CPC is as under.

**BEFORE THE HIGH COURT OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CIVIL APPELLATE JURISDICTION**

**MISCELLANEOUS APPLICATION NO\_\_ OF 20\_\_**

(UNDER ORDER XLI RULE 5 OF CODE OF CIVIL PROCEDURE, 1908)

**FIRST APPEAL NO \_\_\_\_\_ OF 20\_\_**

**IN THE MATTER OF:**
MR. \_\_\_\_\_\_\_\_\_\_\_\_                               **APPLICANT / APPELLANT**

**VERSUS**

MR.\_\_\_\_\_\_\_\_\_\_\_\_\_              **RESPONDENT**

**AFFIDAVIT**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Son of Shri. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, aged about \_\_ years, resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, New Delhi \_\_\_\_\_, do hereby solemnly affirm and declare as under:

1. That I am the appellant in the abovementioned Appeal and the applicant/petitioner in the Application referred to above. Being well conversant with the facts and circumstances of the present case, the deponent is competent to swear to this affidavit and will be referred to as the applicant hereinafter.

2. That, the respondent had filed a suit No \_\_\_\_\_ of 20\_\_ against the applicant in the Subordinate Court of for recovery of an  amount of Rs \_\_\_\_\_\_ allegedly due from the applicant to the respondent on account of the Computer supplied by the respondent for the applicant.

3. That, the suit for the said recovery was decreed by the Hon'ble Subordinate Court on \_\_\_\_\_.

4. That, the respondent-decree-holder had, on filed an application before the Subordinate Court for execution of the said decree.

5. That, it is most humbly submitted that the applicant runs a small Photo shop in the front portion of his house bearing No \_\_\_\_ and is a man of limited means. The applicant also has a very large family consisting of his wife, three children and parents and he is the only bread-winner of the family.

6. That, if the aforesaid decree is executed pending the disposal of the appeal, the applicant will be put to great inconvenience and hardship, as it would become next to impossible for him to maintain his large family.

7. That, in view of the aforementioned circumstances, it is just and necessary that this Hon'ble Court may be pleased to stay all proceedings in execution of the decree dated \_\_\_\_\_\_\_\_ passed by the Subordinate Judge's Court, in O.S. No \_\_\_\_\_of until the appeal is finally disposed of.

**DEPONENT**

**VERIFICATION**
I the Deponent above named do hereby verify that the contents of the above Affidavit are true and correct to my personal knowledge and nothing material has been concealed or falsely stated.

Verified at New Delhi on this day \_\_\_of \_\_\_\_\_\_\_\_\_20\_\_.

**DEPONENT**

## Order XLI Rule 5 of Code of Civil Procedure

**Rule 5 Order XLI "Stay by Appellate Court"**

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation- An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree- Where an application is made for stay of execution of an appeal able decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant far the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.