**Affidavit for Application to arrest Defendant before Judgment.**

**Format of Affidavit to be attached with application for arrest of Defendant before Judgment.**

To arrest the Defendant before Judgment, application needs to be filed with affidavit, in case of summon is served to the Defendant and he is evading appearance. This application can be filed when the defendant leaves the jurisdiction of this court, the plaintiff will not be able to recover any money from him.

Sample Format of Affidavit to be filed with application for arrest is given below:

**IN THE COURT OF \_\_\_\_\_\_\_\_\_\_\_\_, NEW DELHI**
**CS OS NO. \_\_\_\_ OF 20\_\_**

**IN THE MATTER OF :**
MR. \_\_\_\_\_\_\_\_\_\_\_\_\_\_                                         **PLAINTIFF**

**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 plaintiff in the above mentioned suit and as such well acquainted with the facts deposed to below.

2. That the defendant has taken a friendly loan of Rs \_\_\_\_\_\_ from the me on \_\_\_\_\_\_\_ and he executed a promissory note on \_\_\_\_\_\_\_\_\_\_. I have demanded the money from him in several occasions he has not paid any amount inspite of demand.  The present suit has been filed for recovery of the said amount and interest thereon.

3. That the defendant was served with summons in the present suit on \_\_\_\_\_\_\_\_\_

4. That on \_\_\_\_\_\_ the defendant sent his wife and children with household items to unknown place.

5. That I have been informed by Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_the Manager of \_\_\_\_\_\_\_\_\_ Company Ltd, where the defendant is employed, which I believe to be true, that the defendant has given notice to his employer to resign from service at the end of \_\_\_\_\_\_\_\_\_\_\_.

6. That if the defendant leaves the jurisdiction of this court, the plaintiff will not be able to recover any money from him.

7. That if the defendant leaves the jurisdiction of this Court, the plaintiff will be put to irreparable loss .

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the above named deponent, do hereby verify that the contents of paragraphs 1 to 7 of this affidavit are true to my personal knowledge and nothing has been concealed and no part of it is false.

**DEPONENT**

**VERIFICATION**
Verified at Delhi on this day of, \_\_\_ that the contents of my above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

**DEPONENT**

## Order XXXVIII Rule 1 of Code of Civil Procedure

**Rule 1 Order XXXVIII Where defendant may be called upon to furnish security for appearance**

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,-

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,-

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limit soft the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is About to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiffs claim; and such sum shall be held in deposit by the Court until: the suit is disposed of or until the further order of the Court.