**Affidavit to be filed with Interlocutory Application seeking security under Rule 3(6)(b) in a Summary Suit Under Order xxxvii of Code of Civil Procedure.**

As per Order xxxvii Rule 3 (6) (b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

Sample Format of Affidavit for Intervention Application in a Suit is given below:

**IN THE COURT OF THE \_\_\_\_\_\_\_\_\_\_\_\_\_ JUDGE AT \_\_\_\_\_\_\_\_\_**

**INTERLOCUTORY APPLICATION NO\_\_\_\_\_ OF 20\_\_\_**

**IN**

**ORIGINAL SUIT NO \_\_\_\_\_\_\_ OF 20\_\_**

**MR \_\_\_\_\_\_\_\_\_\_\_\_\_\_                                        APPLICANT / PLAINTIFF**

**VS**

**MR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                        RESPONDENTS / DEFENDANTS**

**AFFIDAVIT**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Son of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ aged \_\_\_\_\_\_\_\_\_ years, Resident of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do solemnly affirm and say as follows:

1. The I am the Accounts Manager and authorised signatory of the petitioner in the application and the plaintiff in the suit referred to above. The deponent is fully conversant with the facts and circumstances of the case and stands competent to swear to this affidavit on behalf of the petitioner. The deponent will be referred to as the petitioner hereinafter.

2. The suit is filed for recovery of an amount of Rs\_\_\_\_\_\_  with future interest from the counter-petitioner who owes the money to the petitioner. The amount is due against sale of Generator sets made to the Defendant and the cheque issued by him, which was returned with reason of not having sufficient fund in the Accounts. Copy of cheque issued by the Defendant in favour of the petitioner, is produced alongwith the plaint as Ex-1.

3. Inspite of repeated requests made by the petitioner, the Defendant did not care to effect payment or settle the account, which necessitated the filing of the suit.

4. Before filing the suit, the petitioner had sent a legal notice to the Defendant through its lawyer Mr \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and reply containing false and frivolous contentions was sent by the Defendant, without remitting the amount. At the same time, he started taking steps for disposing of the stock of Computers in his business premises at the address given above with a view to siphoning off the sale proceeds into his private and concealed coffers for screening it from creditors like the petitioner. His attempt is to remove those goods, dispose of the same and then start a business in the name of his son thereby effectively defeating a creditor like the petitioner. The petitioner has come to know of the said threatened plans of the counter-petitioner yesterday when he made discrete enquiries through his agent, from dependable sources.

5. For the various reasons mentioned in the plaint, the suit is likely to be decreed in favour of the petitioner in terms of the plaint. If pending disposal of the same, the Defendant is allowed to do the threatened act, it will cause irreparable loss, injury and hardship to the petitioner, incapable of being remedied by way of damages. Moreover, the Defendant does not have any other property or assets, movable or immovable, in his ownership or possession. The petitioner will be left high and dry, if the threatened acts are allowed to go unchecked. Therefore, Defendant has to be restrained from doing so.

6. It is, therefore, just and necessary that this Hon'ble Court within a time to be stipulated by this Hon'ble Court, issue notice as to why he should not be asked to furnish security for an amount of Rs \_\_\_\_\_\_ necessary for satisfying the decree that is likely to be passed against him in the present suit, or the scheduled properties to be attached and removed to the premises of this Court and, in the meantime, to order interim attachment and removal to this Hon'ble Court's custody of the movable items belonging to the Defendant and detailed in the schedule attached as prayed for in the accompanying application.

**DEPONENT**

**VERIFICATION**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_the above named deponent do hereby verify on oath that the contents of the affidavit above are true to my personal knowledge and nothing material has been concealed or falsely stated therein.

Signed and verified this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_ 20 \_\_\_\_\_\_\_ at \_\_\_\_\_\_\_

**DEPONENT**

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_ ,20\_\_**.**

**COUNSEL FOR THE DEPONENT**

## Order XXXVII Rule 3 of Code of Civil Procedure 1908

**Rule 3 Order XXXVII "Procedure for the appearance of defendant"**
(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an a address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if tile plaintiff sues in person, to the plaintiff himself, either by. notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) if the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.