

IN THE HON'BLE COURT OF SH _____, LD ADJ (WEST)
TIS HAZARI COURTS, WEST DISTRICT, NEW DELHI
CIVIL SUIT NO ___ OF YYYY

IN THE MATTER OF:

M/s 'PLAINT' ABC

.....PLAINTIFF

VERSUS

SH. 'DEFEN' XYZ

....DEFENDANT

INDEX

S. No.	PARTICULARS	PAGE NO.
1.	APPLICATION UNDER ORDER XIV RULE 2 READ WITH SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908 FOR DISMISSAL OF SUIT ALONG WITH AFFIDAVIT.	
2.	COPY OF INVOICE NO. _____ DATED DD.MM.YYYY IS ATTACHED HEREWITH AS ANNEXURE A-1.	
3.	COPY OF E-MAIL DATED DD.MM.YYYY IS ATTACHED HEREWITH AS ANNEXURE A-2	
4.	COPY OF THE GUARANTEE CERTIFICATE IS ATTACHED HEREWITH AS ANNEXURE A-3.	
5.	COPY OF E-MAIL(S) DATED DD.MM.YYYY, DD.MM.YYYY AND DD.MM.YYYY ARE ATTACHED HEREWITH AS ANNEXURE A-4 (COLLY).	
6.	COPY OF E-MAIL DATED DD.MM.YYYY IS ATTACHED HEREWITH AS ANNEXURE A-5.	
7.	COPY OF COMPLAINT DATED DD.MM.YYYY IS ATTACHED HEREWITH AS ANNEXURE A-6	

Filed On: DD.MM.YYYY

Filed By:

APPLICANT/DEFENDANT
THROUGH

NITINYAYA LAW OFFICES
Advocate(s) for the Applicant/Defendant
Chamber No.103, New Lawyers Chambers
CK Daphtary Block, Tilak Lane
Supreme Court of India, New Delhi-110001
Contact no.:09818085505, 011-45009902
Email id- info@nitinyaya.com

IN THE HON'BLE COURT OF SH _____, LD ADJ (WEST)
TIS HAZARI COURTS, WEST DISTRICT, NEW DELHI
CIVIL SUIT NO ____ OF 2018

IN THE MATTER OF:

M/s 'PLAINT' ABC

.....PLAINTIFF

VERSUS

SH. 'DEFEN' XYZ

....DEFENDANT

N.D.O.H: DD.MM.YYYY

**APPLICATION UNDER ORDER XIV RULE 2 READ WITH SECTION
151 OF CODE OF CIVIL PROCEDURE, 1908 FOR DISMISSAL OF
SUIT.**

MOST RESPECTFULLY SHOWETH:

1. That the Applicant/Defendant herein is an Advocate by profession and practices in Delhi/NCR.
2. That the Non-Applicants/Plaintiff herein is a private limited company engaged in the business of trading, marketing, import and export in all types of Indian and imported marbles and stones under the name and style of “**PLAINT' ABC**” with its registered office at _____.
3. That in YYYY, the Applicant/Defendant carried out construction work at his residence, in pursuance of the same Applicant/Defendant approached the Non-Applicants/Plaintiff looking for marbles and certain other goods.
4. That the Applicant/Defendant purchased Laminam sheets for the exteriors and duly paid the amount generated vide Invoices and bills.
5. That the Non-Applicants/Plaintiff gave the assurance to the Applicant that they will be issuing the guarantee certificate after full and final payment.
6. That the last bill was generated vide invoice No. _____ dated DD.MM.YYYY amounting to Sum of Rupees Three Lacs One Thousand One Hundred And Eighty Three (INR 3,01,183/-) Only.

Copy of invoice No. _____ dated DD.MM.YYYY amounting to Sum of Rupees Three Lacs One Thousand One Hundred and Eighty Three (INR 3,01,183/-) Only is attached herewith as **Annexure A-1.**

7. That in pursuance of the same Applicant/Defendant issued a 'security cheque' bearing no. '_____' drawn on Bank, Kirti Nagar in favour of Non-Applicants/Plaintiff which will be presented subject to delivery of the remaining goods and issuance of guarantee certificate.
8. That the Non-Applicants/Plaintiff with their malafide intention presented 'Security Cheque' bearing no. _____ on DD.MM.YYYY without making any intimation to the Applicant/Defendant at ABC Bank, situated at _____, however the same was returned unpaid due to the reason 'insufficient funds.'
9. That the Non-Applicants/Plaintiff issued guarantee certificate vide e-mail dated DD.MM.YYYY to the utter surprise of the Applicant/Defendant with respect to the terms and condition mentioned therein. Copy of e-mail dated DD.MM.YYYY is attached herewith as **Annexure A-2.**
10. That the Non-Applicants/Plaintiff have played a fraud on the Applicant/Defendant by concealing the material facts with respect to the guarantee of the goods. **Article 10** of the Guarantee Certificate issued by the Non-Applicants/Plaintiff states that;
 - i. *'This Warranty is governed by and shall be construed in accordance with the laws of Italy. Any dispute arising out or in connection with this Warranty will be submitted to the exclusive jurisdiction of an Italian judge and the Courts of Modena.'*

Copy of the guarantee certificate is attached herewith as **Annexure A-3.**

11. That the Non-Applicants/Plaintiff acted fraudulently by securing the 'Security Cheque' bearing no. _____ and presenting the same without making any intimation to the Applicant/Defendant as they were aware of the fact that if they disclose the abovementioned terms and conditions in the guarantee certificate to the Applicant/Defendant prior to securing the 'security cheque,' the Applicant/Defendant would have disputed the same and repudiated the contract between them.
12. That the Non-Applicants/Plaintiff induced the Applicant/Defendant by concealing the material facts with respect to the guarantee certificate, and in case the same was in the knowledge of Applicant/Defendant prior to entering into the contract with the Non-Applicants/Plaintiff, the Applicant/Defendant would have repudiated the same.
13. That as per the guarantee certificate, in case of any of the disputes and damages with respect to the goods the same shall be resolved in accordance with Italian laws and should be submitted to the exclusive jurisdiction of an Italian judge and the Courts of Modena (Article 10 of the Guarantee Certificate).
14. That the Applicant/Defendant has already purchased entire goods from the Non-Applicants/Plaintiff and thereby would suffer heavy loss in case of any defect, damages arising out of goods delivered as the Non-Applicants/Plaintiff would escape their liability by referring to the terms and conditions mentioned in the guarantee certificate, thereby causing huge loss to the Applicant/Defendant.
15. That the Non-Applicant/Plaintiff has played fraud on the Applicant/Defendant by not disclosing the fact that the principal supplier is in _____.
16. That the Applicant/Defendant despite repeated reminders vide email dated DD.MM.YYYY, DD.MM.YYYY and DD.MM.YYYY asked

for the terms of the agreement between Non-Applicant/Plaintiff and principal supplier in Italy which were not shared by the former. Copy of the email(s) dated DD.MM.YYYY, DD.MM.YYYY and DD.MM.YYYY are annexed herewith as **Annexure A-4 (COLLY)**.

17. That since the above stated facts were in the knowledge of Non-Applicants/Plaintiff as they acted as an agent of undisclosed Principal supplier in Italy and continued to suppress material facts from the Applicant/Defendant, therefore their acts amounted to 'FRAUD' within the meaning of Section 17 of Indian Contract Act, 1872, hence the same is voidable at the instance of Applicant/Defendant.

18. That Non-Applicant/Plaintiff concealed the factum of holding one 1) sheet of Laminam as per e-mail dated DD.MM.YYYY thereby causing loss to the Applicant/Defendant from this Hon'ble Court implying that the terms of the contract were not fulfilled .Copy of e-mail dated DD.MM.YYYY is attached herewith as **Annexure A-5**.

19. That since the Plaintiff has approached this Hon'ble Court with unclean hands by the material suppression and concealment of the fact of the guarantee certificate and hence this Suit is liable to be dismissed as held by Hon'ble Supreme Court of India in case of **S.P Chengalvaraya Naidu (Dead) by L.Rs Vs Jagannath (Dead) by LRs & Ors AIR 1994 SC 853 on 27/10/1993** that

a. *"a person ,who's case is based on falsehood ,has no right to approach the court .He can be summarily thrown out at any stage of the litigation. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage".*

20. That Complaint dated DD.MM.YYYY was filed with the S.H.O of Kirti Nagar Police Station whereby it was brought to the knowledge

of the concerned officer regarding the selling of goods by dishonest representation by Non-Applicants/Plaintiff, adjudication of which is still under process. Copy of Complaint dated DD.MM.YYYY is annexed herewith as **Annexure A-6**.

21. That this instant application has been necessitated in order to save the valuable time and resources of this Hon'ble Court contesting the prayer of the Non-Applicant/Plaintiff for passing a decree of recovery amounting to Sum of Rupees Three Lakhs Forty Three Thousand Five Hundred and Thirteen (INR 3,43,513/-) Only along with interest @ 18% per annum from the date of filing of the Suit till realization of the decretal amount.
22. That in the light of the abovementioned facts and circumstances, the captioned civil suit of the Non-Applicants/Plaintiff is liable to be dismissed as the same is barred by law.
23. That the present application is bonafide and hence has been filed in the interest of justice.
24. That it will prejudice the Applicant/Defendant in case the present application is not allowed.

PRAYER

In the light of the abovementioned facts and law the Applicant/Defendant most humbly prays that this Hon'ble court my kindly be pleased to:

- a) Allow the present application in favour of the Applicant/Defendant and against the Non-Applicant/Plaintiff;
- b) Pass an order for the dismissal of suit against Non-Applicant/Plaintiff and in favour of Applicant/Defendant;
- c) Pass any other direction or order which this Hon'ble court may deem fit or necessary in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE HUMBLE APPLICANT/DEFENDANT AS IN DUTY BOUND SHALL EVER PRAY

Filed By:
Filed On: DD.MM.YYYY
Filed At: New Delhi

APPLICANT/DEFENDANT
THROUGH

NITINYAYA LAW OFFICES
Advocate(s) for the Applicant/Defendant
Chamber No.103, New Lawyers Chambers
CK Daphtary Block, Tilak Lane
Supreme Court of India, New Delhi-110001
Contact no.:09818085505, 011-45009902
Email id- info@nitinyaya.com

VERIFICATION

Verified on DD.MM.YYYY at New Delhi, that contents of the present application from paragraph no.1 to paragraph no.23 are correct and true to the best of the knowledge of the Applicant/Defendant.

APPLICANT/DEFENDANT

IN THE HON'BLE COURT OF SH _____, LD ADJ (WEST)
TIS HAZARI COURTS, WEST DISTRICT, NEW DELHI
CIVIL SUIT NO ____ OF YYYY

IN THE MATTER OF:

M/s 'PLAINT' ABC

.....PLAINTIFF

VERSUS

SH. 'DEFEN' XYZ

....DEFENDANT

AFFIDAVIT

I, 'Defen' XYZ, aged about ____ years, S/o ____ R/o _____ do hereby
solemnly swear and declare as under:

1. That the Deponent is the Applicant/Defendant in the captioned
suit and is therefore, being well aware of the facts and
circumstances of the case, competent to swear the present
affidavit;
2. That I say that the accompanying application for dismissal of suit
has been drafted by my counsel on my instructions, contents
whereof are true and correct to my knowledge and the same may
kindly be read as part and parcel of present Affidavit which for
the purposes of brevity are not being reproduced herein.

DEPONENT

VERIFICATION

Verified on DD.MM.YYYY at _____, that the contents of this affidavit
are correct and true to the best of the knowledge of the Defendant.

DEPONENT