



HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

CIVIL REVISION NO.14 OF 2026

14^h August, 2026

Sri Mayank Verma

...Revisionist/ Respondent

Versus

Sri Shivam Joshi

...Respondent/ Plaintiff.

Counsel for the revisionist : Mr. D.C.S. Rawat, learned counsel.

Counsel for the respondent : Mr. Tejas Agarrwal, learned counsel through V.C.

JUDGMENT: (per Mr. Subhash Upadhyay, J.)

The present civil revision under Section 25 of the Provincial Small Cause Courts Act has been preferred against an order dated 02.02.2026 passed by the learned Judge, Small Causes Courts/ Additional District Judge, Kotdwar, District Pauri Garhwal in SCC Case No.24/2025, "Shivam Joshi Vs. Mayank Verma" whereby the learned Trial Court has allowed Application No.23-C filed by the respondent/plaintiff to take the new amended evidence affidavit on record and to withdraw the already filed evidence affidavit.

2. The respondent/plaintiff filed SCC Suit No.24/2025 against the revisionist / respondent for arrears of rent, ejectment and *mesne* profit. The respondent/ plaintiff in paragraph nos.1 and 2 of the plaint made the following



averments:

“1— यह कि वादी शिवम जोशी गोखले मार्ग, कोटद्वार स्थित एक भवन का स्वामी है जिसके भूतल की पश्चिम मुहानी लगभग 150 वर्गफीट की एक दुकान व भवन के भूतल व बेसमेन्ट पर स्थित एक गोदाम जो भूतल व बेसमेन्ट मिलाकर लगभग 600 वर्गफीट क्षेत्रफल में है पर प्रतिवादी अपने पिता के समय से पिछले लगभग 50 वर्षों से किराएदार चला आ रहा है। वर्तमान में किराए की दर 2000/— रुपये प्रतिमाह है।

2— यह कि प्रतिवादी की किराएदारी वाली दुकान व गोदाम व सीमाएँ निम्न प्रकार हैं।

(अ) विवरण एवं सीमाएँ दुकान

प्रतिवादी की किराएदारी वाली दुकान जो लगभग 150 वर्गफीट क्षेत्रफल में है जिसके पूरब में वादी की सम्पत्ति का अन्य भाग, पश्चिम में गोखले मार्ग, उत्तर में गली बाद बिनोद अग्रवाल की किराएदारी वाली दुकान तथा दक्षिण में वादी के भवन का शेष भाग है।

(ब) विवरण एवं सीमाएँ गोदाम

प्रतिवादी की किराएदारी वाला गोदाम जो भूतल व बेसमेन्ट मिलाकर कुल लगभग 600 वर्गफीट क्षेत्रफल में है जिसके पूरब में वादी की सम्पत्ति का अन्य भाग, पश्चिम में वादी की सम्पत्ति की रईस की किराएदारी वाली दुकान, उत्तर में वादी की सम्पत्ति की खाली जगह बाद गली व गली के बाद पंचायती धर्मशाला कोटद्वार तथा दक्षिण में अन्य की सम्पत्ति जिस पर आनन्द सिंघानिया की पेंट पालिश आदि की दुकान है।”

3. The revisionist/ respondent in his written statement admitted the said averments. The respondent / plaintiff, thereafter, filed his evidence affidavit. However, as per the case of the respondent/plaintiff, due to inadvertence, the first two paragraphs of the plaint averments, which are related to the details of the property could not be mentioned in the said evidence affidavit. As such, an application no.23-C was filed whereby it was prayed that the earlier evidence affidavit may be permitted to be not pressed/ withdrawn and the plaintiff may be permitted to file new evidence affidavit. The said application reads as under:



“न्यायालय मा. जज खफीफा / अपर जिला जज महोदय कोटद्वार

ख. वाद सं. 24 सन् 2025

शिवम जोशी

.....वादी

बनाम

मयंक वर्मा

.....प्रतिवादी

नया शपथ पत्र प्रस्तुत करने हेतु प्रार्थना पत्र

महोदय,

उपरोक्त मामले में निवेदन है कि वादी की ओर से प्रस्तुत वादी शिवम जोशी के शपथपत्र में भूलवश टाइपिंग की गलती से दो पैरा आने छूट गए हैं जिनमें कि सम्पत्ति के विवरण आने थे। वादी पुनः नया शपथ पत्र प्रस्तुत कर रहा है। जिसमें सम्पत्ति के विवरण वाले दो पैरा जोड़े गये हैं।

अतः प्रार्थना है कि वादी को पूर्व में दाखिल वादी शिवम जोशी के शपथपत्र को नाट प्रैस करने की इजाजत प्रदान करने की कृपा की जाए तथा सम्पत्ति के विवरणों वाले दो प्रस्तारों को सम्मिलित कर प्रस्तुत किए जा रहे नए शपथपत्र को प्रस्तुत करने की इजाजत प्रदान करने की कृपा की जाए।
दिनांक 5.1.2026

हस्ताक्षर
अधिवक्ता
वादी”

4. The revisionist / respondent filed an objection to the said application, however, by the impugned order dated 02.02.2026 application no.23-C has been allowed and assailing the aforesaid order, the present revision has been filed.

5. Learned counsel for the revisionist / respondent submits that an evidence affidavit once filed cannot be withdrawn and, as such, the order impugned is liable to be set aside on this ground alone.

6. Learned counsel for the revisionist / respondent in support of his contention has placed reliance on the following



judgments of Bombay High Court:

- 1) Digambar Ramchandra Bawaskar Vs. Soma Prabhu Pawar and Others [2018(1) Mh.L.J.] and;
- 2) Abdul Samad (since deceased) through LRs Vs. Abdul Wahed in Writ Petition No. 6779 of 2009 and Writ Petition No.1892 of 2017

7. Per contra, learned counsel for the respondent / plaintiff submits that the mistake in the earlier evidence affidavit was due to inadvertence and no prejudice would be caused to the revisionist in case the new evidence affidavit is taken on record.

8. The moot question before this Court is that as to whether the evidence affidavit once filed can be permitted to be withdrawn. Order 18 Rule 4 of the CPC, which relates with the recording of evidence reads as under:

*²[4. **Recording of evidence.**—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:*

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it: Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with



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his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]”

9. Thus, as per order 18 Rule 4 CPC, evidence affidavit once filed formed part of the record of the suit as such it cannot be permitted to be withdrawn. The application no.23-C filed by the respondent/ plaintiff was for withdrawal of the earlier affidavit and for taking the amended affidavit on record.

10. The learned Trial Court thus committed an error in allowing application no.23-C in totality and permitting the plaintiff to withdraw the earlier evidence affidavit and permitting him to file an amended evidence affidavit in place



of the earlier affidavit.

11. This Court has also perused the judgments cited by the revisionist/ respondent and is in agreement with the view taken in the aforesaid judgments, that the evidence affidavit once filed which formed part of the record cannot be allowed to be withdrawn. However, at the same time, Order 18 Rule 4 CPC does not preclude a party to file another affidavit. The judgments cited by the revisionist also laid down the aforesaid principle that evidence affidavit once filed cannot be withdrawn. But, the Court, at the same time, is empowered to permit the party to file an additional evidence affidavit if it comes to the conclusion that the subsequent affidavit is not filed for filling up any *lacunae* or is used for delaying the proceedings of the suit.

12. In the present case, the respondent /plaintiff in the plaint in paragraph nos.1 and 2 had specified the details of the property and the revisionist had admitted the said contents in its written statement. Thus, mere omission of the said facts in the evidence affidavit, which were pleaded in the plaint, can only be termed as a mistake and would not come under the category of filling *lacunae* or can be termed as an act of deliberately delaying the trial.

13. In view of the above discussion, this Court is of the



view that though the order passed by the Trial Court allowing the application of the respondent / plaintiff in totality by permitting withdrawal of the evidence affidavit is not sustainable in law, however, at the same time, the respondent / plaintiff cannot be debarred from filing an additional affidavit. Accordingly, the revision is disposed of with the following directions:

- 1) The order impugned, in the present revision dated 02.02.2026 passed by the learned Small Causes Courts / Additional District Judge, Kotdwar, District Pauri Garhwal, is set aside.
- 2) The evidence affidavit, filed by the respondent / plaintiff, which became part of the record, cannot be permitted to be withdrawn, the same shall remain part of the record.
- 3) The setting aside of the order impugned would, however, not preclude the respondent / plaintiff to file a supplementary affidavit. The respondent / plaintiff would be at liberty to move an application for filing a supplementary evidence affidavit. In case such an application for taking the supplementary affidavit on record is filed, the same shall be considered and decided by the learned



Trial Court, in accordance with law.

14. Pending application, if any, also stands disposed of.
15. Let a copy of this judgment be forthwith sent to the court concerned for due compliance.
16. LCR, if any, be also sent back.

Dt:14.08.2026

Sukhbant

SUBHASH UPADHYAY, J.