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LIMIT OF SURETY'S LIABILITY UPON VARIATION OF GUARANTEE

The Supreme Court of India (“SC”), in *Bhagyalaxmi Co-operative Bank Ltd.* case,¹ clarified the extent of a surety’s liability where the creditor permits transactions beyond the terms of the original guarantee. It held that under Section 133² of the Indian Contract Act, 1872 (“Act”), the liability of a surety is discharged only in respect of transactions subsequent to an unauthorised variance in the terms of the contract.

Brief Facts

Bhagyalaxmi Co-operative Bank Ltd. (“BCBL”) sanctioned a cash-credit facility of ₹4 lac to M/s. Darshak Trading Company (“Darshak”), for which Respondent Nos. 1 and 2 stood as sureties. It was alleged that Darshak withdrew amounts far exceeding the sanctioned limit, purportedly in connivance with certain bank officials.

Upon default, BCBL initiated recovery proceedings for about ₹27 lac along with interest. The Board of Nominees decreed the claim only against Darshak and dismissed it against the sureties. On appeal, the Gujarat State Co-operative Tribunal held the sureties liable to the extent of ₹4 lac with interest. However, the Gujarat High Court (“HC”) set aside this finding, holding that the sureties could not be partially liable and stood fully discharged, leading to the present appeal before the SC.

BCBL’s Contentions

- Under Section 133 of the Act, any variance without the surety’s consent discharges the surety only for subsequent transactions, and not the amount originally guaranteed.
- It is entitled to recover dues from the sureties at least up to the original guarantee, even if excess amounts were later withdrawn.
- The liability of the sureties are co-extensive and that it is not necessary to first proceed against the principal debtor before initiating action against the sureties.

Sureties’ Contentions

¹ *Bhagyalaxmi Co-Operative Bank Ltd. vs. Babaldas Amtharam Patel (D) Through Legal Representatives & Others*, 2026 LiveLaw (SC) 210.

² Section 133 of the Act allows for the discharge of a surety by variance in terms of contract.

- Under Section 139 of the Act, they stand discharged of their liability as BCBL permitted excess withdrawals without their knowledge, which is inconsistent with their rights and impairs their eventual remedy against the principal debtor *i.e.*, Darshak.
- The variation in the contract between BCBL and Darshak was effected without the knowledge or consent of the sureties and therefore cannot bind them to any outstanding dues.
- In the absence of any intimation or consultation regarding the additional lending, BCBL cannot proceed against the sureties at all, and the appeal is liable to be dismissed.

Judgment & Reasoning

The SC:

- Interpreted Section 133 of the Act to hold that any variance in the terms of the contract, made without the sureties' consent, results in discharge only in respect of transactions subsequent to such variance, and not in a complete discharge of liability.³
- Clarified that the liability of a surety is confined to the terms of the original contract of guarantee, and a surety cannot be bound to obligations beyond what was expressly undertaken.⁴
- Held that Section 139 of the Act requires not only an act inconsistent with the surety's rights but also an impairment of the surety's eventual remedy against the principal debtor.⁵
- Found that mere variation of the contract does not attract Section 139 in the absence of demonstrated prejudice to the surety's remedy.⁶
- Concluded that the sureties are liable to the extent of ₹4 lac with interest, being the amount originally guaranteed, and are discharged only with respect to excess withdrawals.⁷
- Rejected the HC's view that the sureties must either be liable for the entire amount or not at all, observing that such an approach is contrary to the express wording of Section 133.⁸
- Set aside the HC's judgment and restored the limited liability of the sureties in accordance with Section 133.⁹

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³ Paragraph No. 4.4 of the Judgement

⁴ *Ibid.*

⁵ Paragraph No. 7.1 of the Judgement

⁶ *Ibid.*

⁷ Paragraph No. 7.2 of the Judgement

⁸ Paragraph No. 7.3 of the Judgement

⁹ Paragraph No. 7.4 of the Judgement