



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 30158 OF 2015 (GM-DRT)

BETWEEN:

1. M/S. SSA CONSTRUCTIONS
A PARTNERSHIP FIRM REGISTERED,
AT 1408, 11TH MAIN, MAHALAKSHMIPURAM,
WOC ROAD, II STAGE, BANGALORE-86
REPRESENTED BY ITS MANAGING PARTNER
SRI.GOPAL REDDY, S/O LATE G. VENKU REDDY,
AGED ABOUT 68 YEARS.
2. MR. G. GOPAL REDDY
S/O LATE.G.VENKU REDDY,
AGED ABOUT 68 YEARS,
MANAGING PARTNER
M/S SSA CONSTRUCTIONS
A PARTNERSHIP FIRM REGISTERED,
AT 1408, 11TH MAIN, MAHALAKSHMIPURAM
WOC ROAD, II STAGE, BANGALORE-86

...PETITIONERS

(BY SRI. HEGDE V S., ADVOCATE)

AND:

1. ANDRA BANK
GANDHI NAGAR BRANCH,
SUJATHA COMPLEX, 1ST MAIN,
GANDHINAGAR, BANGALORE-560009.
2. MRS. DEVIREDDY BUJAMMA
W/O DEVI REDDY SUNDARAMA REDDY
DOOR NO.27-1/1306,
ADITYA NAGAR, NALLUR
ANDRAPRADESH- 524001.





3. MRS.D.ANUSHA REDDY
D/O MALLIKARJUNA REDDY,
AGED ABOUT 27 YEARS,
R/AT YELLAYAPALYAM POST,
KODVALUR MANDAL,
NALLUR DISTRICT
ANDRAPRADESH-524 001.
4. M/S OMKARA ASSETS RECONSTRUCTION
PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
REGISTERED AS A SECURITIZATION AND
ASSETS RECONSTRUCTION COMPANY HAVING
ITS REGISTERED OFFICE AT NO.9, MP NAGAR
FIRST STREET, KONGU NAGAR EXTENSION
TRIPUR 641607, TAMIL NADU.
HAVING CORPORATE OFFICE AT C/515
KANAKIA ZILLION, JUNCTION OF LBS ROAD
AND CST ROAD BKC ANNEXE NEAR EQUINOX
KURLA(WEST) MUNBAI 400070.
REP. BY IS AUTHORIZED OFFICER
MR. SHUBHODEEP BANERGEER.

...RESPONDENTS

(BY SRI. T P MUTHANNA FOR. ,ADVOCATE FOR R1;
R3 SERVED;
SRI. SIVARAMA KRISHNAN,. ADVOCATE FOR
APPLICATION IN IA3/22)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
CALL FOR THE RECORDSQUASH THE ORDER DT.22.5.2015
ON I.A.NO.674/2013 IN O.A.NO.963/2011 AS PER ANNEX-A AND
ETC.

THIS PETITION, COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE
THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR



ORAL ORDER

Petitioner No. 1, a partnership firm called M/s. SSA Constructions (the mortgagor-borrower), and Petitioner No. 2, its managing director and alleged surety, obtained various loan facilities from Respondent No. 1, the mortgagee creditor bank. They have filed this writ petition, challenging the dismissal of I.A. No. 674/2014 in O.A. No. 963/2011 by the Debt Recovery Tribunal (DRT), Bangalore, in an order dated 22.05.2015. In their application, the petitioners requested that the properties of Respondent Nos. 2 and 3 be included for issuing a recovery certificate under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act).

2. Respondent No. 1 had approved credit facilities for the petitioners and M/s. SSA Constructions (Defendant No. 3 in O.A. 963/2011, not listed here). The properties of the petitioners, co-borrowers, and guarantors were offered as security for the repayment of these loans.

3. On 08.03.2007, the term loan limit was reduced from Rs. 200 lakhs to Rs. 60 lakhs, and the properties of Respondent Nos. 2 and 3, which the petitioners now want to include, were released.



4. After the borrower defaulted on the loan repayment, Respondent No. 1, Andhra Bank (the mortgagee creditor), filed O.A. No. 963/2011 (later renumbered as T.A. 598/2017) under Section 19 of the RDDBFI Act before the DRT, Bangalore, seeking a recovery certificate for the following:

1. An amount of INR 4,45,97,599/- against Petitioner No. 1 (Defendant No. 1 - borrower), Petitioner No. 2 (Defendant No. 4 - surety), and Respondent Nos. 2 and 3 (Defendants No. 14 and 15, respectively - co-sureties), among others (unarrayed herein).
2. An amount of INR 3,35,67,342/- against Defendant No. 2 (unarrayed debtor), Petitioner No. 2 (Defendant No. 4 - surety), and others (unarrayed herein).
3. An amount of INR 2,50,18,250/- against Defendant No. 3 (Shree Surya Constructions, unarrayed debtor), Petitioner No. 2 (Defendant No. 4 - surety), and Respondent Nos. 2 and 3 (Defendants No. 14 and 15, respectively - sureties), among others (unarrayed herein).

Thus, a total of INR 10,31,83,191/- is being claimed from Petitioner Nos. 1 and 2, along with other defendants (not listed



here), including Respondent-defendant sureties Nos. 2 and 3, who had provided equitable mortgages to secure the petitioners' and other borrowers' loans (also not listed here) through a Memorandum of Deposit of Title Deeds (RF255) and an Extension of Memorandum of Deposit of Title Deeds (RF255B). The case is still pending.

5. Petitioner Nos. 1 and 2 later filed I.A. No. 674/2013 on 08.02.2013, in O.A. No. 963/2011 under Section 22 and Section 19(25) of the RDDBFI Act, 1993, and Rule 18 of the related rules, requesting the inclusion of the following properties, which were left out of the Schedule of O.A. No. 963/2011 filed by the Respondent Bank:

1. Equitable mortgage of a residential property in Devanahalli, Bangalore, owned by D. Anusha Reddy, valued at Rs. 22.50 lakhs (urban property) – Respondent No. 3 / Defendant No. 15.
2. Equitable mortgage of wet agricultural property (1.3 acres in Yellayapalem, Kodavalur) and a 17-acre mango garden in Thimmanagari Palem, Gudur, owned by D. Venku Reddy, valued at Rs. 79.50 lakhs – Defendant No. 12, not listed here.



3. Equitable mortgage of 18 acres of wet agricultural land in Gogulapalli, Alur, Nellore, owned by D. Bujjamma, valued at Rs. 54.00 lakhs – Respondent No. 2 / Defendant No. 14.

6. On 09.12.2013, the DRT allowed I.A. No. 674/2013 while granting the respondent-bank the right to submit an additional written statement, if necessary. However, on 23.04.2014, the respondent-bank filed I.A. No. 3102/2014, seeking to recall the order, which was allowed vide order dated 12.01.2015.

7. The DRT re-examined I.A. No. 674/2013, and on the objections filed by the respondent-bank on 25.02.2015, wherein the respondent-Bank had explained why these properties were excluded from the Schedule of O.A. 963/2011, the DRT vide order dated 22.05.2015 dismissed the plea seeking the inclusion of the respondents' properties for the following reasons:

1. Petitioner No. 2 (Defendant No. 4 in O.A. 963/2011) benefited from the release of securities. The bank had released the properties not included as security as per the sanction letter dated 08.03.2007 and also released properties belonging to Petitioner No. 2 at the request of the parties.



2. The petitioners cannot now challenge this decision, as the original property documents were returned to the respective owners in March 2007, and they have remained silent for a long period, invoking the rule of acquiescence and estoppel.

8. During the proceedings, the entire loan taken by Petitioner Nos. 1 and 2 was assigned to Respondent No. 4, M/s. Omkara Assets Reconstruction Pvt. Ltd., through an assignment agreement between Respondent No. 1 (the bank) and Respondent No. 4, dated 30.06.2017. This Court allowed the addition of Respondent No. 4, the assignee, by order dated 27.11.2017.

9. Shri V.S. Hegde, the learned counsel for the petitioners submitted that respondent-Bank has deliberately omitted to include in its recovery proceedings against the petitioners in O.A. 963/2011 the properties of the respondent-defendants No. 14 and 15 in collusion with the defendants No. 8, 14, and 15.

9.1. Furthermore, he contended that it was only after the lapse of several months since the order dated 09.12.2013, which had allowed the petitioners' application in I.A. No. 674/2013 to include the respondents' properties in the



recovery proceedings, that the respondent-Bank had preferred an application in I.A. No. 3102/2014, seeking to recall the same. Subsequently, he submitted that in excess of the jurisdiction conferred on it, the DRT recalled the order dated 09.12.2013, despite the recall application having been barred by the limitation of 30 days and not being supported by an application seeking condonation of delay. Thereafter, placing reliance upon the objections by the respondent-Bank, the learned counsel argued that the impugned order dated 22.05.2015 dismissing inclusion of the properties belonging to the respondents is hit by non-application of mind.

10. In response, the learned counsel for the respondent-Bank submitted that the petitioners cannot after a prolonged delay seek inclusion of the properties belonging to respondent-sureties when the same were released by the creditor more than six years ago via return of the tile deeds.

11. Heard the learned counsels for the parties.

12. The issues for consideration are:

12.1. Whether the impugned order dated 22.05.2015 recalling the earlier order dated 09.12.2013 in I.A. 674/2014 stands in excess of jurisdiction as the Debt Recovery



Tribunals are not vested with any authority to recall its own order?

12.2. Whether the partial release of an equitable mortgage by the creditor bank from a co-surety is legally valid?

12.3 Whether the released co-surety is still liable to the other co-sureties for the principal debt during the guarantee's validity?

13. Due to the non-payment of loans, Respondent-Bank initiated proceedings before the DRT to obtain a recovery certificate, as mentioned in paragraph (4).

14. In this writ petition, the relevant principal debtor is Petitioner No. 1, which obtained credit facilities on 12.08.2005, with renewals until 16.02.2009. Loan, security, and guarantee documents were executed on 16.08.2005, 15.12.2008, and 04.02.2010, securing an outstanding liability of INR 4,45,97,599/- as recorded in O.A. No. 963/2011.

15. Petitioner No. 1, a partnership firm, and Petitioner No. 2, its managing partner, have approached this Court to include properties of co-sureties, Respondent Nos. 2 and 3 (D. Bujjamma and Smt. D. Anusha), which were omitted by Respondent-Bank in its claim, as noted in paragraph (4).



16. The total extent of the guarantees executed by Respondent Nos. 2 and 3 (Defendant Nos. 14 and 15) for Petitioner No. 1's credit facilities is:

- (i) A General Form of Guarantee dated 16.08.2005 for INR 1800.00 lakhs, jointly with other defendants.
- (ii) An Equitable Mortgage (RF255B) dated 10.04.2006 on 7 acres and 6 guntas of dry agricultural land, jointly with other defendants.
- (iii) Respondent No. 2 (Defendant No. 14) executed an equitable mortgage of 18 acres of wet agricultural land in Nellore, valued at INR 54.00 lakhs as of 12.08.2005.
- (iv) Respondent No. 3 (Defendant No. 15) executed an equitable mortgage of a residential property in Devanahalli, Bangalore, valued at INR 22.50 lakhs as of 12.08.2005.

The properties in (iii) and (iv) are the subject of this petition and are sought to be included in the recovery proceedings initiated by the Respondent-Bank in O.A. No. 963/2011.

17. Petitioner No. 2 also executed the following guarantees for loan repayment:

- (i) RF255 on 31.05.1996 and RF255B on 16.08.2005 for Schedule 'B' property.
- (ii) RF255 on 08.05.1997 and RF255B on 16.08.2005 for Schedule 'C' property.



(iii) RF255 and RF255B on 16.08.2005 for Schedule 'E' property.

(iv) RF255 on 19.07.2006, jointly with another defendant for Schedule 'I' property.

(v) RF255 on 16.08.2005, jointly with other defendants, for Schedule 'N' property.

18. According to the Letter of Sanction dated 08.03.2007, the following properties belonging to Petitioner No. 2 were also released:

(i) A site in Survey No. 91, Munnekala Village, valued at INR 82.50 lakhs.

(ii) A site and farmhouse in Magadi, Bangalore, valued at INR 6.90 lakhs.

Additionally, a residential property in Saraswathipuram, Mysore, was also released, but its value is unknown.

Therefore, the total value of the properties released was over INR 76.50 lakhs, as on 08.03.2007.

19. The Respondent-Bank claims it released the properties of Respondent Nos. 2 and 3, as these properties were not available as security at the time of renewing Petitioner No. 1's credit facility on 08.03.2007. The Letter of Sanction, dated 08.03.2007, shows the loan limit was reduced from INR 2 crores to INR 60 lakhs.



20. However, the same Letter of Sanction notes that Respondent No. 2's property, valued at INR 107.20 lakhs as of 08.03.2007, was still offered as security by Petitioner No. 1. The letter does not mention Respondent No. 3's property being offered as security.

21. The Respondent-Bank transferred the borrowings of the Petitioner No. 1 and 2 to Respondent No. 4 through an Assignment Agreement dated 30.06.2017. Schedule I of this agreement lists securities held by the bank, including Respondent No. 2's property, indicating it was not released as security when the loan was renewed.

22. Despite this, the Respondent-Bank asserts that the mortgages of the respondent - co-sureties were discharged, and title deeds were returned to the respondents on 08.03.2007.

23. It is also noted that the terms of the renewal dated 08.03.2007 required all partners to join the loan transaction as guarantors in their personal capacity.

24. With the relevant facts established, we may now turn to address the question of jurisdictional competence of the DRT in recalling its earlier order dated 09.12.2013, and



thereby excluding the subject properties, morefully described in paragraph no. (16) (iii) and (iv), from the recovery proceedings in O.A. No. 963/2011.

25. The Debt Recovery Tribunals are a statutory creation, established under Chapter II of the Recovery of Debts and Bankruptcy Act, 1993, envisaged for the expeditious adjudication and recovery of debts advanced by banks and financial institutions. Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993, deals with Review and states that any party considering itself to be aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record may seek a review thereof, but that no such application seeking a review shall be entertained after the expiry of sixty days from the date of such order. The Rules further state that a review shall be granted when it appears to the Tribunal that there exists a sufficient ground for the review, provided no such application shall be granted without giving an opportunity of fair hearing to the opposite party.

26. It has been held by the Hon'ble Supreme Court in the case of **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr., 2024 INSC 102**, that a Tribunal or a Court is invested with such ancillary or



incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice, and that it can in the absence of a statutory prohibition, recall its order in exercise of such ancillary or incidental powers. Admittedly, in this case, the Apex Court dealt with the inherent powers of the NCLT to recall its earlier orders by placing reliance upon the Rule 11 of the National Company Law Tribunal Rules 2016, framed under Section 469 of the Companies Act 2013, which is in *pari materia* with Section 151 of the Code of Civil Procedure, 1908, which confers the NCLT with inherent powers for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

27. Incidentally, the DRTs are not conferred with such plenary powers to meet the ends of justice but have been conferred with the review jurisdiction. However, the Apex Court in the case of **Indian Bank v. M/s. Satyam Fibres India Pvt. Ltd. (1996) 5 SCC 550**, had opined that where a Court itself commits a mistake which prejudices a party, *inter alia*, the Court shall have the inherent powers to recall its order. It further held that such power is inherent to statutory tribunals also which are conferred with power to record evidence by applying certain provisions of the Code of Civil Procedure. The same was affirmed in the case of **Shri Budhia Swain & Ors. v. Gopinath Deb and Ors., AIR 1999 SC 2089**.



28. Furthermore, the petitioners contend that the DRT had failed to consider that the respondent-Bank's application seeking recall of the earlier order dated 09.12.2013 was barred by the period of limitation of 30 days and that the application was not supported by a separate application seeking condonation of the delay. It is undisputed that the I.A. No. 3102/2014, seeking to recall was filed by the respondents 23.04.2014, upon expiry of more than approximately four months from the date of the passing of the said earlier order.

29. It is now settled law that inherent powers shall not be invoked to reopen settled matters. It shall be pertinent to recall that the respondent-Bank had instituted the O.A. 963/2011 seeking issuance of the recovery certificate in relation to the scheduled properties therein. However, the same were not issued at the time of the passing of the impugned order dated 22.05.2015. Furthermore, as on the date of filing the I.A. No. 3102/2014 seeking the recall of the said earlier order, it had been approximately only two months since the expiry of the period of limitation prescribed for filing a review application, as contained under Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993. It may thus be concluded that no substantive right which accrued to the petitioner by virtue of the passing of the earlier order dated 09.12.2013 was



crystallised at the time of allowing the recall vide order dated 12.01.2015, and that the passing of the impugned order dated 22.05.2014, which, finally dismissed the I.A. 674/2014 seeking inclusion of properties belonging to the respondent-co-sureties.

30. It is now equally settled that delay may be condoned on grounds of sufficient cause and that a liberal approach must be adopted in construing the 'sufficient cause' so as to serve the ends of justice. In the instant case, upon perusal of the reasons recorded by the DRT in the passing of the impugned order, it appears that the DRT has attempted to rectify the error apparent on the face of record in the earlier order, which inadvertently had caused prejudice to the respondents.

31. It is now pertinent that we advert to the provisions of the Indian Contract Act, 1872 which govern the liability of the principal debtor and co-sureties to the creditor.

32. Section 44 of the Act states:

44. Effect of releasing one joint promisor—If two or more people make a joint promise, the release of one by the promisee does not discharge the other joint



promisors, nor does it release the discharged promisor from responsibility to the others.

33. This section abolishes the English common law rule that releasing one joint debtor discharges the others (as seen in **Barber Maran v. Ramana Goundan, 1897 ILR 20 Mad 461**).

34. The High Courts of Madras (**Moolchand v. P. Alwar Chetty, AIR 1915 Mad 934**), and Calcutta (**Krishna Charan Barman v. Sanant Kumar Das, AIR 1917 Cal 502; Chand Mall Babu v. Ban Behari Bose, AIR 1924 Cal 209**) have held that in India, joint liability implies joint and several liability. Thus, the release of one mortgagor without explicitly reserving rights against the others does not release the remaining mortgagors. However, the creditor can recover the debt only to the extent of the unreleased mortgagors' liabilities.

35. Section 138 of the Indian Contract Act extends the principle in Section 44:

138. Release of one co-surety does not discharge others—If there are co-sureties, releasing one by the creditor does not discharge the others, nor does it free the released surety from responsibility to the other sureties.



36. The Supreme Court in **Pandit Sri Chand v. M/s. Jagdish Parshad Kishan Chand (AIR 1966 SC 1427)** ruled that under Indian law, sureties' liability is joint and several. The release of one surety does not discharge the others. The Court added that the fact that the obligation can be enforced separately does not make the liability of each surety distinct. Properties of sureties may be sold separately, but this reflects ownership, and not distinct liability.

37. The Calcutta High Court in **United Bank of India v. Modern Stores (India) Ltd. (AIR 1988 Cal 18)** confirmed that Section 138 deliberately extends Section 44, removing distinctions between joint co-guarantors and the several liabilities of co-sureties. The release of one surety does not discharge the others.

38. Section 128 of the Act reads:

128. Surety's liability—A surety's liability is equal to that of the principal debtor, unless the contract says otherwise.

39. In **Bank of Bihar v. Dr. Damodar Prasad (AIR 1969 SC 297)**, the Supreme Court ruled that a surety cannot dictate terms to the creditor or demand that the creditor first pursue the principal debtor. The surety's right to recover from the



principal debtor (under Section 140) arises only after discharging their own liability.

40. The Karnataka High Court in **Hukumchand Insurance Company Ltd. v. Bank of Baroda (AIR 1977 Kant 204)** explained that the surety's liability, while coextensive with the principal debtor's, is separate and does not always arise simultaneously.

41. Section 128 holds that the surety's liability is equal to the principal debtor's unless a contrary contract specifies otherwise. While the surety's liability may arise immediately, the creditor may choose whether to recover from both the principal debtor and the surety, or just one of them, depending on the circumstances (**Chokalinga Chettiar v. Dandayuthapani Chettiar, AIR 1928 Mad 1262; Daljit Singh v. Harkishan Lal Shah & Bros, AIR 1940 All 116; State Bank of India v. GJ Herman, AIR 1998 Ker 161**).

42. The Supreme Court in **Hariharnath v. State Bank of India (2006) 4 SCC 457** reaffirmed that the surety's liability is coextensive with the principal debtor's, and the creditor can decide how to recover the amount.



43. In **State Bank of India v. Indexport Registered (AIR 1992 SC 1740)**, the Supreme Court held that a creditor, with both a money and mortgage decree, has the right to execute either against the surety or the principal debtor in any order they see fit.

44. A contract of guarantee grants the creditor the right to proceed against either the principal debtor or the surety as they choose, unless the contract specifies otherwise.

45. Section 141 of the Act outlines the surety's right to benefit from the creditor's securities:

*141. Surety's right to benefit of creditor's securities—
The surety is entitled to any security the creditor holds against the principal debtor when the suretyship contract is made. If the creditor loses or gives up this security without the surety's consent, the surety is discharged to the value of the security.*

46. In **North British Insurance Co. v. Lloyd (1854) 10 Exch 523, 102 RR 686**, the English Court held that the creditor is not obligated to inform the surety that a new guarantee is replacing an old one.



47. In **Narayan v. Ganesh (1870) 7 BHC AC 118**, a creditor gave up some mortgaged property that was worth the amount the surety had guaranteed. The court held that the surety was discharged to that extent.

48. In **State Bank of Saurashtra v. Chitranjan Rangnath Raja (AIR 1980 SC 1528)**, the Supreme Court confirmed that the surety is discharged if the creditor loses security provided by the debtor.

49. In **Cooper v. National Provincial Bank Ltd. [(1945) 2 All ER 641]**, it was held that a creditor is not required to disclose the fact that the principal debtor is already overdrawn.

50. In **Behan v. Obelon Proprietary Ltd. [(1984-85) 157 CLR 326]**, the Australian High Court held that a creditor does not have to disclose one surety's financial status to another co-surety.

51. In **Cini v. Pets Paradise Franchising (SA) Pty Ltd. [2008] SASC 287; 102 SASR 177**, the court held that a bank is only required to disclose unusual features of the account being guaranteed to the surety, as stated in *Lloyds Bank Ltd. v. Harrison*.



52. In **National Australia Bank Ltd. v. Rice [2015] VSC 10**, it was observed that a bank generally has no duty to the surety to assess the credit risk of the customer or whether to advance funds.

53. The creditor's obligation to disclose information to a co-surety is based on fairness, ensuring that the surety has relevant information about the guarantee. However, this duty is limited to matters related to the creditor's relationship with the principal debtor.

54. According to Section 146 of the Indian Contract Act, 1872, when two or more persons are co-sureties for the same debt, they are equally responsible for paying if the principal debtor does not pay. This rule governs the relationship between co-sureties and does not affect their liability to the creditor.

55. In **Ibn Hasan v. Brijbhukan Saran (1904) ILR 26 All 407**, the Allahabad High Court held that if one co-surety is required to pay the debt, they can seek a contribution from the other co-sureties. However, as established in **Re Snowdon (1881) 17 Ch D 44p**, a surety can only claim contribution from co-sureties if they have paid more than their share of the debt. In **Wolmershausen v. Gullick (1891-94) All ER Rep 740**, it



was held that a judgment against a surety for the full debt allows that surety to seek contributions from co-sureties.

56. In this case, Respondent Nos. 2 and 3 provided guarantees secured by equitable mortgages (depositing property title deeds with the bank). However, the bank acknowledges that these guarantees ended when the loan was renewed on 08.03.2007, and the title deeds were returned. This return of deeds is not disputed.

57. To summarize the legal principles:

- i. Releasing one joint promisor does not discharge the others.
- ii. Releasing one co-surety does not discharge the others; they remain jointly and severally liable.
- iii. A surety's liability begins as soon as the principal debtor's does.
- iv. The creditor can choose to recover from either the principal debtor or any surety, in any order.
- v. A surety cannot demand that the creditor pursue the principal debtor first before going after the surety.



vi. If a creditor formally releases a mortgagor surety, that surety is discharged.

vii A surety can only claim contribution from co-sureties after paying more than their share of the debt.

viii. A surety steps into the creditor's rights only after paying off the debt.

ix. A creditor only needs to disclose special or unusual details about the guarantee to the surety.

x. Co-sureties must share the debt equally among themselves based on their obligations.

58. In light of the foregoing, the following is recorded:

- i. The return of title deeds of the subject properties i.e. properties mentioned at Sr. Nos. (iii) and (iv) of paragraph No. 14, to the respective owners thereof by the Respondent-Bank is undisputed.
- ii. The property belonging to Respondent No. 3 was released by the Respondent - Bank, as is evidenced by a bare perusal of the Schedule 1 of the Assignment Agreement dated, 30.06.2017.



- iii. Despite the return of the title deeds of the property to the Respondent No. 2, the Letter of Sanction dated 08.03.2007 notes the said property being offered as security and valued at INR 107.20 lacs. Furthermore, the Schedule 1 of the Assignment Agreement dated, 30.06.2017, which enumerates the list of securities held by the Bank includes the said property.
- iv. The return of properties valued at an excess of 76.50 lacs as on 08.03.2007, belonging to the Petitioner No.2 (i.e. the managing partner of the Petitioner No.1 - borrower), remains undisputed, as is evidenced by a bare perusal of the Letter of Sanction dated 08.03.2007.

59. Thus, it may be reasonably inferred that the contract of guarantee *via* execution of equitable mortgage came to a close upon the return of the title deeds of the said property to Respondent No. 2.

60. However, if it were to be held that a contract of guarantee continued to remain in subsistence, the release of certain properties belonging to the Petitioner No. 2 would *ipso facto* grant Respondent No.2 the right to avoid his obligation to guarantee the principal debt in light of material alteration of the



principal contract between the Respondent-Bank and the principal debtor and the managing partner thereof. It is settled principle of law propounded in the case of **Croydon Gas v. Dickinson (1876) 3 CPD 46, 49** that any dealing by the principals together so as to effect the position of the surety to his prejudice discharges the latter.

61. Thus, if any life were to be breathed into an otherwise concluded contract of guarantee, in light of the fact that the value of the released properties belonging to the Petitioner No. 2 remains exactly unknown, but is certain to be in excess of INR 75.60 lacs, it would be but equitable in the present circumstances to preclude the petitioner - principal debtor from seeking to include the said property of the co-surety i.e. the Respondent No.2 in the recovery proceedings in O.A. No. 963/2017 before the Debt Recovery Tribunal (DRT), Bengaluru.

Accordingly, this petition stands dismissed.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE

BKM