

A complete discharge of the surety does not occur unless the conditions of Section 139 are met, which requires that the creditor's act or omission impairs the surety's eventual remedy against the principal debtor. However, sureties are not liable for excess amounts permitted to be withdrawn from cash credit facility of the bank by the principal debtor.

The **Supreme Court** in the case of **Bhagyalaxmi Cooperative Bank vs Babaldas Amtharam Patel [Civil Appeal No. 3200 of 2016]** dated **February 27, 2026**, has held that the sureties are not liable for excess amounts permitted to be withdrawn from cash credit facility of the bank by the principal debtor. Essentially, the Court said that under Section 133 of the Indian Contract Act, 1872, when a variance is made in the terms of a contract between a creditor and a principal debtor without the surety's consent, the surety is discharged from liability only for transactions that are subsequent to such variance. However, the surety remains liable for the original obligation as per the terms of the guarantee contract, they entered into.

The Apex Court held that a complete discharge of the surety does not occur unless the conditions of Section 139 are met, which requires that the creditor's act or omission impairs the surety's eventual remedy against the principal debtor. Therefore, a bifurcation of the surety's liability is not only permissible but statutorily required to separate the original guaranteed liability from the liability arising from subsequent, unconsented variations.

The Court observed that the primary issue was whether the sureties were entitled to a complete discharge under Section 139 or were liable to a limited extent under Section 133 of the Indian Contract Act, 1872. It noted that Section 133 provides that any variance in the terms of the contract between the principal debtor and the creditor, made without the surety's consent, discharges the surety as to transactions subsequent to the variance.

This principle ensures a surety is not bound to something for which they have not contracted, and the Court affirmed that while a material alteration can discharge a surety, the discharge under Section 133 applies only to transactions post-variance, meaning the surety remains liable for the original obligation.

The Court distinguished this from Section 139, which requires two conditions for a surety's discharge: (i) the creditor must do an act inconsistent with the surety's rights or omit a duty owed to the surety, and (ii) this act or omission must impair the surety's eventual remedy against the principal debtor. In the present case, while the bank's act of allowing overdrafts was inconsistent with the sureties' rights, it did not impair their eventual remedy against the principal debtor. The Court also reiterated the established principle that a creditor is not required to exhaust remedies against the principal debtor before proceeding against the surety.

The Court found the High Court's reasoning that the sureties must be liable for the entire amount or not at all to be erroneous and contrary to the plain reading of Section 133. It observed that the bifurcation of liability, which the High Court deemed impermissible, is in fact mandated by Section 133 to correctly determine the extent of the surety's liability.