**APPLICATION UNDER SECTION 145 OF THE CODE OF CIVIL PROCEDURE**

APPLICATION FOR EXECUTION OF DECREE AGAINST SURETY

IN THE COURT OF THE....................

Misc. Application No..................... of 19....................

Under Section 145, of the Code of Civil Procedure.

in

Execution No.................... of 19....................

A. B........................................................ Decree-Holder

*versus*

C.D ........................ Judgment Debtors/Opposite Parties.

Sir,

The decree-holder most respectfully submits as follows:

1. That the opposite Party No. 1 stood surety for the opposite Party No. 2 in execution of decree in suit No..................... between.................... *versus* .................... in the Court of Appeal, that is to say, the 1st Additional District Judge, .................... and bound himself through his surety bond to deposit Rs..................... the decretal amount, decreed against opposite party No. 2.

2. That the appeal was dismissed with costs on.................... 19.................... by the learned Additional District Judge aforesaid.

3. That the Opposite Party No. 2 went up in second appeal in the High Court but that Second Appeal, No..................... of 19.................... was also dismissed summarily/after final hearing, on.................... 19....................

4. That now the Decree-holder/Appellant wants the decree to be executed against the Opposite Party No. 1 and in the alternative against Opposite Party No. 2 the main judgment-debtor, and for the purpose the opposite parties may be summoned and ordered to deposit the amount aforesaid in court.

**PRAYER**

It is therefore most respectfully prayed that this learned Court may be pleased to summon the opposite parties and order them to deposit the decreetal amount-in court.

Dated.................... 19.................... Counsel for the Decree-holder

**CASE LAW**

*Section 145*

**NATURE OF LIABILITY OF SURETY**

Liability of the sureties is under the law joint and several. If a creditor seeks to enforce the surety bond against some only of the joint sureties, the other sureties will not on that account be discharged; nor will release by the creditor of one of them discharge the other. The fact that the surety bond is enforceable against each surety severally, and that it is open to the creditor to release one or more of the joint sureties, does not alter the true character of an adjudication of the Court when proceedings are commenced to enforce the covenants of the bond against all the sureties. The mere fact that the obligation arising under a covenant may be enforced severally against all the covenantors does not make the liability of each covenantor distinct. It is true that in enforcement of the claim of the decree-holder of the properties belonging to the sureties individually may be sold separately. But that is because the properties are separately owned and not because the liability arises under distinct transactions1.

**SURETY BOND IN FAVOUR OF COURT: WHEN SURETY STANDS DISCHARGED.**

It is no doubt true that the bond for the performance of decree under section 145 is not in the strict sense a contract of guarantee governed by the provisions of the Contract Act and the provisions of sections 131 to 139 thereof will not directly apply to such bonds. The liability of a surety under a bond executed for the performance of a decree may be determined or put to an end only by the Court in whose favour the. bond is executed, and ordinarily a surety may not be entitled to ask the Court to relieve him of the obligation on the ground that the decree-holder has arrived at a certain arrangement with the principal debtor. But, however, even though the section of the Contract Act aforementioned do not in terms apply to a surety bond executed in favour of a Court, it is well established that the principle contained in those sections do apply, and though in the absence of the stipulation in that behalf there is no ground for limiting a surety’s liability only to decrees passed after contest there is nothing unreasonable or wrong in a surety expressly stipulating that he would be bound by his guarantee only if a decree is passed after contest and that he would not be bound by a consequent decree2.

**SURETY BOND WHETHER CAN BE ENFORCED BY THE TRANSFEREE COURT? — SS. 145/150 — (YES).**

The surety bond was executed in and for the purposes of the particular proceedings, which were pending before the District Judge, in order that the bond should be enforceable at the instance of the presiding officer of the court. "Successor" therefore, must in the context mean the court which for the time being is seized for the proceedings.

Under Section 150 of the Code of Civil Procedure, save as otherwise provided, whether the business of any court is transferred to any other court, the transferee court has the same powers and is entitled to perform the same duties as those respectively conferred and imposed by the Code upon the transferor court. The surety bond was a part of the proceedings pending before the District Judge and on the transfer of the suit the entire proceedings, including the bond, stood validly transferred to the court of the Subordinate Judge. Thus by virtue of Section 150, the Subordinate Judge was entitled to exercise the same powers in the matter of the enforcement of the bond as the District Judge himself3.

**ENFORCEMENT OF LIABILITY OF SURETY — IN THE MATTER OF SATISFACTION OF DECREE — SURETY BOND AGAINST ONE OR RELEASE OF ONE WHETHER DISCHARGES OTHER SURETIES? — (NO) — LIABILITY IS SEVERAL AND JOINT AND NOT DISTINCT.**

Liability of the sureties under law is joint and several. If a creditor seeks to enforce the surety bond against some of them only, other sureties are not on their account discharged from liability. But the fact that the surety bond is enforceable against each surety severally, and that it is open to the creditor to release one or more of the joint sureties, does not alter the true character of an adjudication of the court when proceedings are commenced to enforce the covenants of the bond against all the sureties. The mere fact that the obligation arising under a covenant may be enforced severally against all the convenantors does not make the liability of each covenantor distinct. It is true that in enforcement of the claim of the decree-holder the properties belonging to the sureties individually may be sold separately. But that is because the properties are separately owned and not because the liability arises under distinct transactions4.

**SURETY FOR DUE PERFORMANCE OF DECREE.**

A conjoint reading of clauses of Section 145 do clearly indicate that when a person has undertaken as a guarantor or a surety for the due performance of a decree or any part thereof, to the extent of the undertaking or guarantee, the guarantor or the surety is personally liable for due performance of the liability of the judgment-debtor to the decree-holder and the later is entitled to proceed against him in the manner laid down in Section 145. But when the decree-holder himself had compromised with the principal debtor and had discharged himself from the liability to the performance of the decree, in law it must be a full satisfaction of the decree under S. 47 and the relevant rule in order 21 C. P. C. Full satisfaction recorded in that behalf relieves the guarantor or surety from the obligation with the decree-holder and the decree-holder cannot seek any further remedy against the surety. The liability of the guarantor or surety is co-extensive with the judgment debtor. The compromise entered by the decree-holder binds himself by his conduct and releases the guarantor or surety from the liability undertaken in the guarantee or surety bond for due performance of the decree. In case the compromise was with the consent of the guarantor or surety compromise with the principal judgment-debtor is for other liability other than the extent of the liability undertaken by the guarantor or surety, in that event the guarantor or surety is not relieved from his liability for due performance of the decree5.

**NON-APPLICABILITY OF THE SECTION**

The provisions of this section clearly implicate that the liability of the person who furnishes or gives guarantee is created and fastened on such person by an order of the Court. Therefore, there should be an order or decree for the payment of money to attract the provisions of this section. When there is no order of the Court for the payment of money this section has no application6.

Clause (a) of the section is of a general nature and was designed to set at rest the conflict under Section 263 of the Code of 1882 and to make it wide enough to cover a decree that has already been passed as well as a decree that may be passed after the person concerned has become liable as surety, as also to suretyships given for the performance of appellate decrees.

Three conditions are necessary for the applicability of Clause (c), namely that the person should be liable as a surety, that he undertakes the performance of the decree and that there is a personal liability. The words ‘for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon, would no doubt make the execution conditional on the order of the Court; but this clause is independent and applied only in respect of fulfilment of any condition imposed by such order. Where a surety makes himself personally liable to the Court for the satisfaction of a decree enforceable in execution proceedings taken or to be taken, the decree can be executed against such surety6a.

**SCOPE OF THE SECTION.**

If a property is seized in execution of a decree and made over to a custodian, and the custodian commits defaults, that decree may be executed in the prescribed manner. The provision of this section is meant for the protection of the decree-holder, at whose instance the property is attached and made over to a custodian. The provision is not meant for the benefit of all the persons, who hold various decrees against the same judgment-debtor. Explanation to the Section merely points out the true effect of Clause (b) of the section and does not materially alter the general plan of the section7.

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1. Sri Chand v. M/s. Jagdish Prasad Kishan Chand, A.I.R. 1966 S.C. 1427: (1966) 2 S.C. W. R. 34: 68 Punj. L. R. 291 (Delhi).

2. Adam Sab Usman Sab v. Gurushindhaiyya, A.I.R. 1967 Mys. 147: (1965) 2 Mys. L.J. 87.

3. M/s. Howrah Insurance Co. Ltd. v. Shri Sochindra Mohan Das Gupta, 91975) 2 S.C.C. 523: 1975 S.C. 2051: (1976) 1 S.C. R. 356: 1975 U. J. (S.C. ) 713.

4. Srichand v. M/s. Jagdish Prasad Kishan Chand, A.I.R. 1966 S.C. 1427: (1966) 2 S.C. W. R. 34.

5. Amar Chand v. Bhano, 1994 (3) C.C.C. 769 (S.C. ).

6. Board of Trustees, Mormugao Port v. Chowgule & Co. Pvt. Ltd., A.I.R. 1985 Bom. 174: I. L. R. 1 (1985) Bom. 652.

6a. Jafar Ali v. Ramloo: A.I.R. 1967 Andh. Pra. 234: (1967) Andh. L. T. 147: (1967) 1 Andh, W. R. 118: (A.I.R. 1919 P. C. 55 explained).

7. Shyam Lal v. Firm Poonam Chand, A.I.R. 1966 All. 250: 1965 A. L. J. 604.

8. Sri Chand v. M/s. Jagdish Prasad Kishan Chand, A.I.R. 1966 S.C. 1427: (1966) 2 S.C. W. R. 34: 68 Punj. L. R. 291 (Delhi).

9. Adam Sab Usman Sab v. Gurushindhaiyya, A.I.R. 1867 Mys. 147: (1965) 2 Mys. L.J. 87.