**APPLICATION UNDER SECTION 4 OF THE CODE OF CIVIL PROCEDURE**

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

Suit No..................... of 19....................

C. D.................................................................... Plaintiff

*versus*

C. F................................................................. Defendant

To,

The Hon’ble Chief Justice and his companion Judge of the High Court of Delhi.

1. That the appellant had filed a petition under Section 20 of the Arbitration Act in the original side of this Court bearing suit No..................... of 1981.

2. That in the said suit the Appellant had moved Misc. Application No..................... under section 41, read with Second Schedule of the Arbitration Act, asking for issue of a temporary injunction restraining the appellant from encashing the bank guarantee.

3. That the application was decided by Hon’ble.................... J. of this Court, who held that it was well settled that the performance guarantee, even though having its genesis in the primary contract between the parties, is nevertheless autonomous and independent contract;

That a Bank which gives a performance guarantee must honour the guarantee according to its terms and that it is not concerned in the least with the relations between the supplier and the customer, nor with- questions of performing the obligations by the parties. The guarantee was bound to be absolute and the application was accordingly dismissed.

4. That against the order of dismissal, the appellant filed the present Letters Patent Appeal, which has been admitted by this Hon’ble Court on.................... 1984, and *ad interim* injunction has been granted to the appellant.

5. That it is respectfully submitted that the matter is referable to Arbitration Act, and law of arbitration, being a special law, in force in the Country is attracted in the matter, and that law will govern the future course of the action.

6. That the right vis a vis filing of an appeal in the context of the law which is attracted, would crystallise on the date on which the matter was originally instituted and a later amendment may not adversely affect the right of the respondent, and as such section 4 of the Code of Civil Procedure is attracted and the orders of interim injunction as well as admitting the appeal are beyond the jurisdiction of this Hon’ble Court, the provisions of the Code of Civil Procedure not being applicable to matter.

7. That it is expedient that the order of admitting the appeal as well as of issue of temporary injunction may be recalled, and the appeal may be dismissed as not maintainable.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to recall the orders admitting the appeal and issue of temporary injunction dated.................... may be recalled and the appeal may be dismissed as being without jurisdiction.

Plaintiff

Through

Advocate

**VERIFICATION**

I, abovenamed plaintiff, do hereby verify that the contents of paras .................... to.................... of the plaint are true to my personal knowledge and those of paras.................... and.................... thereof are based on legal advice which I believe to be true.

Verified on this................. day of.................... 19.................... at....................

Plaintiff

**CASE LAW**

***Section 4***

**LIMITATIONS OF THE CODE OF CIVIL PROCEDURE.**

This section in terms lays down that when anything in the Civil Procedure Code is in conflict with anything in the special or local law or with any special jurisdiction or power conferred or any special forum or procedure prescribed by or under any other law, the Code will not, in the absence of specific provision to the contrary, prevail so as to override such inconsistent provision.1

If any law prescribes that a certain person must be impleaded as a defendant, even though no relief is sought against him, the failure to implead him will be fatal to the suit, notwithstanding the provision of Order 1, Rule 9 of the Code.2

**SUPREME COURT RULES ARE SPECIAL LAWS.**

Rules framed by the Supreme Court with reference to appeal to it are a special law within the meaning of this section and take precedence over Section 114 or O. 47 of the Code.3

**DECLARATORY RELIEF — AVAILABILITY IN CIVIL COURT.**

A declaratory suit is maintainable by Civil Court and such a relief is not provided for under the Companies Act. The relief for declaration that a certain person was entitled to remain a director of the Company is within the provisions of Section 34 of the Specific Relief Act and could be granted by a Civil Court.4

1. M/s. B. Lal R. Mohan v. Punjab State Co-operative Supply and Marketing Federation Ltd., A.I.R. 1983 Delhi 402.

2. Shitaladin v. Board of Revenue (FB), A.I.R. 1963 All. 549: 1963 All. L. J. 389: 1963 All. W. R. (H. C.) 285: I. L. R. (1963) 1 All. 915.

3. Ganpat v. Smt. Ram Devi, A.I.R. 1978 P. & H. 137 (F. B.).

4. The Panipat Woolen and General Mills Company v. R. L. Kaushik, (1969) Comp. L.J. 289.