
(1980) 03 MAD CK 0039
In the Madras High Court
Case No : Appeal No. 20 of 1976

S. Perumal Reddiar	Vs	APPELLANT
Bank of Baroda and Others		RESPONDENT

Date of Decision : 07-03-1980

Acts Referred:

Contract Act, 1872 — Section 133

Citation : AIR 1981 Mad 180 : (1981) 94 LW 116

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : T.S. Subramaniam, for the Appellant; V.S. Subramaniam, for the Respondent

Judgement

1. This is an appeal by the third defendant S. Perumal Reddiar against the judgment and decree dated 14th February, 1975, in O. S. No. 99 of 1973 on the file of the Court of the learned Subordinate Judge, Kancheepuram, decreeing the suit with costs as prayed for. The trial court held that the 2nd defendant will be proceeded against after the remedies are exhausted against the first defendant.
2. The suit is on a promissory note.
3. The case of the plaintiff, Bank of Baroda by its power of attorney agent Kaliprasad Thakur, before the trial Court is that the plaintiff is a banking institution constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, with its branch, among other places at Mangadu and that the suit is instituted by the power of attorney agent Kali Prasad Thakur, the Regional Manager, Southern Region, Mount Road, Madras-2. The 1st defendant K. L. Sundaram Reddiar, the 2nd defendant A. Sundaram Reddiar and the 3rd defendant S. Ferumal Reddiar are

residing at Kaliampatti village, Uthiramerur Taluk, Chingleput District. The plaintiff, Bank of Baroda at the Mangadu branch afforded to the 1st

defendant on 15th March, 1973 crop loan facility for Rs. 15,000/- for agricultural purposes on the hypothecation of present and future crops on

the 1st defendant's lands bearing Chitta Nos. 39, 377, 281, 130 and 99, of an extent of 43.57 acres of dry and wet lands in No. 219,

Kaliampoondi village, Uthiramerur Taluk, Chingleput District. The 1st defendant promised to pay the amount on demand with interest at four per

cent over the Reserve Bank of India rate with a minimum of ten per cent per annum with, quarterly rests. On 15th March, 1973, the 1st defendant

availed himself of the loan and on the same day, as security for the advance, the 1st defendant executed a demand promissory note and a letter of

continuing security. An agreement of hypothecation-cum-guarantee was duly executed by the 1st defendant as principal debtor and 2nd and 3rd

defendants as guarantors, the latter guaranteeing the due repayment of the loan and that their liability is co-extensive with that of the principal

debtor, the 1st defendant. The 1st defendant has not paid any amount towards the advance in spite of repeated demands made by the plaintiff. A

notice of demand was issued on 2nd July, 1973. Though the agricultural operation for the session ending May, 1973, was completed, the 1st

defendant has not paid the amount as promised and when demanded, gave evasive reply. There is now due and payable by the defendants a sum

of Rs, 15,476.35 P. as on 28th June, 1973 and further interest of Rs. 51.30 P. up to date of plaint, the defendants a sum of Rs. 15,476.35 P.

Defendants 2 and 3 joined the 1st defendant in executing the hypothecation-cum-guarantee as guarantors guaranteeing jointly and severally for the

due repayment and discharge of the loan by the 1st defendant.

4. In his written statement, the 1st defendant K. L. Sundara Reddiar, has inter alia contended that defendants 1 to 3 and one Ramakrishna Reddiar

in partnership proposed to do toddy shop business under license from the State and that they approached the plaintiff-bank for accommodating

them with a loan for one lakh of rupees on a collateral security of lands belonging to the 3rd defendant Perumal Reddiar. The plaintiff bank

accepted the title deeds of the property tendered as security by way of equitable mortgage. It was learnt that toddy shops could be taken under

credit guarantee scheme. Subsequently, the Area Manager of the plaintiff-bank Mr. Narasimhan, represented to the defendants that the loan would

not be granted for the toddy .shop business but on the security of the title deeds offered by S. Perumal Reddiar, small agricultural loans could be

given in the name of diverse parties. Accordingly, the bank granted a loan of Rs. 15,000 - to the 1st defendant, Rs. 1,430.87 P. to the 2nd

defendant, Rs. 15,000/- to -the 3rd defendant, Rs. 8,000/- to Ayyaswami Reddiar, Rs. 5,000/- to R. Ramalinga Reddiar, Rupees 8,000/- to

Sivarama Reddiar, Rupees 10,000/- to K. M. Venkatasami Reddiar, and Rs. 2,500/- to each of V. Govindaswarni Reddiar, Krishan Reddiar,

Varadarajan and Kuppu Reddiar. The sum of Rs. 10,000/- sanctioned in favour of the four persons at Rs. 2,500/each was taken by the said

Narasimhan for his own purposes. The said Narasimhan has so far failed to pay back the money into the bank and that amount with interest

thereon is included in the suit claim. If he had repaid that sum of - Rs. 10,000/- then there would have been very little left in the suit claim against

the defendants. The suit filed by the plaintiff-bank without giving credit to that sum of Rs. 10,000/- is mala fide. The suit is bad for non-joinder of

parties.

5. The 2nd defendant A. Sundara Reddiar in his written statement has contended that he puts the plaintiff-bank to strict proof of the execution of

the suit promissory note by the 1st defendant and payment of consideration. In any event, as he is only a guarantor, he may be made liable for the

suit claim only after the plaintiff exhausts its remedy against the 1st defendant.

6. The 3rd defendant S. Perumal Reddiar in his written statement has contended that he is not the guarantor for the 1st defendant, that he did not

execute any guarantee agreement in favour of the plaintiff-bank and that he never agreed to stand guarantee and never agreed to be liable for the

alleged loan of Rs. 15,000/- advanced to the 1st defendant. He is not liable jointly or severally and did not guarantee the repayment of the amount

due under the promissory note. He is not aware of the loan to the 1st defendant. He never signed any guarantee agreement. He was an inpatient in

the Stanley Hospital at, Madras for Gastric trouble from 6th March, 1973 and was discharged from the hospital on. 29th March, 1973. He was

bed-ridden in Madras - Stanley Hospital and could not and did not execute any

guarantee agreement as alleged in the plaint. One Radhakrishnan and an Honorary Magistrate came and took the signature of this defendant at Madras Stanley Hospital stating it was a power of attorney. Beyond this, nothing else happened. This defendant is not liable for the suit claim. The suit has to be dismissed with costs.

7. The plaintiff in its reply statement, calling it as rejoinder, has denied that there was any partnership between the defendants and one Ramakrishna

Reddiar or they made an application to the plaintiff-bank for a loan of one lakh of rupees. There was a proposal offering the lands of the 3rd

defendant as security for the individual advances to be made to the defendants and four others set out in para 3 of the written statement of the 1st

defendant. But, as the 3rd defendant fell ill and was admitted in the hospital, no deposit of title deeds was made by him. The advances to parties 7

to 10 were on 10th, 11th and 12th of April, 1973 by the agent under his powers and party No. 11 A. Sundaram was given an overdraft and a sum

of Rs. 1,430.87 P. is due from him since February, 1973. The allegation that all the 11 loans were covered by a common security is false to the

knowledge of the defendants and so, the contention, the suit is bad for non-joinder of parties is also not tenable. The plaintiff is not aware of the

financial transactions between the Assistant Area Manager, Narasimhan and the defendants nor is it concerned about the same. The suit should

therefore be decreed as prayed for.

8. The 1st defendant remained ex parte during the trial though he filed a written statement.

9. On the above pleadings, the following issues were framed by the trial Court:

1. Whether the suit is bad for non-joinder of the persons mentioned in para 3 of the written statement and hence not maintainable in law?

2. Whether the defendants 2 and 3 are guarantors and are liable as such?

3. To what relief?

10. On behalf of the plaintiff, P. W. 1, V. Srinivasan and P. W. 2 Krishnaswami were examined. Exs. A1 to A6 were filed on behalf of the plaintiff.

The 3rd defendant Perumal Reddiar, who is the appellant herein, had examined himself as D. W. 1. On behalf of the defendants Ex. B 1,

discharged certificate issued by the Government Stanley Hospital, Madras, was filed.

11. Under Issue No. 1, the trial Court held that the suit is not bad for non-joinder of the other parties to it. Under Issue No. 2, the trial Court held

that the 2nd defendant has prayed in his written statement that, he, as a guarantor, may be proceeded for the said loan after the 1st defendant had

been proceeded against and that this is a reasonable request, which can be considered in equity. It also held under that issue that the claim of the

3rd defendant that his signature was taken in the guarantee agreement Ex. A3 just ten minutes before he was taken to the operation theatre, cannot

be true, that the 3rd defendant cannot escape his liability of the guarantee he has given to the plaintiff-bank for the 1st defendant on the ground that

Ex.A3 was signed by him on 28th March, 1973 or 29th March, 1973 instead of 15th March, 1973 and that the blank spaces in the printed Tamil

form of guarantee Ex. A3 were filled up subsequently. The trial Court also held that defendants 2 and 3 are guarantors and are liable as such.

Under Issue No. 3, the trial Court decreed the suit with costs as prayed for.

12. Aggrieved by the above decision of the trial court, the 3rd defendant S. Perumal Reddiar has come forward with this appeal inter alia

contending that he was admitted in the Stanley Hospital, Madras, on 6th March, 1973 and was operated for duodenal ulcer on the date when the

guarantee letter was said to have been executed just before he was taken to the - operation theatre and in the circumstances in which he was

placed, he could not have signed any paper with the knowledge of its contents. It is also contended that his signature was taken in Ex. A3 on the

representation that it was a power of attorney. It is further contended that R W. 2 has admitted that the appellant executed the guarantee letter on

29th March, 1973 in his house and as such, the case of the plaintiff cannot be accepted, it is submitted on behalf of the appellant that he did not

sign any guarantee letter but only some blank form on the representation that it was a power of attorney. it is also pointed out in this regard, that

both P. Ws. 1 and 2 have deposed that Ex. A 3 was not filled up when the appellant signed it. It is contended by Mr. T. S. Subramaniam, the

learned counsel for the appellant, that P, W. 2 has riot followed the procedure in obtaining the signature of the appellant and as such, the guarantee

letter Ex. A 3 cannot be held as duly executed by the appellant and therefore, there was no due execution of guarantee letter by the appellant

herein. In other words it is contended that inasmuch as the case of the plaintiff, as deposed by P. W. 2 is that the blank spaces in Ex. A. 3 letter of

guarantee were filled up after the signature of the appellant was obtained in it, the appellant had no knowledge about the actual sum for which he

was standing as a guarantor and therefore, he is not liable under Ex. A 3 the letter of guarantee.

13. On the other hand, it is contended on behalf of the plaintiff/1st respondent-bank by Mr. V. S. Subramaniam, that inasmuch as the appellant has

admitted in his evidence as D. W. 1, that he knew English well and that only after knowing that Ex. A 3 is a letter of guarantee, he has signed it,

and it cannot be held that he was having no knowledge that he was signing a letter of guarantee. He contends that Ex A 3 is a printed form in Tamil

and that it is not the case of the 3rd defendant/appellant that he does not know Tamil, The learned counsel for the 1st respondent-bank submit so

that merely on the ground that P. W. 2 admits that the blank spaces in the printed form were subsequently filled up, it cannot be held that the

appellant is not liable under the letter of guarantee. It is also contended on behalf of the 1st respondent that when the appellant knew that he was

putting his signature in Ex. A 3 as a surety for the 1st defendant it is not now open to him to say that he is not liable under Ex. A 3 and in this

regard he relies on the evidence of P. W. 2 who states in his cross-examination that at the time when he obtained the signature of the appellant in

Ex. A. 3 the appellant knew that he was standing as a surety for the 1st defendant.

14. The point for consideration in this appeal is :-

Whether the appellant is liable for the suit claim as a guarantor?

15. The appellant as D. W. 1, has stated in his evidence that on 6th Mar., 1973, he was admitted for operation in the Stanley Hospital, Madras,

and that he was discharged from the hospital only on 29th March, 1973. Ex. B 1, is the discharge certificate issued by the Stanley Hospital, Out-

patient Department, which shows that the appellant was operated on 14th March, 1973, for duodenal ulcer and discharged from the hospital on

29th March, 1973. D. W. 1, further states in his evidence that before he was taken inside the operation theatre, his signature was obtained by one

Radhakrishnan near his bed. According to D. W. 1, there were two persons,

present at that time and they informed him that the 1st defendant asked them to get his signature. The appellant further states that accordingly he signed the said document. Within ten minutes, sifter he thus signed the said document, he was taken inside the operation theatre. According, to D. W. 1, he did not execute any agreement in favour of the 1st defendant. He admits that a notice was issued to him on behalf of the bank and that he did not give any reply.

16. In his cross-examination, the appellant as D. W. 1, states that the 1st defendant is his close relation and that the 1st defendant has transactions with the Mangadu Branch of the plaintiff bank. D. W. 1, is acquainted with both P. Ws. 1 and 2. D. W. 1 further states that he did not obtain any loan from the Mangadu branch of the plaintiff-bank. D. W. 1, in his cross-examination admits that he had signed both in the bottom of the first page as well as on the reverse side of Ex. A 3. Though D. W. 1 has stated in his cross-examination that the said Radhakrishnan is known to him, he has not examined him as a witness in support of his case. He has not also examined the Honorary Magistrate, who, according to him, had accompanied the said Radhakrishnan. According to D. W. 1, it was the said Radhakrishnan, who obtained his signature but he does not know in what documents he had thus obtained his signature. D. W. 1, further states in his cross-examination that he was discharged from the Stanley Hospital on the morning of 29th March, 1973. He would state that he did not go to the house of P. W. 2. He has denied the suggestion that he had gone to the house of P. W. 2 and signed in Ex. A 3, and other documents. Though D. W. 1, has stated that the 1st and 2nd defendants have signed above his signature in the second page of Ex. A. 3, he would state that he does not remember whether he had seen them signing the same.

17. P. W. 1 is the Manager of the Mangadu branch of the plaintiff-bank from 30th April, 1973. In his evidence he states that the 1st defendant had applied for loan from the bank and that Ex. A 1 is the application form given by him. According to P. W. 1, Ex. A 1, was given to the bank on 13th March 1973. P. W. 1, further states in his evidence that Rupees 15,000/_ was sanctioned by the bank to the 1st defendant and the 1st defendant had also executed a promissory note. Ex. A 2 is the promissory note executed by the 1st defendant in favour of the plaintiff-bank for Rs.

15,000/- and it is dated 15th March, 1973. Defendants 2 and 3 have executed Ex. A 3, letter of guarantee. Ex. A 4 is the copy of the ledger

account relating to the 1st defendant. Ex. A 5, is the letter of continuing security executed by the 1st defendant to the plaintiff -bank. Ex. A 6. is the

copy of the notice dated 2nd July, 1973, issued by the plaintiff-bank to the defendants. During that time, one Krishnan was the manager of the

bank. According to P. W. 1, after he became the manager, he asked the defendants to repay the amount and at that time, the appellant told him

that P. W. 1, could first make a demand with the 1st defendant and that if he fails to repay, he (appellant) would pay the amount. According to P.

W. 1, at that time, the appellant herein told him that as he was in the hospital on 15th March, 1973, after his discharge from the hospital, he went

to the house of the agent and signed Ex. A 3 in his house in order to avoid any trouble for the agent. P. W. 1. states that the appellant herein did

not sign in Ex. A 3, in the hospital.

18. In his cross-examination P. W. 1, states that in Ex. A 1, the signatures of the persons who intend standing as sureties ought to have been

obtained, but the signatures of the sureties were not obtained in it. He also states that in Ex. A 1, the date is not mentioned. According to him, only

when the person who gets the loan from the bank as well as two other persons who stand as sureties for the said person who has applied for the

loan in the bank; came together and ask the loan from the bank, ~ the loan would be given by the bank. He also states that it is only during that

time the letter of guarantee is also obtained. He cannot say whether in the instant case the said procedure was followed by the bank authorities. It

is admitted by P. W. 1, in his cross-examination that the blank spaces available as against the column relating to the persons who are standing as

sureties for the 1st defendant remained unfilled and that-the signatures of the sureties have also not been obtained in Ex. A 1. P. W. I specifically

states in his cross-examination that it was he who filled up the blank spaces in the first page of Ex. A 3, subsequent to 30th April. 1973 and that at

the time when he filled the blank spaces, the signatures of the three defendants alone were found in Ex. A 3. He could not say the exact date he

thus filled the blank spaces in Ex. A 3. He could not say whether the signatures of the defendants in Ex. A 3 were obtained on 15th March, 1973.

He frankly admitted in his cross examination that as the loan was disbursed on 15th March, 1973, he had filled up the concerned blank spaces in

Ex. A 3 with the date 15th March, 1973.

19. P. W. 2, Krishnaswami was the Manager of the Mangadu branch of the plaintiff-bank from 4th Oct. 1971 to 3Qth Apr. 1973. He is

acquainted with the 2nd and 3rd defendants. According to P. W. 2, the 1st defendant had signed Ex. A 3, letter of guarantee, even on the date on

which the amount was disbursed to him. At that time, the appellant was an inpatient in the hospital. The 1st defendant told him that the appellant

would sign in Ex. A 3 after he is discharged from the hospital. The specific evidence of P. W. 2 is that on 28th Mar. 1973 or 29th Mar. 1973, the

appellant came to his house and signed Ex. A 3. P. W. 2 was informed by the 1st defendant through phone that the appellant was discharged from

the hospital. P. W. 2 had brought the relevant papers to his house. The 1st and the 3rd defendants came to his house. At that time, the appellant

signed in Ex. A 3. P. W. 2 has stated that the signature of the appellant was not obtained in Ex. A 3, on the representation that the said document

is -a power of attorney, when he was in the hospital. Even in his cross-examination P. W. 2, states that" the signature of the appellant was obtained

in Ex. A 3 only after he was discharged from the Stanley Hospital. F. W, 2 also states in his cross-examination that the signatures of the 1st and

2nd defendants were obtained in Ex. A 3 even on the date on which the loan was disbursed. According to P. W. 2, due to pressure of work, the

signature of the appellant was not obtained in Ex. A 3, P.W. 2 also admits in his cross-examination that without filling up the blank spaces in Ex. A

3, the signature of the appellant was obtained in it and that the blank spaces were filled up subsequently.

20. On a careful consideration of the entire evidence available on record, both oral and documentary I have no hesitation to reject the case of the

appellant that the signature in Ex. A 3, was obtained from him in the Stanley Hospital just about ten minutes prior to himself being taken inside the

operation theatre on the representation that the same was only a power of attorney. On the other hand, I am satisfied that the evidence let in

through P. Ws. 1 and 2 clearly shows at on 15th March, 1973, when the loan was disbursed to the 1st defendant, the signature in Ex. A 3, was

not obtained from the appellant, but the signatures of the 1st and 2nd defendants alone were obtained in it. Their evidence further shows that the

appellant went to the house of P. W. 2 and signed in Ex. A 3, on 29th March, 1973. P. W. 1, specifically admits in his evidence that the blank

spaces in the Tamil printed form Ex. A 3, were filled up by him subsequent to 30th April, 1973.

21. Ex. A 3, is the printed hypothecation agreement for crop-cum-guarantee. Apart from the words ""Bank of Baroda"" and ""Hypothecation

agreement for crop cum-guarantee" being printed in English, the other contents of both the pages of Ex. A 3, are in Tamil. It contains eight clauses

apart from the preamble. The blank spaces in the preamble portion relating to the date of execution, name of the principal debtor and the sureties,

the place where the branch bank is situated, the Survey Number of the lands or the place where the said lands are situate, the period of the crop

season, the principal amount advanced and the rate of interest are left in the first page and the other matters are printed in Tamil. There are blank

spaces in the fourth clause as well as in the eighth clause of page 2 of Ex. A. 3,. They remain unfilled, the blank spaces filled up in the first page of

Ex. A 3, admittedly by P.W. I subsequent to 30th April, 1973, are with, respect of the execution of Ex. A 3, i.e., 15th March, 1973, the name of

the principal debtor K. L. Sundaram, the names of the sureties A. Sundaram and Perumal Reddiar (2nd and 3rd defendants herein), the place

where the branch of the bank is situated viz., Mangadu, the place where the lands of the 1st defendant are situated viz., Uthiramerur 5.42 and 6.39

acres in S. No. 246, the period in the season viz., Mar. to Aug. and the amount taken as loan viz., Rs. 15,000/_ and they have been filled up

without the knowledge and behind the back of the appellant. Similarly, the blank spaces in clause 1 relating to the amount advanced to the 1st

defendant viz., Rs. 15,000/-, the branch where the bank is situated viz., Mangadu and also the amount for which the guarantee has been given viz.,

Rs. 15,000/as well as the rate of interest viz., at 10 per cent per year have been filled up subsequent to 30th April, 1973, by P. W. 1.

22. It is, contended by Mr. V. S. Subramaniam, the learned counsel for the 1st respondent-bank, that the filling up of the blank spaces by P. W. 1,

subsequent to 30th April, 1973, i.e., after obtaining the signature of the appellant, cannot relieve the appellant from his liability under Ex. A 3, the

letter of guarantee, because in clause 2 of Ex. A 3, it is mentioned that the persons who stand as surety are liable jointly and severally to the bank

for the due repayment of the loan obtained by the principal debtor. On the other hand, Mr. T. S. Subramaniam, the learned counsel for the

appellant contends that the introduction by way of filling up the blank spaces in Ex. A 3, relating to the date of execution, name of the principal

debtor, names of the sureties, the description of the land for which the loan is advanced, the period of the season for which the loan is advanced,

the specific amount advanced as loan and the rate of interest, amount to material alteration and as such, Ex. A 3, the deed of contract, is

discharged. In support of his contention, the learned counsel for the appellant refers to the following passage in Principles of the English Law of

Contract by Sir William R. Anson, Twenty second Edition at page 482, which runs as follows: -

If a deed or contract in writing is altered by addition or erasure, it is discharged, except as against a party making or assenting to the alteration, for

"no man shall be permitted to take the chance of committing a fraud, without running any risk of losing by the event, when it is detected".

This principle is subject to the following rules:

(a) The alteration must be made deliberately by the promisee or by one acting with his consent; but there is a supposed rule of law that even an

alteration by a stranger while the instrument is in the custody of the promisee will have the same effect. -Ms responsibility for the acts of officious

burglars cannot be supported.

(b) The alteration must be made without the consent of the other party, else it would operate as a new agreement.

(c) The alteration must be made in a material part. What amounts to a material alteration necessarily depends upon the character of the instrument,

and it is possible for the character of an instrument to be affected by an alteration, which does not touch the contractual rights set forth in it".

23. The learned counsel for the appellant also refers to the following passage in Chitty on Contracts, Twenty-third Edition, volume H, 1694.

Altering the terms of guarantee: It, while the instrument of guarantee is in the hands of the party to whom it was given, it is altered in any material

particular without the knowledge or consent of the surety, it will become void and

the surety will be discharged"".

24. The learned counsel for the appellant relies on the decision in Lakshammal v. Narasimharaghava Iyengar, ILR(1915) Mad 746: AIR 1916

Mad 284 for the following proposition:

An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its

original form is a material alteration and as such destroys the right of action on the document.

Altering a negotiable instrument by causing the words "or order" to disappear and making it non-negotiable is a material alteration, *tinder ordinary*

law and also u/s 87 of the Negotiable Instruments Act (XXVI of 1881). The facts that the payee eventually filed the suit in another Court different

from the one intended at the time of the alteration and that it was not necessary for him to rely on the altered "state of document to enable him to

succeed therein do not make the alteration any the less material.

25. The learned counsel for the appellant refers to the decision in Verco Private Ltd., Padi and Others Vs. Newandram Naraindas and Another,

for the following proposition:-

The insertion of the rate of interest by the promisee in a promissory note after its execution, amounted to material alteration as to render the

promissory note unenforceable u/s 87 of the Negotiable Instruments Act. The plaintiff, as P. W. 1, had not stated in his evidence that there had

been a common intention between the parties to pay interest at the rate mentioned in it and in order to give effect to that intention, he inserted the

figure regarding thereto, and the word "month". Therefore, the last portion of Section 87 of the Act has no application to the circumstances of this

case.

26. The learned counsel for the appellant refers to the decision in Seth Tulsidoss Lalchand Vs. G. Rajagopal and Others, for the following

proposition:

Even though Section 80 of the Negotiable Instruments Act provides that where a promissory note does not express the rate of interest payable

thereon, six per cent interest shall be payable, any alteration of the instrument by inserting the rate of interest would amount to material alteration.

Hence, where in a promissory note executed the rate of interest was left blank and it was filled up later, it will be a material alteration invalidating

the instrument. A promissory note which does not mention the rate of interest cannot be said to be an incomplete instrument enabling the promisee

to fill up the same so as to complete the instrument within the meaning of Section 20 of the Act.

27. In support of his contention, the learned counsel for the appellant also refers to the provision under Secs. 133 and 139 of the Indian Contract

Act (Act IX of 1872). Section 133 of the Indian Contract Act reads as follows:-

Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety

as to transactions subsequent to the variance.

28. Section 139 of the Indian Contract Act reads as follows:-

If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to

do, and the eventual remedy of the surety himself against the principal debtor is there by impaired, the surety is discharged.

29. Referring to the provisions under the above sections, the learned counsel for the appellant submits that material alterations have been made in

the contents of Ex. A 3, when it was in the possession of the 1st respondent-bank. Therefore, he contends that even if the evidence adduced

through P. W. 2 that the 1st defendant accompanied the appellant when he had been to the house of P. W. 2 to sign Ex. A 3 is true, inasmuch as it

is the categorical admission on the part of P. W. 1, that it is he who filled up the material particulars in the blank spaces in Ex. A 3 subsequent to

30th April, 1973, and also his admission that he did not remember the date on which he filled up the blank spaces with particulars, his contention

that the appellant is discharged by the contract under Ex. A 3 has "to be upheld.

30. The learned counsel for the appellant vehemently argues that the filling up of the blanks relating to the material particulars in a contract of

guarantee viz., Ex. A 3, behind the back of the appellant cannot under any circumstance be held to be immaterial and they do not vitiate the

contract. He further submits that it is not the case of the plaintiff 1st respondent itself that it was informed by P. W. 2 at the time when he had

obtained the signature of the appellant in P. W. 2's house that the blank spaces

would be filed subsequently with respect to the loan advanced to the 1st defendant or that the appellant was informed at that time about the principal amount advanced to the 1st defendant and also the rate of interest on the sum thus advanced. He also points out that inasmuch as the application form Ex. A 1 does not contain the name of the appellant as a surety and inasmuch as it does not also contain the signature of the appellant as a surety, it cannot be field that the appellant had signed as a surety in Ex. A 3, for the 1st defendant. We have already seen that Ex. A 1 does not contain the other names of the persons who intended to stand as sureties for the 1st defendant or the signature of the appellant in the column intended for the signature of the sureties. It is also relevant in this connection to note that the 1st defendant has applied for a loan of Rs. 17,400/-. It is not in evidence that at any point of time the appellant was made known by the 1st respondent-bank about the loan applied for by the 1st defendant or about the amount that was sanctioned and discoursed to the 1st defendant. Therefore it cannot be held on the basis of the evidence of P. W, 2 that the 1st defendant accompanied the appellant at the time the latter signed Ex. A 3 and it cannot be presumed that he knew about the particulars which were subsequently filled up in the blank spaces in Ex. A 3 by P. W. 1 long after the signature of the appellant was obtained in it.

31. On the other hand, the learned counsel for the respondent-bank Mr. V. S. Subramaniam, contends that filling up of the blanks relating to the particulars of the contract of guarantee a deed does not amount to material alteration and the said contract of guarantee cannot be held to be void and unenforceable. He relies on the following passage in Chitty in Contracts, General Principles, twenty third edition, Vol. 1, 1394:

Immaterial alteration: An instrument is not discharged by an immaterial alteration, that is to say, one which does not alter the legal effect of the instrument or impose a greater liability on the promisor. Thus the addition, without the assent of the maker, of the words on demand to a promissory note did not vitiate the instrument since the alteration only expressed the legal effect of the note as originally drawn. But the alteration in a charter party of the time of sailing has been held to be material as it altered its legal effect.

32. Regarding the point on material alteration, the learned counsel for the 1st

respondent-bank relies on the following passage in the same volume,
at 1394:

Material alteration: If a promisee deliberately makes a material alteration in a specialty or other instrument containing words of contract without the constant of the promisor, this will discharge the promisor from all liability thereon, even though the original words of the instrument are still legible.

The principle, which lies behind this rule has been said to be that "no man shall be permitted to take the chance of committing a fraud, without running any risk of losing by the event, when it is detected." The promisor is therefore not discharged if the alteration is made by accident or by mistake".

33. Mr. V. S. Subramaniam, the learned counsel for the 1st respondent-bank also relies upon the following passage in Mulla on Indian Contract

and Specific Relief Act, Ninth Edition at page 625:

An unauthorised material alteration by the promisee whether that is by adding anything to or by striking out any part of a written contract, avoids

the contract against the person otherwise liable upon" it. The alteration even if made by a stranger without the knowledge of the promisee or his

agent, while the contract document is in possession of the promisee or his agent, also discharges the contract but if it is altered by as stranger while

the document was not in the custody of the promisee or his agent, the promisor is not discharged. If a guarantor entrusts a letter of guarantee to the

principal debtor and the latter makes an alteration without the assent of the guarantor, then the guarantor is liable because it is due to the act of the

principal debtor and what the principal debtor does will estop the guarantor from pleading want of authority".

34. The learned counsel for the 1st respondent-bank also refers to the decision in M. S. Anirudhan v. Thameo's Bank Ltd. AIR 1933 SC 746 for

the proposition that the law now accepts that unsubstantial alteration, which are to the benefit of the surety, do not discharge the surety from

liability. If the alteration is to the disadvantage of the surety or its unsubstantial nature is not self-evident, the surety can claim to be discharged and

the court will not enquire whether it in fact harmed the surety in M.S. Anirudhan Vs. The Thomco's Bank Ltd., a guarantor stood surety for an

over draft allowed by a bank. The bank gave a blank guarantee form to the

principal debtor, who filled it up by stating the maximum debt guaranteed to be Rs.. 25,000/-. The bank was not prepared to accept the guarantee or give accommodation for more than Rs. 20.000/-. The principal debtor made an alteration reducing the sum to Rs. 20,000/- and gave the document to the bank. In a suit against the principal and the surety, the surety pleaded discharge of liability on the basis of the alteration. The Supreme Court, by a majority, held that the surety was not discharged. In this case, the bank sued upon the letter of guarantee and the contention raised by the surety was that there was a material alteration of the instrument of guarantee and as such, he was absolved of all liability on it. It was held, as already seen, that the avoidance of contract by material alteration was inapplicable as the document was not altered while in possession of the bank or its agent but was altered by the principal debtor, who was at the time acting as the agent of the surety. In the instant case, the alteration has been made in Ex. A 3 while it was in the custody of the bank, by P. W.1, the then manager of the Mangadu branch of the plaintiff-bank. The signature of the appellant alone was obtained by P. W.

2. At the time when the signature of the appellant was obtained in Ex. A3 it is the specific evidence of P. W. 2, the then manager of the plaintiff-bank, that the blank spaces in the first page of Ex. A 3 were remaining blank and that they were unfilled. It admits of no doubt that the subsequent filling up of the blanks in the first page of Ex. A 3 amounts to alteration of the instrument while in the custody of the bank, especially when it is frankly admitted that those filling up of the blank spaces in Ex. A 3, were made after the signature in it was obtained from the appellant.

35. In M.S. Anirudhan Vs. The Thomco's Bank Ltd., the document was altered while it was in possession of the principal debtor. In the instant case Ex. A 3 was altered while it was in possession of the bank and it was altered by P. W. 1, who was at that time acting as the agent of the plaintiff-bank at Mangadu. It has not been established in the instant case by the plaintiff 1st respondent that the said intention had been to carry out the intention of the parties. When the material particulars such as the amount for which the appellant, is standing as surety and the rate of interest were not made known to him, and the blank spaces relating to the same were subsequently filled up long after the date which Ex. A 3 bears, and

that too in the absence of the appellant, it cannot be held that the alterations are not material alterations and they do not discharge the surety from

liability. Ex. A 3, the letter of guarantee, in the instant case, had been signed by the appellant on 29th March, 1973, when, the loan had already

been disbursed to the 1st defendant on 15th March, 1973. In the circumstances, I hold that as there was material alteration of the instrument of

guarantee Ex. A 3, the appellant is absolved of all liability on it. The alterations thus made by way of filling the blank spaces, in Ex, A 3 cannot be

held, under the circumstances, to be unsubstantial and to the benefit of the surety, and as such. They do not discharge the surety from the liability.

The alterations have been made in Ex. A 3, certainly to the disadvantage of the appellant. Those alterations are certainly with respect to substantial

character and the same is self-evident. When the alterations in the instant case have been made with respect to the amount advanced to principal

debtor as well as with respect to the rate of interest and also relating to the lands for which the loan is advanced, it cannot be held, that the said

alterations are not material because they carried out the intention of the parties already apparent on the face of it.

36. Mr. V. S. Subramaniam, the learned counsel for the 1st respondent-bank relies on the decision in AIR 1940 160 (Privy Council) for the

following propositions :

The rule relating to the effect of material alterations in a deed made after its execution, by or with the consent of any party thereto, as, it prevails in

English Courts, applies to Indian cases and can be briefly summarised as follows -

If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party

thereto or person entitled there under, but without the consent of the party or parties "liable there under, the deed is there any made void. The

avoidance however is not abolition or so as to nullify any conveyancing effect which the deed has already had but only operates as from the time of

such alteration and so as to prevent -lie person who has made or authorised the alteration and those claiming under him, from putting the deed in

suit to enforce against any party bound thereby who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or

made.

A material alteration is one, which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state or otherwise

varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertain^{2d} and as

such void, or may otherwise prejudice the party bound by the deed as originally executed. The effect of making such an alteration without the

consent of the party bound is exactly the same as that of canceling the deed. The avoidance of the deed is not retrospective and does not revest or

recovery any estate or interest in property which passed under it. And the deed may be put in evidence to prove that such estate or interest so

passed or for any other purpose than to maintain an action to enforce some agreement therein contained.

The alterations of the date of execution of the deed and certain other words by making holes in the document without the consent of the obligee by

the party in whose favour it was executed held in the particular case did not amount to material alterations within the meaning of the rule".

37. In *Adsetts v. Hives*, (1863) 55 ER 286, a mortgagor executed a mortgage deed to A. B., the Solicitor who prepared it. On the following

morning, A. B., filled in the date, the names of the tenants and the date of the proviso for redemption. It was held that this alteration did not render

the deed void.

38. In *Deo v. Bingham* (1821) 106 LR 1082, by a deed a mortgage conveyed to the mortgagor the legal estate, upon -being paid the mortgage

money, and the latter, reconveyed it to trustees for the purpose of securing an annuity. At the time of the execution by the mortgagee, there were

several blanks in the deed, but not in that part which affected him. The blanks left were for the sums to be received by the mortgagor from the

grantees of the annuity, and were all filled up at the time of the execution of the deed by the mortgagee; but several interlineations were made in that

part of the deed, after the execution by the mortgagee. It was held that the deed was not therefore void, but operated as a good conveyance of the

estate from the mortgagor to the trustees for the payment of the annuity.

39. In *Kunni Sankaran Nambiar v. Narayanan Tirumunpu* ILR(1920) Mad 405: AIR 1920 Mad 596 a document mortgaging only one item of

property, was duly executed, and attested, and another item of his property was

interpolated by the mortgagor with the knowledge and consent of the mortgagee in the presence of the same attesting witnesses. The mortgagor registered the deed in the Sub Registrar's Office within whose jurisdiction the latter item was situated. It appeared that the object of adding the second item was not so much to give an additional security to the mortgage, as to enable the mortgagor to get the document registered near the place where he was living and thus prevent delay in registering the deed. It was held that there had been no fraud on the registration law and that the document was duly executed, attested and registered with regard to both items fo property.

40. In *Bishop of Credition v. Bishop of Exeter*, 1904 7 All ER 552 a deed conveying the advowson of a church was in October 1899, signed, sealed and delivered by all the parties to it but the Bishop of E. It was intended that the deed should bear the date upon which it was excited by the Bishop of E., and in the engrossment the day and month were left a blank, but the words ""eighteen hundred and ninety-nine"" were written. The deed was sent to the Bishop of E on November 4, 1899. He executed it on January 26, 1900, and the date of his execution was inserted in the deed, and ""eighteen ninety-nine"" altered to ""nineteen hundred"". It was held that the deed was valid, as the alteration was only to carry out the intention of the parties.

41. In *Paget v. Paget* (1688) 21 ER 701, deed of revocation, and a new settlement made by that deed, though after the sealing and execution of the said deed, blanks were filled up in the said deed and the said deed not read again to the party nor released and executed, it was held that it was a good deed.

42. In the instant case, the 1st defendant principal debtor, has remained ex-parte during the trial. Therefore, the evidence of P. W. 2 remains uncorroborated when he asserts that the 1st defendant accompanied the appellant when the latter came to his house and signed Ex. A 3. It is not quite clear from the "evidence of the appellant as D, W. 1, that he admitted that the signatures of the 1st and 2nd defendants were available in Ex.A3 when he had put his signature in it. Though it was the case of the appellant. Both in his written statement as well as-in his evidence, that certain documents were signed by him at the instance of the 1st defendant when

he was about to be taken inside the operation theatre, i.e., just about ten minutes prior to the operation was performed on the appellant, yet, he had not specifically stated that he had signed Ex. A 3. The appellant only states in his evidence that" his signature was obtained in some document, which was represented to him as a power of attorney.

Therefore, I am constrained to uphold the case of the plaintiff, which is unfurled through the evidence of P. W. 2, that the signature in Ex. A 3 was obtained either on 28th or 29th of March, 1973. It could not be on 28th March, 1973 because the appellant was discharged from the hospital only on 29th March, 1973, as evidenced by the contents of Ex. B. 1. P.W. 2 himself admits that the signature of the appellant was not obtained in Ex. A 3. on 15th March, 1973, which date it bears. Therefore, it has to be held that the signature of the appellant was obtained in Ex. A 3 by P. W 2 and that the blank spaces were filled up subsequent to 30th April, 1973, by P. W. 1. I hold that the filling up of the blank spaces relating to the material particulars of the contract of guarantee certainly amount to alterations in the deed of guarantee. That those alterations made in Ex. A 3 amount to material alteration is evident from the fact that the alterations have been made with respect to the date of the contract, amount for which the appellant stands as surety, the property for which the amount is advanced and also the rate of interest. Both P. Ws. 1 and 2 have not stated in their evidence that there had been ""a common intention between the parties to pay the same as principal amount and also to pay interest at the rate mentioned in Ex. A 3 and that in order to give effect to that intention, P. W. I had filled up the blank spaces in Ex. A 3. Under these circumstances I hold that the alterations made in Ex. A 3 render the deed of guarantee unenforceable u/s 133 of the Indian Contract Act.

43. It is contended on behalf of the appellant that if it is to be held that Ex. A 3 is a valid and enforceable document, under the circumstances, it would amount to giving a free hand to the Bank to substitute any onerous condition in the blank spaces in a printed form) of deed of guarantee and subsequently plead that those blanks were filled up as a result of a common intention between the parties and that the same is for the advantage of the persons who stand as sureties. I am unable to reject this contention as unsustainable.

44. The surety, it is often said, is a favoured debtor. An unauthorised material alteration by the promisee whether that is by adding anything to or by striking out any of a written contract, avoids the contract against the person otherwise liable upon it. In a printed form of guarantee, if the signature of the guarantor is obtained prior to the filling up of the blanks relating to material particulars of the contract, the said filling up of the blank spaces in the printed form of guarantee amounts to material alteration especially when the said deed relating to the contract of guarantee is in the possession of the promisee or his agent, and discharges the contract of guarantee. In the instant case, the alterations have been made by the agent of the Mangadu Branch of the plaintiff-bank while the document was in its custody and so, the said alteration amounts to material alteration and the Appellant, who is the promisor, is thereby discharged. In a document of guarantee, if the blank spaces relating to the amount for which the person stands as a guarantor, the date of the instrument, the amount for which the person stands as a surety and the rate of interest for which the amount had been advanced, are filled up, such filling up would amount to substantial alteration, which are to the detriment of the surety and the said material alteration discharged the surety from liability. The said alterations are certainly to the disadvantage of the surety. They cannot be held as alterations of unsubstantial nature and that the surety cannot claim to be discharged. The conduct of P. W. 2 in this case in bringing the deed of guarantee from the bank to his house and asking the appellant to put his signature in it is certainly an act which is not in accordance with the normal procedure. Equally, the act of P. W. 1 in filling up the blank spaces in Ex. 3 without the knowledge of the appellant long after the signature of the appellant was obtained in it is really very strange.

45. There is nothing in evidence to show that at least soon after the material alterations were made, P. W. 1 had informed the appellant or other parties to the document Ex. A 3 about the same. It is only Ex. A 6, copy of the suit notice dated 2nd July, 1973, that contains the particulars of the transactions between the 1st defendant and the plaintiff-bank. It is mentioned only in it that the appellant and the 2nd defendant have executed the general form of guarantee, guaranteeing the due repayment of the loan on demand and that their liability is co-extensive with that of the principal

debtor.

46. The true rule, in my opinion, applicable to the contract of guarantee is that if there is any agreement between the principals with reference to the

contract guaranteed, the surety ought to be consulted. If the alteration is to the disadvantage of the surety, or its unsubstantial nature is not self-

evident, the surety can claim to be discharged. The contract of the surety should not be altered without his consent and the creditor should not

undertake to alter the contract and then say, that though the contract had been altered, it was not done to the disadvantage of the surety, especially

when such alterations were made with respect to material particulars regarding the contract of guarantee affecting the surety.

47. For the foregoing reasons, I disagree with the finding rendered by the trial Court and hold that the appellant is not liable to pay the suit amount

as a surety for the 1st defendant.

48. In the result, the appeal is allowed, the judgment and decree of the trial Court in so far as they are against the 3rd defendant/appellant are set

aside and the suit as against the 3rd defendant alone is dismissed without costs. There will be no costs in this appeal.

49. Appeal allowed.