**MHCA200000642024**

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| ***EXHIBIT*** | **:** | ***12*** |
| *Received on* | *:* | *10 – 04 - 2024* |
| *Registered on* | *:* | *10 – 04 - 2024* |
| *Decided on* | *:* | *05 – 08 - 2026* |
| *Duration* | *:* | *Year Month Days*<br>*02 – 03 – 25* |

**THE MAHARASHTRA STATE CO-OP. APPELLATE COURT,**
**MUMBAI BENCH AT AURANGABAD.**
**(Before Smt. S. R. Pawar, Member )**

# Appeal. No.16/2024.

*(Arises out of the Judgment and Award dated 10.10.2023 passed by the Ld. Judge, Cooperative Court, Jalgaon in dispute bearing no.452/2006).*

1) *Ashokkumar Gangaram Ranglani,*
*Age : 71 Years, Occu : Business,*
*R/o. 6, Shivram Nagar*
*M.J. College Road, Jalgaon.* *(Orig. Opp. No.2)*

2) *Amit Ashokkumar Ranglani,*
*Age : 42 Years, Occu : Business,*
*R/o. 6, Shivram Nagar*
*M.J. College Road, Jalgaon.* *(Orig. Opp. No.4)*

***..... Appellants.***

***V E R S U S***

1) *Bhaichand Hirachand Raisoni,*
*Co-operative Credit Society Ltd., Jalgaon,*
*Branch at E-2/345, Raymond Chowfuly,*
*MIDC, Ajanta Road, Jalgaon,*
*Through its Recovery Officer,*
*Vijay Rupal Bari.* *(Orig. Disputant)*

2) *Prabhudas Gangaram Ranglani,*

*Age : 84 Years, Occu : Business,*
*R/o. Plot No.3, Telephone Nagar,*
*Jalgaon, Dist. Jalgaon.* *(Orig. Opp. No.2)*

*3) Nandlal Gangaram Ranglani,*
*Age : 72 Years, Occu : Business,*
*R/o. M/s. Ashok India Chitra Talkies Chowk,*
*Jalgaon, Dist. Jalgaon.* *(Orig. Opp. No.3)*
***..... Respondents***

*Mr. V. B. Patil, Ld. Advocate for the Appellants.*
*Mr. B. H. Kurhe, Ld. Advocate for Respondent no.1.*
*The Respondent nos.2 and 3 died hence, abated.*

***AURANGABAD.***
***DATE 05.08.2026.***

***ORAL JUDGMENT***
*(Dictated and pronounced in the open court)*

*1) Being aggrieved and dissatisfied by the Judgment and Award dated 10.10.2023 passed by the Ld. Judge, Cooperative Court, Jalgaon in dispute bearing no.452/2006, the present appeal has been filed by the appellants (who were the opponent nos.2 and 4 before the Trial Court).*

*The original dispute has filed by the respondent no.1 society herein against the appellants as well as respondent nos.2 and 3 for recovery of an amount of Rs.21,56,831/- along with interest @ 17% p.a. with quarterly rests from 01.03.2006 till realization of the entire claim amount.*

*2) In the said dispute the appellants have appeared before the trial court and they have filed counter-claim against the* *disputant / respondent no.1 society.*

*3) For one reason or other the disputant society did not prosecute its claim and thus the dispute was dismissed, but the trial court proceeded further in respect of counter-claim filed by the appellants.*

*By the impugned Judgment and Award, the said counter-claim filed by the appellants / opponent nos.2 and 4 was dismissed by the Ld. Trial court.*

*4) In order to appreciate the correctness of the impugned Judgment and Award, it is necessary to briefly advert to the cause of action pleaded by the appellants / opponent Nos.2 and 4 before the Trial Court.*

*The facts in nutshell are as under; (For the sake of brevity, the parties are referred to as per their status in the original dispute).*

*5) By filing the counter claim it is contended by the opponent nos. 2 and 4 (counter-claimants) that, they are not the share-holder members of disputant society. The disputant society had not run its business in accordance to its bye-laws. The disputant society by playing fraud and misrepresentation obtained guarantee of the counter-claimant no.1 and shows he stood as the guarantor to the loan availed by the opponent No.1 (Mr. Prabhudas G. Ranglani). The opponent no.4 was joined in the array of party opponent as he had executed mortgage deed of his property towards the suit loan. It is the main contention of the counter-claimant that, the disputant society* *had violated the terms and conditions of the alleged loan in dispute, hence they are entitled for discharged from the liability of guarantors/sureties.*

*6) It is further contended by the counter-claimants (opponent nos.2 and 4) that, disputant society had obtained the mortgage of the properties of opponent No.2 and 4 by playing fraud and misrepresentation and without disbursing the loan amount to opponent No.1 as agreed between the parties of Mortgage Deeds. The Mortgage Deeds are without consideration and hence are void and cannot be enforced under the provisions of law. It is further contended that, the disputant can not enforce any action of recovery on the basis of alleged mortgage deeds against the properties of these opponents and therefore the properties needs to be released from liabilities.*

*7) It is further the case of these counter-claimants (opponent nos.2 and 4) that, the opponent No.1 (borrower) was in need of loan of Rs.18,00,000/- as working capital to run his business of manufacturing PVC fittings for Agricultural Irrigation purpose. It is alleged that, the officers of disputant society had obtained the signatures of all the opponents on blank printed loan forms. The signatures on the blank printed forms were obtained at the time of making demand of loan and was told that proper information for the loan of Rs.18,00,000/- will be filled in the said printed forms. It is alleged that the loan documents were not executed on 12.03.2004 by opponent No.2 but the disputant falsely shown the documents executed on 12.03.2004 by putting impression of the date by stamp.*

*8) It is further contended that, the Mortgage deeds are* *shown to be executed for loan of Rs.18,00,000/- on 16.02.2004 i.e. prior to submission of loan demand application whereby showing the properties i.e. Shop No.21 adm. 20.90 sq.mt, Shop No.34 adm. 20.90 sq.mt., shop No. 20 adm. 18 sq.mt.,3. shop No.33 adm.3.72 sq.mt. standing in the name of opponent No.3 out of C.S. No.27/3A/2 situated at Mehrun, Tal. & Dist. Jalgaon and further plot No.40 adm. 192 sq. mts. Out of G.No.198, Plot No.4 out of G. No.192, Plot No. 41 out of G. No.198 and Plot No.42 out of G.No.189/1 situated at Savkheda Bk. standing in the name of opponent No.4, as mortgaged in favour of disputant society.*

*9) It is further contended that, opponent No.2 had not accepted personal guarantee of the loan of Rs.16,00,000/- but accepted for the loan of Rs.18,00,000/- which was the necessity of opponent No.1 for running his business. It is contended that, opponent No.2 had full confidence that if loan of Rs.18,00,000/- would have been granted to opponent No.1, he would had overcome his financial crisis and repaid all the loan, hence the opponent No.2 and 4 have also mortgaged their properties. However, the disputant had not disbursed any amount to opponent No.1.*

*10) It is further contended that, as per the bye-laws No.16 of disputant society, the loan amount is to be utilized only for that purpose for which it is sanctioned. The office bearers of disputant society were aware of the business of opponent No.1 which was of manufacturing PVC fittings. However, the loan documents show the sanction of loan for the business of Engineering works, as no loan amount was disbursed to opponent No.1 for which it was demanded, hence, the opponent No.2 is not liable to pay any amount as surety* *and the properties of opponent Nos.2 and 4 are also not liable to repay the alleged loan.*

*11) It is further contended that, the disputant society itself had violated the terms and conditions of the bye-laws, loan agreements and conditions of Mortgage, therefore the opponent No.2 is discharged from the liability of surety and the disputant is not entitled to sell the Mortgage properties as there is no consideration given for the Mortgage deeds, hence the Mortgage deeds are void-ab-initio.*

*12) It is further contended that, as the loan amount which was demanded was not fully disbursed to opponent No.1, thus opponent no.1 incurred loss, hence there was no production in the factory of opponent No.1 and for want of capital and finance, the opponent No.1 had to close his factory and for such act, the office bearers and employees of disputant society are liable.*

*13) It is further contended that, the disputant society had not issued any Notice to present counter-claimants. The disputant had not filed any proof of service of Notice to these counter-claimants. Moreover, the notice produced on record shows that, there is demand of Rs.3,68,222/- plus interest but the dispute is filed for an amount of Rs.21,56,831/- with future interest @ 17% p.a. The statement of account maintained by the disputant is not proper and legal. By playing fraud and misrepresentation the disputant had obtained the guarantee and shown opponent No.2 and 4 as guarantors. The disputant society had violated the terms and conditions of loan agreements and so also there is variance in the terms of contract of* *the alleged loan in dispute. There is no loan amount disbursed to opponent No.1, therefore the present counter-claimants are discharged from the liability of surety.*

*14) On all the above mentioned grounds, the opponent nos.1 and 4 (counter claimants) urged to allow their counter-claim thereby declared that, "the counter-claimants are discharged from the liability of surety". Further to declare that, "the mortgage deeds bearing No.649/2004 & 650/2004 dated 16.02.2004 as void-ab-initio". The opponents further prayed for declaration,"to release all the properties of the counter-claimants". It is further urged that, "the disputant society be restrained from initiating any recovery proceeding against the property of counter-claimants on the basis of mortgage deeds dated 16.02.2004".*

*15) The record of trial court shows that inspite of an opportunity given the disputant / respondent no.1 society failed to file W.S. to the counter-claim and the thus trial court vide order dated 16.03.2019 passed 'No W.S. order' against the respondent no.1 society and matter was proceeded further.*

*16) To substantiate their claim the counter-claimant no.1 led evidence on affidavit at Exhibit 109. The counter-claimant no.2 has led evidence on affidavit at Exhibit 110. The counter-claimants have also examined the opponent no.1 (borrower) at Exhibit 114.*

*To support their contention in pleading the counter-claimants has produced on record Aadhar Card, Memorandum of articles of association of M/s. Prakash Polyvinyl Pvt. Ltd., and the audit report for the year 2001-2002 at Exh.116 to 118. Inspite of an* *opportunity given the disputant failed to cross-examined the above mentioned witnesses thus no cross order passed against the disputant society and matter was proceeded further for final hearing.*

*17) Considering the case of the counter-claimants, the trial court has taken a view that, "the counter-claimants failed to prove the fact that loan amount was not disbursed and the mortgage deeds are void ab intio and not enforceable by law by non producing of document and non producing witness of the society" thus the Ld. Trial court dismissed the counter-claim.*

*19) Being highly aggrieved by the said judgment and award the present appeal has been filed by the opponent nos.2 and 4 (counter-claimants) contending that, "the judgment and award passed by the Trial court is not in accordance with the law, it suffers from serious infirmity and thus needs to be set aside. It is further contended that, the judgment is against the oral as well as documentary evidence produced on record by the counter-claimants. Moreover, the counter-claim was proceeded exparte, thus the pleading as well as oral evidence was not challenge, hence the counter-claim ought to have been allowed by the Ld. Trial court. On all these grounds the appellants urged for allowing the appeal by setting aside the impugned judgment and thereby awarding the counter-claim.*

*20) Pursuant to summons issued by this court, the respondent no.1 / disputant society appeared before this court through Ld. Advocate Mr. B.H. Kurhe. He had filed his V.P. on record on 10.04.2024 but thereafter he continuously remained absent. Rest of the respondents noted died, no steps have been taken by the appellants to* *bring their LRs on record and thus Appeal abated against them.*

*21) Heard Ld. Advocate Mr. V. B. Patil for the appellants.*

*22) Considering the pleadings of the appellants, the oral as well as documentary evidence produced on record by the appellant, the reasons assigned by the Ld. Trial Judge in the impugned judgment, the grounds raised in the appeal memo, and after hearing the Ld. Advocate for the appellant, following points arise for my consideration, and I record my findings thereon for the reasons given herein below:*

| | ***POINT*** | | ***FINDINGS*** |
|---|---|---|---|
| *1)* | *Whether the appellants / counter-claimants proved that, the office bearers of the disputant / respondent no.1 society had obtained their signatures on the loan document by playing fraud and misrepresentation ?* | ***:*** | ***No*** |
| *2)* | *Whether the appellants are entitled for discharged from suretyship ?* | ***:*** | ***No*** |
| *3)* | *Whether the appellants proved that, they are entitled for release of mortgage properties ?* | ***:*** | ***No*** |
| *4)* | *Whether the findings recorded by the Ld. Trial court in the* | | |

| | | | |
|---|---|---|---|
| | *impugned judgment in accordance with law ?* | **:** | ***Yes*** |
| *5)* | *Whether interference of this court is warranted in the impugned judgment ?* | **:** | ***No*** |
| *6)* | *What order and what relief ?* | **:** | ***As per final order.*** |

***R E A S O N S***

***POINT NO.1 To 6 :***

*As all the above-mentioned points are interconnected with each other, they are discussed commonly.*

*23) Mr. V. B. Patil, Ld. Advocate for the appellants has submitted that, the Ld. Trial Court erred in holding that, "the counter-claimants / appellants failed to prove their counter-claim by non producing the documents non examinations of the witnesses of the society".*

*24) Mr. Patil further submitted that, in the dispute before the Ld. Trial court the society had already filed the loan documents and further the society not laid the evidence and therefore it is for the trial court to appreciate the documents on record and evidence available on the record by the counter-claimants. The Ld. Trial court failed to consider that, the respondent no.1 society come with the case that, the opponent no.1 was in need of loan and thus he had applied for loan on 02.03.2004 and the respondent no.1 sanctioned the loan of*

*Rs.16,00,000/- on 12.03.2004, whereas the mortgage deed were executed on 16.02.2004. The counter-claimant no.2 was also not a guarantor. Thus, he can not be impleaded the array of party opponent.*

*25) It is further submitted that, the Ld. Trial court further failed to appreciate that, the disputant society did not file W.S. to the counter-claim, thus the pleadings as well as evidence led by the counter-claimants / appellants remained unchallenged thus dispute ought to have been decreed. The Ld. Trial court failed to consider the provision of section 133 of Contract Act and discharge the appellant from the liability of repayment and thus interference of this court is warranted.*

*26) While re-appreciating the case of the respective parties, I have carefully considered the submissions advanced by the Ld. Advocate Mr. Patil for the appellants / counter-claimants. I have gone through the pleadings, documentary evidence and the findings recorded by the Ld. Trial Court.*

*After minute perusal of the W.S. as well as counter-claim filed by the appellants (original opponent nos.2 and 4). It is evident that, few facts are specifically admitted by the appellants or became deemed to be admitted by them for want of denial and those needs to be reproduce first.*

*27) It is an admitted fact that, the counter-claimants (opponent nos.2 and 4) and the original opponent nos.1 and 3 belongs to the same family. The counter-claimant No.1 is the real brother of opponent No.1 (borrower), whereas counter-claimant No.2 (opponent No.4) is the nephew of borrower. Thus, the loan transactions were* *entered into between close family members and the society with the object to facilitating financial assistance to the borrower (opponent no.1).*

*28) The pleadings of the counter-claimants itself disclose that, the counter-claimants were fully aware that, the opponent No.1 intended to obtain financial assistance of Rs.18,00,000/- from the disputant society for the purpose of running his business and overcoming financial difficulties. They have categorically admitted in pleading that, "acting upon such understanding, they voluntarily executed two registered mortgage deeds in favour of the disputant / respondent no.1 society, one securing Rs.10,00,000/- and the other Rs.8,00,000/- on 16.02.2004. Thus, the execution of these mortgage deeds is not disputed.*

*29) The counter-claimants have further admitted that, "counter-claimant No.1 executed the guarantee bond in favour of the disputant society".*

*Having these admitted facts, I have perused the pleadings and I find the counter-claimants in order to avoid their liability tried to alleging that, "their signatures were obtained by fraud and misrepresentation", such plea remains a mere allegation unsupported by evidence.*

*30) It is to be noted here that, the allegations of fraud, forgery and fabrication require strict proof. In the absence of specific pleading with complete particulars and best evidence the counter-claimants failed to establish any fraudulent conduct on the part of disputant / respondent no.1 society. Neither the pleadings of the appellants disclose the particulars of the alleged fraud nor has any* *cogent oral or documentary evidence been adduced to substantiate such allegation. Mere assertion, without proof, cannot invalidate a written contract, much less a registered transaction.*

*31) Be it as it may, the Counter-claimant No.1 / opponent no.2 specifically admitted his signature on the guarantee bond. It is his defence that, he has signed the said documents when it was blank, thus the execution of the guarantee bond is otherwise admitted and same, assumes considerable significance and the said documents presumed to be proved on the basis of admission of appellant and onus shifted upon the appellants to prove that, the document was blank when the appellant has signed the same and under what circumstances, he has signed. Apart from bare words there is no evidence on record led by the appellants.*

*32) It is a well-settled principle of law that, a person who has signed a document carrying contractual obligations is bound by his signatures, even if he is not fully aware of its precise contents or the consequences thereof. To rest my view, I am guided by the judgment passed by the Hon'ble Apex court in case of* ***Bihar State Electricity Board Vs. Green Rubber Industries****, reported in* ***1990 (1) SCC 731****. Thus, I find no merit in the defence raised by the appellants / counter-claimants that, "their signatures were obtained on blank loan documents by playing fraud upon them". Hence, it is prove that, the counter-claimant no.1 willfully agreed to stand as guarantor for the suit loan transaction. More importantly, the evidence on record demonstrates that, "the guarantee bond was executed after the respondent no.1 society had sanctioned a loan of Rs.16,00,000/- and not Rs.18,00,000/-. Thus, the counter-claimant No.1 had full* *knowledge of the actual amount sanctioned by the disputant / respondent no.1 society and still he chose to execute the guarantee. Having knowledge, if, the counter-claimant no.1 undertaken such obligation, he cannot subsequently contend that, "his signatures were obtained by misrepresentation".*

*33) To prove their claim the appellants further contended that, the suit loan was shown to be sanctioned for the purpose of engineering work, whereas the opponent no.1 (borrower) has no nexus with the business of engineering. His business is of manufacturing PVC fittings. To prove the said contention, the appellants have produced on record the memorandum of article association at Exh.117 and Tax Audit report at Exh.118 of the said company.*

*34) I do not find any force in such contention of the appellants. After perusal of the loan application given by the borrower (opponent no.1) to the society dated 02.03.2004 it is evident that, the borrower himself mentioned in his loan application that, "he is carrying a business of engineering work at industrial premises at Jalgaon, and for the said work in intend to avail the loan of Rs.16,00,000/-". This application is also signed by the opponent nos.2 and 3 as guarantors. If it is so, the appellants can not take undue advantage of their own wrong. Admitted fact is that, prior to sanction of loan, the appellant no.1 as well as his son (appellant no.2) by executing the registered mortgage deeds secured the loan amount. If the bank sanctioned the loan amount which is otherwise secured, the appellant can not subsequently, raise a defence that, "the business of borrower is different and hence office bearers played fraud upon them".*

*35) The conduct of the principal borrower also needs to be seen in the matter. It is to be noted here that, at no point of time the opponent No.1 dispute that, only Rs.16,00,000/- had been sanctioned. On the contrary, he accepted the loan without protest, executed the requisite loan documents, availed the financial assistance and utilized the amount for his business. He never contended that, "the contract stood frustrated because the entire amount of Rs.18,00,000/- was not sanctioned". His conduct clearly establishes unconditional acceptance of the loan transaction. After minute perusal of the record of the trial court, it is evident that, the principal borrower has filed the application before the trial court at Exh.31 and thereby urged for grant of OTS scheme to him for repayment of entire loan amount by selling the properties which were mortgage towards the loan. In the said application, he specifically admitted the claim of disputant society as well as security provided by him towards repayment.*

*36) In this context, the pleading of the counter-claimants also deserve careful consideration. In para no.1 of the counter-claim, the counter-claimants specifically contended that, "the averments contained in the written statement shall form part of the counter-claim". In para no.3 of the written statement, the opponents / counter-claimants have pleaded that, "the opponent no.2 agreed to stand as guarantor, because, his real brother required financial assistance of Rs.18,00,000/- for revival of his business and that, counter-claimants Nos.1 and 2 mortgaged their properties relying upon the proposed loan transaction".*

*37) A careful reading of these pleadings reveals that, nowhere the counter-claimants pleaded that, the guarantee and mortgage were* *conditional upon disbursement of the entire amount of Rs.18,00,000/-. There is no averment that, "had the society sanctioned a lesser amount, they would not have executed the guarantee or mortgage". There is also no pleading that, "immediately after noticing that only Rs.16,00,000/- had been sanctioned they objected to the transaction, revoked the guarantee or sought cancellation of the mortgage deeds". The pleadings of the counter-claimants, therefore, contradict their pleading subsequently raised.*

*38) Be that as it may, the entire case of the counter-claimants is founded upon the only circumstance that, "whereas the mortgage deeds mention Rs.18,00,000/-, the society actually disbursed Rs.16,00,000/-". Thus, there is variance in contract.*

*The question is "whether such circumstance, by itself, is sufficient to discharge the sureties and extinguish the mortgage security" ?*

*In my opinion, the answer shall be in the negative.*

*39) Sections 126 and 128 of the Indian Contract Act, 1872 define a contract of guarantee. It provides that, "the liability of the surety is co-extensive with that, of the principal debtor unless otherwise agreed". The liability of the guarantor commences the moment the principal debtor commits default. The law does not contemplate automatic discharge of the surety merely because the creditor ultimately advances a lesser amount than what was initially proposed.*

*40) Here in the present case at hand, the counter-claimants have not been able to bring their case within Section 133 to 143 of the*

*Indian Contract Act. As per section 133, a surety is discharged only when there is a material variance in the terms of the contract between the creditor and the principal debtor, made without the surety's consent, which substantially alters the surety's obligation or prejudicially affects his rights.*

*41) In the present case, there is no evidence of any such variance. The identity of the borrower remained unchanged. The guarantor remained the same. The securities remained the same. The purpose of the loan remained the same. The rate of interest, repayment obligations and other contractual terms remained unaltered. The only difference is that, the society advanced Rs.16,00,000/- instead of Rs.18,00,000/-.*

*42) Such reduction cannot by any stretch of imagination be regarded as prejudicial to the sureties. On the contrary, it reduced their maximum financial exposure by Rs.2,00,000/-. A guarantor cannot legitimately contend that, "he has suffered legal prejudice because, his liability has stood reduced rather than increased". Therefore, Section 133 of the Contract Act has no application to the facts of the present case.*

*43) Likewise, Sections 134, 135, 139 and 141 of the Indian Contract Act are wholly inapplicable. There is no release of the principal debtor, no composition, no agreement extending time to the borrower behind the back of the sureties, no impairment of the surety's remedies, and, no loss of securities attributable to the disputant society. None of the statutory grounds for discharge of a surety have been established.*

*44) The conduct of the counter-claimants also completely disentitles them from claiming equitable relief. After execution of the mortgage deeds and guarantee bond, they remained completely silent. They allowed the society to alter its position by disbursing Rs.16,00,000/- to the borrower. They permitted the borrower to utilize the loan amount without objection. They never issued any notice seeking cancellation of the guarantee. They never demanded release of the mortgage immediately after the alleged deviation.*

*The contention now raised, has been raised, only after recovery dispute was filed by the disputant society against them. Thus, the principle of acquiescence squarely applies in the present case at hand. A party who knowingly stands by and permits another to alter his position on the faith of an existing representation cannot subsequently resile from that representation to the prejudice of the other party. Equity does not permit such inconsistent conduct.*

*45) Moreover, the doctrine of estoppel embodied in Section 115 of the Indian Evidence Act also bars the present contentions of the appellants. Admittedly, by executing the registered mortgage deeds and guarantee bond, the counter-claimants represented to the disputant society that, adequate security had been created for the loan transaction. Acting upon such representation, the disputant / respondent no.1 society sanctioned and disbursed the loan. After the society altered its position on the strength of that representation, the counter-claimants are estopped from asserting that, "the security became ineffective merely because, the sanctioned amount was less than the amount originally proposed".*

*46) Another important aspect which cannot be ignored is the* *rights of the parties arise out of two registered mortgage deeds and the written guarantee bond. These documents constitute the entire contract between the parties. Under Sections 91 and 92 of the Indian Evidence Act, when the terms of a contract have been reduced into writing, the rights and liabilities of the parties must be determined from the written instruments themselves. Oral evidence cannot be admitted to contradict, vary, add to or subtract from the terms of such written contracts except in cases falling within the recognized statutory exceptions.*

*47) Neither the mortgage deeds nor the guarantee bond contains any stipulation that, the securities would become operative only if the society disbursed the entire amount of Rs.18,00,000/-. Had such condition been intended by the parties, it would have found place in the written documents. The Court cannot import into a written contract a condition which the parties themselves never incorporated.*

*48) The counter-claimants have also failed to establish any exception to Section 92 of the Evidence Act. They have not proved fraud, coercion, mistake, want of consideration or any other circumstance which would legally justify departure from the terms of the written documents. Their attempt to vary the legal effect of the registered mortgage deeds by oral assertions is therefore legally impermissible.*

*49) Be it as it may, admittedly the burden of proving facts entitling the counter-claimants to discharge from the contract of guarantee lies upon the appellants / counter-claimants. Except pointing out that, "Rs.16,00,000/- was disbursed instead of*

*Rs.18,00,000/-", no evidence has been adduced by the appellants to show that, the guarantee stood revoked or that the mortgage deeds became unenforceable.*

*50) During the course of argument, the appellant has filed on record one application at 'Exhibit 13' under Order 41 Rule 21 of C.P.C., for production of additional evidence. After perusal of said application it is evident that, by way of additional evidence, the appellants have produced on record the amendment application filed by the disputant on trial court record along with few documents (which is already in the trial court record).*

*I have gone through the application along with documents attached thereto and I find, those documents have no nexus with the present case at hand. The appellants tried to improve their case at Appellate stage contending that, "the property which is mortgage was already mortgage for earlier loan availed by the appellants". All those documents are already on record, further consideration is not required and those documents are not relevant to consider the present case at hand and I find, the appellants tried to traverse beyond their pleading. Moreover, it is also not explained why these documents were not referred in evidence when already same is produced before the trial court. I find, those documents are not relevant to consider controversy and hence the question of remand of counter-claim does not arise.*

*51) To sum up the controversy, I am of the view that, it is settle law that, the liability of a guarantor is co-extensive with that of the principal debtor and that discharge of a surety can be claimed only upon proof of the statutory grounds recognized under the Indian*

*Contract Act. It is also settled principle in law that, "the terms of a written contract cannot be contradicted by oral evidence in the absence of any recognized exception under the Evidence Act". The present case at hand, does not satisfy any such statutory requirement.*

*52) Considering the above mentioned observations, I am of the opinion that, the counter-claimants voluntarily created mortgage security and executed the guarantee with full knowledge of the loan transaction. The borrower accepted and utilized the loan without objection. The society acted upon the representations made by the counter-claimants and altered its position by disbursing the loan amount. Thus, the subsequent plea of discharge as urged by the appellants can not be accepted and I am of the view that, the counter-claimants have utterly failed to prove their claim. The Appeal filed is devoid of any merits and hence, needs to be dismissed.*

*53) In this context, I have gone through the findings recorded by the Ld. Trial court and I find the Ld. Trial court rightly dismissed the counter-claim. The findings recorded by the Trial Court are based upon proper appreciation of the evidence and settled legal principles, thus interference of this court is not warranted in the impugned judgment.*

*54) In view of the above mentioned observations, I record my findings to point nos.1 to 6 accordingly and following judgment is passed.*

**_O R D E R_**

1) *Appeal bearing no.16 / 2024 is dismissed.*

*2) The parties to bear their own cost of appeal.*

*3) R & P sent back to the trial court.*

Digitally signed by SARITA RAJESH PAWAR
Date: 2026.08.05 13:17:33 +0530

*Place : Aurangabad.*

*Date :- 5th August, 2026*

***( Smt. S. R. Pawar )***
*Member*
*Maharashtra State Cooperative Appellate Court Mumbai Bench Aurangabad.*

*Dictated and pronounced in the open Court.*

*Order dictated on : 05.08.2026.*
*Order transcribed on : 05.08.2026.*
*Order ready on : 05.08.2026.*