ITEM NO.103   COURT NO.7   SECTION XIV

S U P R E M E C O U R T O F   I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL   NO.   10323/2011

STATE BANK OF PATIALA   APPELLANT(S)

VERSUS

S.K.MATHUR   RESPONDENT(S)
(WITH OFFICE REPORT FOR DIRECTION)

Date : 24/02/2016 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s)   Mr. Sanjay Kapur, Adv.
                        Mr. Anmol Chandan, Adv.
                        Ms. Priyanka Das, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]   [ASHA SONI]
COURT MASTER   COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL   NO.   10323/2011

STATE BANK OF PATIALA   ...APPELLANT

VERSUS

S.K.MATHUR   ...RESPONDENT

ORDER

1. The challenge in the present appeal is against an order dated 9th February, 2011 passed by the High Court of Delhi in the Second Appeal filed by the plaintiff - State Bank of Patiala (for short "the appellant - Bank") by which the order of the learned first appellate court and the learned trial Court holding the suit against the guarantor to have abated was upheld.

2. The appellant - Bank, as the plaintiff, instituted a suit for recovery

of an amount of Rs.1,56,872.40 against the two defendants, defendant No.1 being the Principal Debtor and the defendant No.2 the guarantor. The defendant No.1 died on 18th October, 2005 during the pendency of the suit. Orders were passed by the learned trial Court on 8th February, 2007 holding that the suit filed by the appellant - Bank stood abated against the defendant No.2 also. The aforesaid order was confirmed in first appeal and also in the Second Appeal, as noticed above.

3. The High Court in taking the view which is under challenge in the present appeal has relied on the provisions of Section 134 of the Indian Contract Act, 1872 (for short "the Act") which enumerates a situation when the discharge of a principal debtor operates as the discharge

of the surety/guarantor. On a

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consideration of the provisions of Section 134 and a decision of this Court in the case of Sri Chand vs. M/s Jagdish Pershad Kishan Chand [AIR 1996 SC 1427] the High Court took the view that on the death of the principal debtor the suit as a whole would stand abated and, therefore, the appellant - Bank would have no surviving cause of action.

4. We cannot agree with the view taken by the High Court. Under Section 128 of the Act the liability of the surety is co-extensive with that of the principal debtor. Section 137 of the Act further provides that mere forbearance on the part of the creditor to sue the principal debtor, in the absence of any provision to the contrary, would not discharge the surety. Section 134 of the Act contemplates discharge of the surety either

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on account of a contract between the creditor and the principal debtor by virtue of which the principal debtor is released or by any act or omission of the creditor which in law operates as the discharge of the principal debtor. It is only in the above two situations contemplated by Section 134 of the Act, that the surety can be understood to be discharged of his liability under the agreement/contract. In view of clear provisions of Section 134 of the Act and those contained in Section 128 and Section 137, referred to earlier, we are of the view that the High Court was not right in concluding that the death of the principal debtor, by itself, would operate as a discharge of the surety. In this regard, we also took note of the fact that the reliance placed by the High Court on the judgment of this Court in Sri Chand vs. M/s

Jagdish Pershad Kishan Chand (supra) is not correct. In Sri Chand vs. M/s Jagdish Pershad Kishan Chand (supra) this Court had occasion to lay down the tests/circumstances in which an appeal can be understood to have abated as a whole. The High Court held that the first situation contemplated in Sri Chand vs. M/s Jagdish Pershad Kishan Chand (supra), namely, "the Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court’s coming to a decision which may be in conflict with the decision between the appellant and the deceased respondent and, therefore, it would lead to the court’s passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent" would apply. We fail to see how the first test laid down

by this Court in Sri Chand vs. M/s Jagdish

Pershad Kishan Chand (supra) can have any application in the case of the death of the principal debtor.

5. For the aforesaid reasons, we set aside the order of the High Court and direct that the proceedings in the suit shall now recommence against the surety/guarantor.

6. The appeal consequently stands allowed in terms of the above.

....................,J.
(RANJAN GOGOI)

...................,J.
(PRAFULLA C. PANT)

NEW DELHI
FEBRUARY 24, 2016