



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
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(Arising out of S.L.P.(C) 18365 of 1999)

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Satish Chandra Jain ..... Appellant

Versus

National Small Industries Corpn. Ltd. & Ors. .... Respondents

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Special leave granted.

The unsuccessful challenge of the appellant before the High Court was to the proposal of respondent No.1 to the attachment of House No. 191A, Saket, Meerut belonging to him for the realisation of the amounts due to respondent No. 1.

Briefly stated the facts are that the appellant's son Rajiv Jain entered into a hire-purchase agreement with respondent No. 1 whereby the said respondent financed a business venture of his proprietorship concern M/s S.R.S. Sunfix Company. At the time of signing of the hire-purchase agreement, the appellant herein stood as guarantor as per the deed of guarantee dated 7th June, 1983. The appellant's son then incorporated a private limited company called Shiraj Sunfix Company Private Limited and the said company took over the business of the proprietorship concern. The terms of the original agreement did not permit such a change without the consent of respondent No. 1. The consent to the new entity taking over the business of the proprietorship ...2/-

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concern was given by respondent No. 1 and a new agreement was entered into. By virtue of this agreement, the private limited company became the hirer and Rajiv Jain and Ajit Prasad Jain became the first and the second surety respectively. These two persons stood as guarantors under this agreement and they undertook due performance of this agreement and to pay the instalments of hire and insurance etc.

The said company failed to make the payments as contemplated by the agreement. Thereupon, respondent No. 1 filed a suit in the Delhi High Court for recovery of Rs. 54,15,001.04p. with future interest and possession of the machinery and mandatory injunction. While the company through its Managing Director was arrayed as defendant No. 1, Rajiv Jain and Ajit Prasad Jain were impleaded as defendants Nos. 2 and 3 in their capacity as guarantors. They also happened to be Directors of the private limited company. In the plaint, it was stated that respondent No. 1 had agreed to the change from the proprietorship concern to the private limited company and

it is thereupon that defendant No. 1 and defendant Nos. 2 & 3, being sureties, executed fresh agreement. It is on the basis of this agreement dated 2nd April, 1986 that the suit was filed which was decreed on 12th September, 1996.

Respondent No. 1 then forwarded a Certificate of Recovery under the U.P. Public Moneys (Recovery of Dues) ...3/-

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Act, 1972 to the Collector, Meerut. The amount for which the decree had been passed was set out in the Certificate. The name of the grantee was mentioned as well as the names and addresses of the guarantors. The appellant, who was not a party to the suit, was not mentioned in the Certificate of Recovery. The names of the guarantors mentioned in the Certificate being only of Rajiv Jain and Ajit Prasad Jain. It is only in Annexure-D which contained the details of the immovable property sought to be attached and sold that the House No. 191A, Saket, Meerut belonging to the appellant was mentioned.

It is the inclusion of this immovable property in the Recovery Certificate which was challenged by the appellant before the High Court. The High Court, however, dismissed the writ petition. Hence this appeal by special leave.

From the facts enumerated hereinabove, it is clear that originally when the hire-purchase agreement had been entered into between the parties in June, 1983, the appellant had stood as one of the guarantors. This agreement, however, was superseded by a new one on 2nd April, 1986. The latter agreement does not say that the earlier agreement of guarantee stood terminated nor does it state that the earlier agreement of guarantee continues. In fact, in the latter agreement of 2nd ...4/-

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April, 1986, there is no mention of the earlier agreement entered into by the appellant as a guarantor. The conduct of the parties, however, shows that respondent No. 1 after 2nd April, 1986 did not regard the appellant as one of the guarantors. Apart from the recital in the agreement of 2nd April, 1986, inter alia, to the effect that a fresh agreement had been entered into and Rajiv Jain and Ajit Prasad Jain have agreed to stand as guarantors, respondent No. 1 when it filed the suit in the Delhi High Court chose not to implead the appellant herein as one of the defendants. Rajiv Jain and Ajit Prasad Jain were impleaded as defendants primarily on the ground that they were guarantors under the fresh agreement dated 2nd April, 1986. There is no reference in the plaint to the earlier deed of guarantee dated 7th June, 1983 executed by the appellant nor is there any prayer in the plaint for a decree against the appellant herein or in respect of the agreement of 1983. This apart even in the Certificate of Recovery which was sent by respondent No. 1 to the Collector, Meerut, the arrears were stated to be due from Rajiv Jain and Ajit Prasad Jain in the capacity as guarantors apart from the company and its Directors. The appellant herein was admittedly not a Director of the company and his name does not find mention in the Certificate of Recovery. ...5/-

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Without going into the question whether the provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972 could be invoked on the facts of this case against the appellant, we find that in fact there was no such invocation in the present case. Furthermore, the second agreement of 2nd April, 1986 amounted to novation of contract as a result of which the earlier guarantors stood discharged and fresh guarantees of Rajiv Jain and Ajit Prasad Jain were accepted by respondent No. 1. It is for this reason that respondent No. 1 chose not to file any suit against the appellant thereby clearly indicating that it did not regard the appellant as a guarantor or a person who was still bound by the deed of guarantee executed on 7th June, 1983. The argument of continuing guarantee, therefore, cannot be applied in the present case.

For the aforesaid reasons, this appeal is allowed, the judgment of the High Court is set aside and the Certificate of Recovery in so far as it refers to the immovable property No. 191A, Saket, Meerut belonging to the appellant is concerned, is quashed. No costs.

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.....J  
(B.N. KIRPAL)

.....J  
(N. SANTOSH HEGDE)

New Delhi,  
October 04, 2001.

.....J  
(P. VENKATARAMA REDDI)