**SUIT FOR DAMAGES AGAINST SURETY QUA HIS SECURITY BOND**

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

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

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

*versus*

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

The abovenamed plaintiff most respectfully submits as under: —

1. That the plaintiff is a registered partnership firm carrying on business of supplying auto vehicles on hire purchase basis to its customers.

2. That the defendant.................... obtained a..................... Engine No. .................... Chesis No..................... A. C..................... model.................... on.................... 19.................... for Rs..................... out of which he paid Rs..................... (........................................ ) as advance hire amount.

3. That the remaining Rs..................... were to be paid on account of the hire purchase of the vehicle aforesaid in.................... equal instalments of Rs. .................... per month to the plaintiff by the 10th day of every calender month.

4. That it was agreed through an agreement of hire-purchase dated .................... 19.................... that the said defendant would regularly pay the instalments till the whole amount is paid, after which full satisfaction of the hire-purchase amount aforesaid, the said defendant would become the absolute owner of the said motor cycle. But if the defendant fails to deposit three continuous instalments aforesaid the agreement for hire-purchase of the vehicle would automatically be deemed to have been cancelled in default of the defendant aforesaid and the money deposited by the defendant with the plaintiff would be forfeited as hire only of the said vehicle, the plaintiff would be entitled to have back the vehicle from the defendant aforesaid; and if the defendant does not surrender the vehicle to the plaintiff, he would be liable to pay the whole balance amount of the vehicle, a liquidated damages.

5. That the defendant No..................... stood surety for the defendant No. .................... and agree to pay the amount jointly with the defendant No..................... or severally to the plaintiff on demand.

6. That the defendant No..................... failed to deposit the hire amount for the last.................... months....................

7. That the plaintiff sent a registered notice to both the defendants but none of them has paid the amount so far, hence this suit for recovery of the said amount with interest *pendente life,* and till the amount is recovered from either of them or both of them.

8. That the suit is valued at Rs..................... the balance amount due from the defendants as liquidated damages to the plaintiff and *ad velorm* court fee is paid thereon.

9. That cause of action arose on.................... 19.................... on refusal of payment of the said amount by the defendants within the territorial jurisdiction of this Court, and this court has pecuniary jurisdiction as well to try the suit.

10. That the relief claimed by way of this suit is that the suit may be decreed against the defendant and a decree for recovery of Rs..................... with interest as liquidated damages may be passed accordingly against the defendants.

Plaintiff

Through

Advocate

**VERIFICATION**

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

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

Plaintiff

**case law**

***Sections 128 and 141***

**SURETY CAN CONTRACT AGAINST LIABILITY TO THE EXTENT OF LOSS OF VALUE.**

The Contract Act has created rights and liabilities. But the parties have got a right to contract out of the rights and liabilities mentioned in the Contract Act. That is envisaged by Section 128 of Indian Contract Act. Therefore, merely because we do not find words "notwithstanding anything contained to the contrary", etc. in Section 141, it does not follow that the parties cannot contract out of the rights and liabilities laid down in Section 141 of the Contract Act.

It was open to the surety to contract out of the rights under Section 141 relating to loss of hypothecated property and the surety having given the undertaking that she would not enforce the right under Section 141, even though, the property might

have been lost, the surety was liable in law in view of the contract between her and the bank.1

***Section 128***

**BANK GUARANTEE — LIABILITY OF SURETY**

The fact that the Company in liquidation i. e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i. e. the guarantor. Under Section 128 of the Indian Contract Act, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability.2

1. (1990) 68 Comp. Cases 267: A. I. R. 1984 N. O. C. 113 (Guj. ).

2. (1983) 1 S. C. R. 561: A. I. R. 1940 Bom. 247: (1905) 1 K. B. 462: (1970) 2 S. C. R. 462.