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**KADAMBA SUGAR INDUSTRIES PVT. LTD. VS. DEVRU GANAPATHI**  
**[AIR 1993 KAR HC] – AN ANALYSIS**

- *Chanchal Patre*<sup>1</sup>

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**ABSTRACT**

In this project an analytical study of case law “Kadamba Sugar Industries Pvt. Ltd. vs. Devru Ganapathi AIR 1993 Kar Hc” has been take place. And it falls under the concept of right of subrogation. It is important to note at this point that the notion of subrogation can also be derived from the terms of Section 140 of the Indian Contract Act, 1872. Rights of surety on payment or performance, where a guaranteed debt has become due, or the principal debtor has failed to perform a guaranteed duty, the surety, upon payment or effectiveness of that he is liable for, is decided to invest with all the rights that the creditor had against the principal debtor. A close reading of the aforementioned law, as well as the intent represented in adopting it, reveals that upon payment of the sum owing to the creditor by the guarantor, the surety is subrogated to the creditor's entitlement.

*Keywords:* Contract Law, Surety, Creditor, Principal Debtor

**INTRODUCTION**

In a guarantee contract, there are three parties and three contracts. The debtor, creditor, and surety are the three persons involved. The surety has rights against the debtor. However, the surety may not always be alone in a guarantee contract. There are even more than two sureties or more than one certainty. Then one surety can use his rights against the other co sureties at any moment.

As a result, the issue of co-sureties will be discussed. The surety's rights against the creditor, debtor, and co-sureties will now be reviewed.

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*Right against Principal Debtor*

**Right of subrogation:** Subrogation is a legal process in which one person's rights are transferred to another. If a surety pays a creditor, the surety obtains all of the creditor's rights through subrogation, and the surety can then act as if it were the creditor.

- **Right of Indemnity:** The principle of indemnification works between the primary debtor and the surety, with the principal debtor acting as an implied indemnifier and the surety acting as an implied indemnity holder. As a result, surety can hold the primary debtor liable for all losses.

*Right against Creditor*

- **Right to get securities:** Surety can obtain all securities from the creditor if he makes payment to the creditor.
- **Right to ask for Set-off:** Surety can advise a creditor to sell the security and use the proceeds for set-off.
- **Right of Sub-rogation:** When a surety makes a payment to a creditor, the creditor relinquishes or relinquishes all of his rights as a creditor, and surety obtains those rights.

*Right against Co-Sureties*

- **Right to ask for contribution:** When the primary debtor defaults, the surety can ask his co-sureties to share the sum. They must contribute equally if they have issued a guarantee for equal sums. The method of contribution changes from England law to Indian law in cases where a guarantee is issued for equal amounts. According to English law, contributions must be given in proportion to the guarantee amounts.

**RIGHT TO INDEMNIFY**

Every contract of guarantee contains an implied promise from the principal debtor to indemnify the surety. As a result, the surety has the right to reclaim from the primary debtor all of the monies he has legally paid under the guarantee. However, no money may be recovered from the principal debtor who was unjustly paid by the surety. When the primary debtor defaults on a guarantee contract, the surety is responsible for making the payment to the creditor. He is the one who makes this payment on behalf of the debtor. He can reclaim the money from the primary

debtor after making such a payment. The surety can only make such a claim for the amounts he has paid incorrectly.

### **RIGHT AGAINST PRINCIPAL DEBTOR**

The first of the surety's rights against the debtor is the "right of subrogation." So, what does it mean to have a right of subrogation? Right of subrogation states that when a surety makes a payment to a creditor and the creditor has left the scene, the surety will treat the debtor as if he were a creditor. After completing the payment to the creditor, the surety will take the creditor's place. Because after the creditor has been paid, the creditor is no longer present. Surety has provided the creditor a guarantee, and now that the creditor has received the payment, the surety will step into the shoes of the creditor. He will continue to work for the creditor in the same capacity. He will put himself in the shoes of a creditor and interact with the debtor as if he were a creditor. As a result, his function will shift; he will no longer be seen just as a surety. Surety has offered a guarantee to the creditor, and now the creditor has received money, the surety will take the creditor's place. In the same function, he will keep working for the creditor. He will pretend to be a creditor and converse with the debtor as though he's a creditor. As a result, his role will change; he will no longer be regarded just as a guarantee. We learned from the indemnification contract that the indemnifier will reimburse the indemnity holder if the indemnity holder suffers a loss. As a result, indemnification refers to the act of paying or making good on a loss. If we apply the same concept to the contract of guarantee that we studied in the contract of indemnity, we find that the surety has a right to indemnify himself if, due to the debtor's fault, the surety has suffered some loss or if he has been damaged because of the non-fulfilment of the words or promises. the words or the lack thereof performance of his pledge, and the surety has sustained some damage or has experienced some harm loss, as a result of making good on the loss, the indemnification contract will apply here, and the guarantor has the right to seek indemnification from the debtor. The company will reward him, debtor. Another right available is the right to be released from liability able to rely on the assurance Surety is an option to the debtor and can tell him that the contract must be fulfilled or performed, and that He should make the payment to the creditor on the due date. These are the surety's rights in opposition to debt.

### **RIGHT OF SUBROGATION**

The right of subrogation is provided for under Section 140.

When a guaranteed debt becomes due, or the principal debtor fails to execute a promised obligation, the surety, upon payment or performance of everything he is accountable for, is invested with all the rights that the creditor had to the principal debtor. A surety is therefore subrogated or invested with most of the creditor's rights against the primary debtor upon payment of the guaranteed cash or execution of a guaranteed duty. This occurs when the full amount owed is paid or when the entire responsibility is completed.

Surety takes the place of the creditor. Surety now has the right to sue the primary debtor in the same way as the creditor did previously.

Section 140 encapsulates the broad rule of equity promulgated by Sir Samuel Romilly as counsel and adopted by the Court of Chancery. The surety will be entitled to all of the creditor's remedies against the principal debtor, to enforce all security and all means of payment, and to act in the creditor's place; not only through the channel of contract, but also through securities joined into without the knowledge of the surety, who will have a right to have those securities transferred to him, even if there was no stipulation for that; and to use all of the secrecy provisions. This right of a surety is similarly based on a notion of natural justice, rather than on the rule of law.

*Right of surety on payment or performance:* When a guaranteed debt becomes due or the principal debtor fails to execute a promised duty, the surety is given all of the creditor's rights against the principal debtor upon payment or performance of everything that he is liable for. When the surety has paid what he owes, he is given all of the creditor's rights against the major debtor. The surety assumes the position of the creditor. The creditor was allowed to suit the main debtor. "If the surety's obligation is coextensive with that of the primary debtor, his right is no less coextensive with that of the creditor after he pays the creditor's debts." As a result, the surety may sue the principal debtor in the creditor's name.<sup>2</sup>

## **BACKGROUND/ FACTS**

The Corporation Bank, with its headquarters in Mangalore and a branch in Sirsi, had issued a loan of Rs. 3,00,000/- to the instant appellant-1 Kadamba Sugar Industries Private Ltd., in Bastigalli, Sirsi. The current respondents and appellant-2 had acted as sureties, guaranteeing the loan's repayment. All of Kadamba Sugar Industries Private Ltd.'s assets, including its machinery and immovables, were hypothecated and levied for the debt, also an equitable mortgage was also

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<sup>2</sup> Burhan, law of indemnity: an analysis, Legal service India (Mar. 24,2022, 1.30 AM), <https://www.legalserviceindia.com>

formed by placing the ownership papers in respect of the land and buildings. It appears that the principal debtor and sureties failed to repay the loan on time, and as a result, the Corporation Bank filed an O. S. No. 8/1981 suit in the Court of Civil Judge, Sirsi, against Kadamba Sugar Industries (instant appellant 1) and all the sureties, including the instant appellant 2, for the recovery of the loan amount, including the interest accrued thereon from time to time. The aforementioned litigation, O. S. No. 8/1981, resulted in a preliminary decree dated 28-6-1986. "Plaintiff do recover Rs. 4,57,350. 85/- ps. with expenses of Rs. 71,660. 50 ps. and future interest at the rate of 16. 50% p. a. from the date of action to the date of payment from defendants-1 to 7," the decretal terms state. From defendants 1 to 8, Rs. 1,97,898. 50 ps. plus future interest at the rate of 17% p. a. from the date of suit until the day of the realization. The defendants have been given six months to deposit the money. The defendants in this action have failed to deposit the money that the plaintiff Bank is obliged to apply for a final order for the sale of postulated machineries listed in Schedule A and immovable assets listed in Schedules C and D in order to realize the total suit claim. "The properties that were hypothecated and mortgaged are shown in Schedules A, C, and D affixed thereto, given under my hand and the seal of the Court this 28th day of June, 1980."<sup>3</sup>

## ISSUES

The following points should be considered in light of the petitions made at the court on both:

- (1) Is there a right of subrogation for defendants 2, 4, and 6–8 (immediate respondents 1–5)?
- (2) If so, may they enforce their right in the eventual decision procedures themselves, or do they have to file a separate suit to do so?
- (3) In what order should they be done?

## CONTENTIONS

The fact that defendant 1 Kadamba Sugar Industries Private Ltd. (immediate appellant 1) borrowed money from the Corporation Bank is undeniable. It is also undisputed that the assets listed in the preliminary decree's schedule were hypothecated, and that the Kadamba Sugar Industries mortgaged the movable properties, including the buildings, to the Bank by depositing title documents as collateral for the loan. There appears to be no doubt that defendants 2 to 8, i.e., immediate respondent 1 to 6 and appellant 2, were sureties and had guaranteed the

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<sup>3</sup> Law services, <https://lawyerservices.in/>, (last visited mar. 24, 2022).

repayment of the aforementioned loan to the Bank. I should emphasise here that the learned Counsel appearing on both sides address this issue in their arguments. The Corporation Bank had also filed an action in O. S. No. 8/1981 before the Civil Judge at Sirsi for the collection of the sum against the Kadamba Sugar Industries and these sureties. There is no doubt that the Court of Civil Judges issued a preliminary decree on June 28, 1986. The essence of the decretal word has already been filtered away. It is also undisputed that the Corporation Bank filed a final decree procedure before the Civil Judge's Court under FDP No. 2/1987 since the defendants failed to pay according to the decretal provisions. The decision of the lower Court further shows that on July 31, 1989, the learned Counsel for the plaintiff Bank submitted a letter noting that the issue had been resolved for Rs. 7.5 lakhs and that defendant 2, 4 and 6 to 8 had paid the stated money to the Bank in full fulfilment of the decree in question. With the foregoing findings in mind, it should be easy to conclude that defendants 2, 4, and 6–8 did make the payment they claimed to have made.

### **JUDGEMENT**

In this case, the notice was limited to the subject of whether the amount of interest allowed should be constrained to the initial principal amount and interest rate. The principal sum counted in the decree has been worked out at Rs. 4.57 lakhs in respect of one count and Rs. 1.97 lakhs in respect of that other count, according to a copy of the preliminary decree.

Even that sum, according to learned counsel, is the result of the Bank adding interest to the original principle amount advanced.

On the decretal sum mentioned before, interest has to be accrued. For ease of accounting, we'll make it Rs. 6.50 lakhs, with interest accrued at a rate of 2:2. In other words, the appellant's obligation is restricted to the sum paid by the subrogate plus interest at the rate of 12% per annum from the date the Memo was filed (31.7.89) on Rs.6.50 lakhs.

As a result, the appeal is dismissed. It was established in this case that even if a surety is unaware of the existence of the securities, he is entitled to their benefits.

### **ANALYSIS**

The above short discussion of the law of subrogation and the incidental aspects of subrogation should eliminate any doubt as to when subrogation occurs. The facts upon which the immediate respondents 1 to 5 base their claim of subrogation have previously been REFERRED TO. Even

at the risk of repetition, it is worth noting that the immediate respondents 1 to 5 were the sureties for defendant 1 Kadamba Sugar Industries Pvt. Ltd.'s loan. It is also possible to argue that a mortgage was established as security for the loan through the deposit of title documents. Furthermore, it may be assumed that defendants 2, 4, and 6–8 who were sureties made the payment while the final decree procedures were pending.

The question is whether the immediate respondents 1 to 5 have the right of subrogation stated by them in light of the foregoing circumstances. In summary, the learned Counsel's position on this point is that the right of subrogation included in Section 92 of the T. P. Act does not apply to respondents 1 to 5.

At this point, it's important to remember the contrast here between substantive right of subrogation and the method of enforcement that will be used to enforce that right. Whether the stated judgement will be of any help to the appellants in their argument that respondents 1 to 5's remedy, if any, is through a separate litigation should be addressed under Point No. 2 submitted for determination. At this point, it would be more practical to limit the debate to the topic of whether the stated decisions would be useful in arguing that respondents 1 to 5 did not possess the right of subrogation under the relevant facts of this case.

## **CONCLUSION**

This project aims to understand the indemnity and concept of right to subrogation and analytical comment on the case law Kadamba Sugar Industries Pvt. Ltd. Vs. Devru Ganapathi AIR 1993 Kar Hc. The surety's rights against the major debtor are the subject of this project. From the foregoing, it may be determined that the surety has rights of subrogation and indemnification against the primary debtor as set forth in sections 140 and 145 of the Indian Contract Act, respectively, as discussed in the project's introductory section. Further, in the main body of the project, these rights are discussed in length, along with relevant case law and examples. As a result, once the surety has paid what he owes, he is given all of the rights that the creditor had against the primary debtor, thereby putting the surety in the shoes of the creditor. Because the creditor has the right to sue the major debtor, the surety has the right to sue the principal debtor in the creditor's name. In addition, the major debtor has impliedly promised to compensate the surety. The surety has the right to reclaim from the primary debtor any amount owed to him under the guarantee.