**SUIT BY A SURETY AGAINST THE PRINCIPAL DEBTOR**

Nature of grievance:

**Suit by a surety against the principal debtor: Where a person A becomes a guarantor for the debts of B and thereafter lawfully pays to the creditor – A Suit may be filed for the recovery of said money against B, within 3 years from the date when the debts were discharged by the person A, under Article 42 of the Indian Limitation Act, 1963.**

Reliefs prayed:

(As may be appropriate and applicable to the facts of one’s case)

a)     The Defendant No.1 be ordered and decreed to pay Rs.\_\_\_\_\_\_\_, as per particulars of Claim, annexed to the Plaint (Exhibit “\_\_\_\_”);

b)     The Defendant No.1 be further ordered and decreed to pay interest on the Suit amount, @18% from the date of filing of Suit, till date of judgment; and further interest @18 / 12 / 6 % from the date of judgment till payment;

c)     The Defendant be ordered and decreed by way of Mandatory Injunction to \_\_\_\_\_\_\_\_\_\_ “perform certain acts”; (as may be applicable to the facts of the case) (Please see the Note below)

Interim and Ad-Interim Reliefs: Pending the hearing and final disposal of the Suit, the Hon’ble Court so as to prevent the ends of justice from being defeated, be pleased to Order –

d)     The Hon’ble Court, in the due exercise of their powers u/s 94 and O.38 of CPC, 1908, issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison; (as may be applicable to the facts of the case)

e)     The Hon’ble Court, in the due exercise of their powers u/s 94 and O.38 of CPC, 1908, direct the defendant to either (i) furnish security to produce any property belonging to him and to place the same at the disposal of the Court or (ii) order the attachment of his property, or, (iii) furnish the bank guarantee for the Suit amount or (iv) deposit the Suit amount in the Court;

f)      The Hon’ble Court, in the due exercise of their powers u/s 75 and O.26 of CPC, 1908, be pleased to appoint Court Commissioner, to hold a scientific, technical, or expert investigation; or to perform any other ministerial act; (as may be applicable to the facts of the case) (Please see the Note below)

g)     Interim/ad-interim reliefs in terms of prayer clauses \_\_\_\_\_\_\_ as aforesaid.

h)     Such further and other reliefs as this Hon’ble Court may deem fit and proper in the circumstances of the case as may be necessary.

Note: In Summary Suits, the Reliefs could only be in the nature of Money, i.e. the Principal sum and the interest, if any claimed, and no declaration or injunction of any nature could be asked for. In Summary Suits, even unliquidated compensation or damages cannot be claimed. However, if other Reliefs are also required to be sought, then, preferably, a leave of the Court under O.2 R.2 may be obtained to file a separate Suit for other Reliefs. Nevertheless, a comprehensive regular Suit may be filed claiming all Reliefs, instead of filing two Suits. Further, whereas Summary Suits are not maintainable in every District Court, in such cases, a comprehensive Suit for all the Reliefs may be filed. Also, please take note of this whilst making averments in the body of Plaint.

Material facts of the case:

The Plaintiffs, most respectfully submit that, having regard to the nature of reliefs prayed for in this Suit, the following facts become germane to the controversy herein; And, the reasonable satisfaction of the existence or the non existence, as the case may be, of these facts, may entitle the Plaintiffs the judgment in their favour. The chronology / chain of events, which has led to the present situation, and has constrained the Plaintiffs to seek certain Reliefs from this Hon’ble Court. [In the chronology / chain of events, the following facts should be set out in clear terms, at appropriate juncture.]

1.      The facts showing that Plaintiffs gave an unequivocal / clear guarantee towards any debt / sum, to be paid by Defendant No.1 towards Defendant No.2:

2.      The facts showing that Plaintiffs lawfully pays the said debt of Defendant No.1, to Defendant No.2, and in accordance with the terms of the guarantee:

In Money Claim Suits, to claim interim relief, “of arrest of the Defendant to cause him to furnish security for his appearance, pending the disposal of the Suit”, any one of the facts must be shown to have exist –

1.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant has absconded or left the local limits of the jurisdiction of the Court:

or

2.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to abscond or leave the local limits of the jurisdiction of the Court:

or

3.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof:

or

4.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree which may be passed against the defendant in the suit:

In Money Claim Suits, to claim interim relief of “directing the Defendant to furnish security for certain sum of money, either by furnishing the bank guarantee or by depositing the said sum of money in the Court”, or to effect the conditional attachment of his immovable property, pending the disposal of the Suit”, any one of the facts must be shown to have existed.

1.      Facts and circumstances showing that, with intent to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to dispose of the whole or any part of his property:

or

2.      Facts and circumstances showing that, with intent to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court:

or

3.      Facts and circumstances showing that the Defendants have admittedly committed default in making payment of debt; and the Defendants have not even bothered to respond to the legal notice of demands being issued by the Plaintiffs; and the Defendants have prima facie no defense to the demand made by the Plaintiffs; and if the claim of the Plaintiffs is not secured by passing appropriate order against the Defendants, there would be a paper decree in the hands of the Plaintiffs and such huge claim made by the Plaintiffs would not be recovered.

or

4.      Facts and circumstances showing that the Defendant has become incommunicable, i.e. he is not available at the place where he regularly carries on business; and he doesn’t answers the phone calls, nor the Defendant makes any reply to the Notices which are being sent; and therefore there is a reasonable apprehension that the Defendant may dispose of the whole or any part of his property, to the serious prejudice of the Plaintiffs and other creditors of the Defendants:

or

5.      Facts and circumstances showing that the Defendant in their letters and emails, in unambiguous terms have admitted the claim of the Plaintiffs; and / or the Defendants, vide their Letters / Emails dated \_\_\_\_\_\_\_\_\_ to the Plaintiffs, have stated that the Defendant is facing severe financial crunch; and therefore there is a reasonable apprehension that the Defendant may alienate, encumber, dispose or create third party rights in respect of their immovable properties, to the serious prejudice of the Plaintiffs and other creditors of the Defendant; and there may not be other properties which could have been made available for the purposes of satisfying the decree, if any, passed against the Defendants; and if the claim of the Plaintiffs is not secured by passing appropriate order against the Defendants, there would be a paper decree in the hands of the Plaintiffs and such huge claim made by the Plaintiffs would not be recovered.

If an interim Relief is asked for the appointment of Court Commissioner, to hold a scientific, technical, or expert investigation; etc. then facts showing that such investigation, etc. is just and necessary for the complete disposal of the Suit.

[To claim any relief in the nature of permanent injunction] The facts showing that the Plaintiff is entitled to some legal position, or to some property, or to some right of any nature whatsoever; and the facts and circumstances showing that the Defendant is doing some act by which the Defendant interferes with such rights of the Plaintiffs;

[To claim any relief in the nature of mandatory injunction] The facts showing that the Defendant is under obligation under the law or under the contract, to perform certain acts, which he is neglecting to do, and the Courts can compel performance of such acts, and the performance of such acts are essential pending the final disposal of the Suit, and the failure of performance of such acts may render the Suit infructuous.