

## **State Of Maharashtra vs Dr. M.N. Kaul (Deceased By His Legal ... on 28 March, 1967**

**Equivalent citations: AIR1967SC1634, [1968]38COMPCAS1(SC), AIR 1967 SUPREME COURT 1634, 1967 MAH LJ 998, 1967 MPLJ 937, 1967 2 SCWR 426, 1968 (1) SCJ 290, 1968 33 COM CAS 1, 1968 (1) COM LJ 68**

**Bench: M. Hidayatullah, C.A. Vaidialingam**

ORDER

Hidayatullah, J.

1. By an order dated February 12, 1962, this court granted conditional stay of the operation of an assessment order passed by the Sales Tax Officer (XII) Enforcement Branch, Greater Bombay and of the notice of demand issued by him against Dr. M.N. Kaul (deceased). The notice of demand required Dr. Kaul to pay Rs. 18,240.06 p. and stay was granted on condition that Dr. Kaul must furnish bank guarantee for the amount in favour of the Registrar of this court. Dr. Kaul furnished guarantee of the National & Grindlays Bank Ltd. and it was accepted by this court and the Sales Tax Officer. We shall presently refer to the terms of this guarantee which was executed by the Bank on March 23, 1962. Dr. Kaul died and the writ petition was placed before this court on March, 15, 1965. On that date the minutes record :

"The court made no order as the writ petition has abated due to the death of the petitioner."

2. On November 25, 1965, the State of Maharashtra moved Civil Miscellaneous Petition No. 331 of 1966. It was stated that the order of stay had come to an end and the amount of Rs. 18,240.06 p. which had by addition of interest become Rs. 19,581.50 p. became payable. The State, therefore, sought to recover the amount from the guarantor. As there was a deficit of a sum of Rs. 1,341.44 p., the State asked to be paid that amount from the security for costs of Rs. 2,500 deposited by Dr. Kaul in this court. The matter was heard on a notice of motion taken out on February 7, 1966. On February 3, 1966, the bank addressed a letter to the Registrar to the following effect:--

"The Deputy Registrar, Supreme Court of India, New Delhi.

Dear Sir, Re: Our L/G No. 100/37 dt. 23-3-1962 issued on account of Dr. M. N. Kaul for Rs. 18,240.06 p. in the matter of Kaul v. State of Maharashtra and Anr. Our Customer Dr. M.N. Kaul has expired and this guarantee is lying outstanding in our books. To enable us to take this guarantee out of our books please send it to us for

cancellation urgently. Yours faithfully, (Sd.) Illegible.

P. Manager (D.R. oSHIDAR)"

3. On February 23, 1966, the bank filed a counter-affidavit, raising several objections. The first objection was that the application was incompetent in the absence of the legal representatives of Dr. Kaul. The second was that the guarantee had become unenforceable as the time limit for its enforcement had expired. Lastly, the bank declined liability in excess of the amount of the guarantee. A further affidavit was filed by the Bank stating that on or about March 11, 1966, the bank received a notice purporting to be under Section 17 of the Bombay Sales Tax Act from the Office of the Sales Tax Officer asking the bank to pay the sum of Rs. 18,240.06 p., without prejudice to the application for directions pending in this court. The bank further stated that an amount of Rs. 18,411.97 p. was standing to the credit of the late Dr. M.N. Kaul with the bank. The bank offered to remit the amount in answer to the notice under Section 17 of the Sales Tax Act provided the bank guarantee was cancelled and discharged. The notice of March 11, 1966, was made an annexure of the affidavit.

4. The C.M.P. was placed before the court on March 23, 1966, when the legal representatives of Dr. Kaul were ordered to be joined and the bank was ordered not to pay the amount to anyone including the Sales Tax Officer. One R.N. Kaul (brother of Dr. M.N. Kaul) was brought on record as the legal representative. Dr. Kaul had left behind no issue, male or female. The State of Maharashtra repeated its demands by another petition dated November 25, 1966. R.N. Kaul appeared and filed an affidavit in reply opposing payment of the amount under the guarantee and the payment of the deficit amount from the security amount.

5. In view of this opposition, the matter was heard fully. The terms of the guarantee may now be seen. The guarantee is in the form of a letter addressed to the Registrar of this court. The first two paragraphs at its forefront are preambles setting out the circumstances in which the guarantee came to be furnished. The operative part reads :

"AND WHEREAS THE NATIONAL AND GRINDLAYS BANK LIMITED, a Licensed Bank, having its branch office at Chandni Chowk, Delhi, has agreed with Dr. M.N. Kaul, Delhi, to furnish in your favour a guarantee in the sum of Rs. 18,240.05 np. (Rupees eighteen thousand two hundred and forty, and six naye paise) fixed by the court as aforesaid.

Now therefore in pursuance of the said Order of the court dated the 12th February, 1962, and in consideration of the said agreement between Dr. M.N. Kaul of Delhi and the National and Grindlays Bank Limited, Delhi, HEREBY GUARANTEE to you the payment on demand of a sum not exceeding Rs. 18,240.06 np. (Rupees eighteen thousand two hundred and forty and six naye paise) only in the event of the above-mentioned writ petition No. 9 of 1962 filed by Dr. M.N. Kaul, Delhi, being dismissed by the Supreme Court of India and/or the said court holding that Dr. M.N. Kaul, Delhi, is liable to pay the sales tax Rs. 18,240.06 np. (Rupees eighteen thousand two hundred and forty and six naye paise only) to the said respondent.

AND THE NATIONAL AND GRINDLAYS BANK LIMITED, DELHI, declares that this guarantee shall remain in force until one calendar month after the date of the pronouncement of the Judgment and/or a period of TWELVE MONTHS from the date of the execution of the GUARANTEE whichever is later and/or the drawing AND SEALING OF THE order (as the case may be) of the SUPREME COURT finally disposing of the said petition filed by Dr. M.N. Kaul of Delhi."

6. The question is whether this guarantee is enforceable. That depends upon the terms under which the guarantor bound himself. Under the law he cannot be made liable for more than he has undertaken. It is often said that a surety is a favoured debtor, for in the expressive phrase of Lord Westbury L.C. in *Blest v. Brown*, (1862) 4 De G.F. & J. 367 at 376.

" you bind him to the letter of his engagement.

Beyond the proper interpretation of that engagement you have no hold upon him."

7. These observations have been recalled in cases of guarantee and suretyship by the Judicial Committee and also this court. See for example *Pratapsing Moholalbhai v. Keshavlal Harilal Setalvad*, and *M.S. Anirudhan v. Thomco's Bank Ltd.*, (1934) 62 I.A. 23 at 33. To this there are some exceptions. In case of ambiguity when all other rules of construction fail the courts interpret the guarantee *contra proferentem*, that is, against the guarantor or use the recitals to control the meaning of the operative part where that is possible. But whatever the mode employed, the cardinal rule is that the guarantor must not be made liable beyond the terms of his engagement.

8. Judging of the letters of guarantee from this standpoint it is clear that the bank bound itself to pay on demand the sum of Rs. 18,240.06 np. only in the event of the writ petition being dismissed and/or this court holding Dr. M.N. Kaul liable. The guarantor however put a time limit on the guarantee. According to the last paragraph the contract was to remain in force :

(i) for one calendar month after the pronouncement of the judgment and/or

(ii) (a) a period of 12 months from the date of the execution of the guarantee whichever be later and/or

(b) the drawing and sealing of the order (as the case may be) of the Supreme Court finally disposing of the petition of Dr. Kaul.

9. The sales tax authorities can take advantage of any of the above conditions. It will be recalled that the order of this Court was passed on March 15, 1965. Under (i) time for enforcement was available till April 15, 1965. Under (ii) (a) as the guarantee was executed on March 23, 1962, one year expired on March 23, 1963. Condition (ii) (b) does not apply because no order was drawn up or sealed. Thus the last date for enforcement of the guarantee was April 15, 1965. No attempt was made so to enforce it and the guarantee was not available thereafter.

10. Mr. Dhebar sought to increase the liability by reading the recitals and also by making the first paragraph of the operative part of the guarantee to speak. This is not possible. The guarantee in this form was accepted by the party concerned as well as this court and it is impossible to ignore the time limit which is an integral part of the guarantee. The contention of the bank that the guarantee is no longer enforceable is therefore right. Of course if the Bank can be made to part with the money belonging to Dr. M.N. Kaul under any other procedure open to the sales tax authorities, the bank would be bound legally to pay it over but the guarantee cannot be enforced.

11. As regards the sum of Rs. 1,341.44 np. which is sought to be recovered from the amount deposited by Dr. Kaul as security for costs, it is obvious that that cannot be ordered. The sum of Rs. 2,500 is available only to meet costs and as in this case costs have not been ordered that sum cannot be touched. In the result, the two notices of motion must fail and they are dismissed. The costs of the hearing shall be borne by the State of Maharashtra.