claimed himself to be the legal representative of Sahib Dayal, deceased. In this view of the matter, the view taken by the lower appellate Court was wrong and misconceived. The order of the trial Court could not be said to have been passed under Order XXII rule 10 of the Code; rather it was passed under Order XXII rule 5 and, therefore, no appeal against the same was maintainable.

(4) For the reasons recorded above, this revision petition succeeds and is allowed. The impugned order of the lower appellate Court is set aside and that of the trial Court dismissing the application of the respondent for bringing him on record as the legal representative of Sahib Dayal, deceased, is restored with costs. The parties are directed to appear in the trial Court on 10th October, 1985.

N.K.S.

Before B. S. Yadav, J.

PRESTOLITE OF INDIA LTD,—*Petitioner.*

versus

UNION BANK OF INDIA, AND OTHERS,—*Respondents.*

Civil Revision No. 3041 of 1984.

September 26, 1985.

Code of Civil Procedure (V of 1908)—Section 115 and Order 40 Rule 1—Application for appointment of a receiver in a pending suit—Hypothecation deed giving power to the creditor to appoint a receiver in case the debtor committed default in payment—Receiver—Whether could be appointed merely because there is a clause in the deed—Appointment of a receiver—Principles governing such appointment—Stated—Trial Court exercising discretion and appointing a receiver—Order upheld by the lower appellate court—Discretion exercised by the courts below—Whether could be interfered with by the High Court under Section 115.

Held, that the creditor might have a right to appoint a receiver, but if it seeks the help of the Court for appointment of a receiver, then the provisions of Order 40 Rule 1 of the Code of Civil Procedure, 1908, will have to be taken note of. That provision lays down that the receiver can be appointed only if it appears to the Court to be just and convenient. Therefore, the creditor cannot insist that a

receiver should be appointed because there is a clause to that effect in the hypothecation deed.

(Para 7)

Held, that if the lower court has not exercised its discretion in accordance with sound judicial principles, then the Court will be deemed to have acted in the exercise of its jurisdiction with material irregularity and, therefore, it becomes the bounden duty of the High Court to undo the injustice, if any, caused to a party by the impugned order. Where the Courts below have exercised the jurisdiction vested in them with material irregularity and have appointed a receiver and the order if allowed to stand would cause irreparable injury to a party as it would be deprived of its possession over its property, the High Court woud interfere under section 115 of the Code.

(Para 11)

Held, that the principles which must govern the Courts while exercising equity jurisdiction in appointing a receiver are follows:

1. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: It is sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceedings;

2. The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit;

3. Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm;

4. An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the

dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the court can hardly do wrong in taking possession; and

(5) the Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc."

(Para 10)

S. N. Industries and another *vs.* Union Bank of India, etc. A.I.R. 1978 Allahabad 189.

Dissented from.

Petition under Section 115 *C.P.C. for revision of the order of the court of Shri Raj Kumar Gupta, District Judge, Faridabad, dated 20th October,* 1984, *affirming that of Shri P. L. Goyal, Sub-Judge, 1st Class, Faridabad, dated the 5th December,* 1983, *appointing a receiver of the property with certain powers and duties.*

V. K. Bali, Advocate, *for the Petitioner.*

Anand Swroop, Senior Advocate with I. S. Rai, Advocate, *for the Respondent.*

JUDGEMENT

B. S. Yadav, J.

(1) The facts leading to this revision petition are that the respondent, Union Bank of India (for short the Bank) filed a suit for the recovery of Rs. 2,27,58,343.70 paise, with future interest at the agreed rate of 16 per cent per annum till realisation against the present petitioner, M/s Prestolite of India Ltd., (for short the Company) and respondents No. 2 and 3, who had been arrayed as defendants No. 1 to 3 respectively, by the sale of mortgaged, pledged, and hypothecated property and for the recovery of deficiency, if any, by sale of other properties and from the persons of respondents No. 2 and 3, Managing Director and Director of the Company. Briefly the case of the Bank is that the Company

opened a current account with it in August or September, 1963 and requested for the grant of various facilities of advances, loans and limits, as detailed in the plaint. Those were sanctioned by the Bank upon the execution of the usual documents. Some loans were advanced jointly by the Bank and respondent No. 4, New Bank of India, which had been arrayed in the suit as defendant No. 4. According to the Bank, the above amount was due from the Company in the various accounts. That amount includes the interest upto the date of the filing of the suit.

(2) Along with the suit, the Bank filed an application under Order 38, Order 39, Rules 1 and 2, 6 to 7, Order 26 Rules 9, 10 and 12 and Order 40 Rule 1 read with section 151 of the Code of Civil Procedure. It was alleged in the application that despite all contractual obligations and categoric assurances, the Company and respondents No. 2 and 3 had deliberately and intentionally violated the terms of pledge and hypothecation from time to time and unauthorisedly. stealthily and illegally removed sold/or transferred the pledged and hypothecated machinery and goods without informing the Bank and failed to deposit the sale proceeds thereof in the respective accounts. In fact, they misappropriated the same to their own personal gain, to the detriment of the interest of the Bank with a view todefraud it and defendant No. 4 of their valuable securities and repayment of dues. They also committed other irregularities in honouring their commitments. It was further stated that *mala fide* intention and ulterior motive, the Company had dreated second charge by way of hypothecation in favour of Shri S. S. Sahni, Managing Director (respondent No. 2), A. S. Sahni, Director (respondent No. 3) and Mrs. J. K. Sahni, wife of Shri S. S. Sahni against book debts of tangible and immovable assets. The Company, defendants No. 2 and 3 illegally removed the securities under the hypothecation and trust receipt and were also indulging in direct sales of the hypothecated goods in process, finished goods, stores and stocks-in-trade, etc. hypothecated plant and machinery and stocks both of raw materials, goods in process, finished goods, stores and stock-in-trade, etc. Huge withdrawals were made from the accounts and this showed that they were siphoning a substantial fund for their personal gains besides eating into the other securities of the Bank. Some other irregularities were also alleged. Therefore, it was prayed:

(a) Attachment before judgment and by way of injunction restraining defendants No. 1 to 3 from negotiating, selling, disposing of, transferring, alienating and in any

manner, dealing with the title and possession of the property situated at Mile Stone No. 16/4 Main Mathura Road, Faridabad (Haryana), belonging to defendant No. 1 and mortgaged and charged in favour of the plaintiff bank and defendant No. 4 Bank.

(b) Attachment before judgment and restraining defendants No. 2 and 3 from dealing with, disposing of, transferring or otherwise dealing in any manner with their shares in defendant No. 1 company, cars, air-conditioners, furnitures fittings and fixtures installed/kept for and on behalf of and in the name of defendant No. 1 company at W-65, Greater Kailash, I, New Delhi or any where else.

(c) Attachment before judgment and restraining defendants No. 1 to 3 by injunction from selling disposing of removing, transferring or dealing with the pledged goods and hypothecated plant, machinery, equipment and goods including raw-materials, goods in process, semi-finished goods, finished goods, stocks in trade, etc., stored or lying in the factory premises/godowns including the goods despatched and lying in railway/transporter godown at or in different stations or in transit or elsewhere and/or the goods, equipment and machinery transferred to and lying with the allied and sister concerns of defendants No. 1 to 3 of which defendants No. 2 and 3 or their relatives and close friends are partners or proprietors, namely Tropical Commercial Company Private, Ltd., M/s. Inspi Auto Industries Private Ltd., M/s. Auto Marks Private Limited, M/s. Faridabad Engineering, Ottino Private Ltd., Sterling Motors and Auto Motors.

(d) Attachment before judgment and restraining defendants No. 1 to 3 from realising or receiving book debts hypothecated in favour of the plaintiff bank from the debtors of defendant No. 1 company.

(e) Directing the defendants No. 1 to 3 under order 38 Rule 5 Civil Procedure Code to furnish security to the satisfaction of this Court for the payment of plaintiff's claim in suit, i.e., Rs. 2,27,58,243 with costs and future interests as specified in the plaint within the time to be fixed by the Court and in case of their failure to do so within the time fixed by the Court, to order the sale of the plant,

machinery and equipment hypothecated in favour of the plaintiff bank and the goods including raw materials, goods in process, semi-finished goods, stocks in trade, the book debts and goods despatched, in transit, lying in the godowns of railways/transporters at various stations, etc. and to deposit the sale proceeds thereof with the plaintiff bank towards the adjustment/realisation of the plaintiff's claim in suit.

(f) Appointing a Local Commissioner/Receiver with the directions to make an inventory of the pledged as well as hypothecated plant, machinery, equipment and goods including raw materials, goods in process, semi-finished goods, finished goods, stocks in trade, etc., stored or lying in the factory premises godowns including the goods despatched and lying in railway/ transforters godowns or in transit or elsewhere in different stations and/or the goods, equipments and machinery transferred to and lying with the allied and sister concerns of defendants No. 1 to 3 mentioned hereinabove of which defendants No. 2 and 3 or their relatives and close friends are partners or proprietors, from the records of defendant No. 1 company and to inspect the books of accounts, security registers, stock registers, raw material registers, finished goods registers, despatch goods record, records of goods and machinery transferred and who after signing should take the same into his custody/possession and to manage, supervise and conduct sale of the same by public auction or private treaty under the directions and supervision of this learned court and deposit the sale proceeds thereof with the plaintiff bank and/or with the Court.

(g) Appointing Local Commissioner/Receiver with the directions to take charge of and prepare an inventory of articles, goods, fixtures, air-conditioners, furnitures and fittings, and other valuables installed/lying at W-65, Greater Kailash-I, New Delhi and/or belonging to defendants No. 1 to 3 and to sell the same by public auction and deposit the sale proceeds thereof with the plaintiff bank and/or the court towards its claim in suit.

(3) The application was opposed by defendants No. 1 to 3 and the various allegations about the destruction, squandering, wastage

or removal of the goods from the Company's premises were denied. It was further pleaded that there were no grounds for granting various reliefs claimed by the applicant.

(4) The suit was presented during vacation of Civil Courts in the Court of the District Judge, Faridabad. *Vide* order dated 19th June, 1981, he issued an *ad interim* injunction restraining defendants No. 1 to 3 from selling, removing, dealing with or otherwise disposing of or parting with possession of the shares of defendants No. 2 and 3 in the Company and the mortgaged land, building of the factory premises of defendant No. 1, situate at 16/4, Main Mathura Road, Faridabad and the pledged goods, hypothecated plant, machinery, equipment, goods including raw-material, semi-finished goods, finished goods, stock-in-trade and from realising book debts, goods despatched and lying in the godowns of railway/transporters at various stations, etc., or in transit. It was, however, clarified that the aforesaid order, in so far as it related to raw-material, semi-finished or finished-goods, including goods in transit was limited to the extent that the same would not be sold, removed, dealt with or otherwise disposed of or possession thereof parted with except in the normal course of usual business of the Company and in a *bona fide* manner. *Vide* order dated June 25, 1981 the said Court appointed a local commissioner and gave the following instructions:—

(1) He should make the inventory of hypothecated and pledged goods/machinery, trust receipts filed by the plaintiff with the plaint and in so far as possible physically verify each and every item, so verified as available intact.

(2) He should also prepare a list of all assets, fixed as well as floating of the Company, including book-debts.

(3) He should sign all the accounts books, godown registers, pledged goods register, register of hypothecated machinery and goods, book debts, fixed assets, register, Trust account register and all other relevant records. Assets of the Company would include all the assets wherever they were situated including the factory premises, their godowns, the residences of Directors and sureties.

(5) Later on the suit was transferred to the Subordinate Judge I Class, Faridabad. He appointed local commissioners to evaluate the land, building, plant and machinery installed in the Company.

The application was finally disposed of by the Subordinate Judge on 5th December, 1983. He held that the Bank had a *prima facie* good case and it was just and convenient, in the circumstances of the case, to appoint a receiver. He accordingly appointed a receiver with the following directions:

"(1) He will protect and preserve the entire fixed and floating assets of defendant No. 1 Company;

(2) He will prepare an inventory of the entire fixed and floating assets of the defendant Company;

(3) He will take charge of the entire fixed and floating assets of the defendant company;

(4) He will renew the insurance policies to cover all fixed and floating assets, building, pledged goods, hypothecated plant, machinery, equitable goods, raw-material, semi-finished and finished goods lying in the factory premises or else-where against the risks of fire, riots, civil commotion, strikes, burglary, etc.;

(5) He will take over the charge of the returned goods in respect of unpaid bills already received by the Local Commissioner and to arrange the rebooking and taking of open delivery of the remaining goods lying with transporters in respect of the dishonoured/unpaid discounted by the defendant company from the plaintiff Bank. He will then dispose of these goods by conducting public auction and deposit the sale proceedings thereof in the court."

He also confirmed the *ad interim injunction* granted by the District Judge on June 19, 1981. The rest of the prayers made in the application filed by the plaintiff were declined.

(6) Feeling aggrieved, the Company filed appeal which was heard by the learned District Judge, Faridabad. The Bank had also filed cross-objection in relation to the reliefs not granted to it. He did not find any merit in the appeal and the cross-objection and dismissed both. Still not feeling satisfied, the Company has filed this revision petition.

(7) Before I take the principles which should be kept in mind by the Courts while appointing a receiver, I may take up one argument advanced by Shri Anand Sarup, learned counsel for the Bank.

He argued that clause 15 of the Hypothecation Deed which has been reproduced at pages 19 and 20 of the plaint, the Bank has been given the power to appoint a receiver if the Company made default in the payment of a single instalment or (on demand) of the balance amount due or if there was any apprehension that the Company was unable to pay its dues. He, therefore, argued that in such circumstances, it was a fit case to appoint a receiver, because the Company has committed default in the payment of the balance amount and the Bank is under an apprehension that the Company was unable to pay its dues. In this respect, he placed reliance upon *S. B. Industries & another* v. *Union Bank of India, etc.*, (1), wherein it was remarked:

> "In the instant case, it would be found that under the agreement between the defendants and the plaintiff, the defendants had themselves conferred a right upon the plaintiff to appoint a receiver in case of default were committed by them in making payment of the advances made to them. The plaintiff has clearly stated in the plaint that the defendants did not pay the amounts due to it despite repeated demands. Accordingly, the defendants committed default in making payment of the advances. The plaintiff has become entitled to get the appointment of the receiver made."

With due respect to the learned Judges who decided that case, I am unable to persuade myself to agree to that proposition. The Bank might have a right to appoint a receiver, but if it seeks the help of the Court for appointment of a receiver, then the provisions of Order 40 Rule 1 of the Code of Civil Procedure will have to be taken note of. That provision lays down that the receiver can be appointed only if it appears to the Court to be just and convenient. In fact, in that very case, it was remarked by the learned Judges:

> "A court will make an appointment of a receiver with great caution and circumspection. In a case where the remedy of the appointment of a receiver seems necessary to prevent fraud, to protect and preserve the property against an imminent danger of loss or diminution in value, destruction, squandering, wastage or removal from jurisdiction, the court may appoint a receiver. It may further be stated

(1) A.I.R. 1978 Allahabad 189.

in this connection that a court in exercise of its discretion to appoint or refuse a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, ends of justice, the rights of all the parties interested in the subject-matter and the adequacy of other remedies."

Therefore, the Bank cannot insist that a receiver should be appointed, because there is a clause to that effect in the Hypothecation Deed.

(8) To meet the argument of the learned counsel for the petitioner that when an injunction has been issued, restraining the defendant from removing or disposing of the property, a receiver should not be appointed, the learned counsel for the Bank has placed reliance upon S. B. Industries' case (supra) wherein it was remarked:

"Learned counsel for the defendants, however, contended that since the trial court had already issued an injunction restraining the defendants from disposing of the properties, therefore, there was no occasion for the court below to order the appointment of a receiver. There is no such law that the issue of a temporary injunction affects the rights of the plaintiff to get the receiver appointed. A receiver can be appointed even after the issue of injunction if exigencies of the situation require it and the Court feels that it would be just and convenient to make an order in that respect. Accordingly we are not impressed by the argument of the learned counsel for the defendants that simply because an injunction had been earlier issued, the court below had no jurisdiction to order the appointment of receiver. The allegations made in the affidavit of the plaintiff would show that the defendants were trying to remove and dispose of the properties despite the injunction hence the order of the court below cannot be said to be wrong on this ground."

There is no dispute with the above proposition, but in the present case there is no circumstance to suggest that the Company was trying to remove or dispose of the property in spite of the injunction order or has in any way violated its terms.

(9) The learned counsel for the Bank also placed reliance upon *Shri Venktarmana Temple Board of Education* v. *C. Manjumathat Kamath & others* (2), in support of his argument that a receiver can be appointed to manage the suit property in respect of which there is an injunction in favour of one of the parties to the suit. In that case, the plaintiffs who claimed themselves to be duly and formally constituted members of a Board of Education and entitled to manage and conduct three schools of the Board, obtained a temporary injunction restraining the defendants from interfering in their management of the schools. While an injunction order was thus operating against the defendants, they filed an application for appointment of a receiver, complaining that the suit property was not properly managed. The trial Court, after enquiry, appointed a receiver. The plaintiff's appeal against that order was dismissed and the High Court dismissed the revision petition as well. The facts of that case are entirely different and therefore, it is not necessary to discuss them in detail. In the present case, the Bank is praying that receiver be appointed for taking possession of the assets of the Company and not for running the Company.

(10) It is not disputed that the appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights. The principles which are to be taken into consideration for the appointment of a receiver have been lucidly stated by Ramaswamy, J., in *T. Krishnaswamy Chetty* v. *C. Thangavelue Chetty and others* (3), and which have been reiterated by this Court in *Industrial Finance Corporation of India and another v. M/s. Sehgal Paper Ltd., and another* (4). After an exhaustive consideration of the authorities, the learned Judge stated the principles as under:

> "The five principles which can be described as the 'panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows:
>
> (1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the

(2) A.I.R. 1974 Karnatak 59.
(3) A.I.R. 1955 Madras 430.
(4) 1982 P.L.R. 185.

circumstances of the case, exercised for the purpose of permitting the ends of justice and protecting the rights of all parties interested in the controversy and the sub-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceedings;

(2) The Court should not appoint a receiver except upon proof by the plaintiff that *prima facie* he has very excellent chance of succeeding in the suit;

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm;

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio,' that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession; and

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself

to the equitable relief by laches, delay, acquiescence, etc."

Therefore, the question to be seen is, whether in the light of the above five principles, a receiver should have been appointed, or not, in the present case.

(11) At this stage, I may take up a preliminary objection raised by the learned counsel for the respondent-Bank. He argued that the learned trial Court, while appointing the receiver, has exercised its discretion and that discretion was not interfered with by the learned lower Appellate Court and therefore, the orders of the Courts below are not liable to be interfered with by this Court in this revision petition, as the powers of this court are circumscribed by section 115, Code of Civil Procedure. It will be useful to reproduce the relevant portions of the said section. Those read as follows:

"115(1) The High Court may call for the records of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) ... ...

(b) ... ...

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where—

(a) ... ...

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. ... ...".

It is well settled principle that if the lower Court has not exercised its discretion in accordance with sound judicial principles, then the Court will be deemed to have acted in the exercise of its jurisdiction with material irregularity and therefore, it becomes the

bounden duty of this Court to undo the injustice, if any, caused to any party by the impugned order. In the present case, as will be discussed below, the Courts below have exercised the jurisdiction vested in them with material irregularity and the order if allowed to stand will cause irreparable injury to the Company as it will be deprived of its possession over its property.

(12) The learned counsel for the petitioner argued that the learned Courts below have not given any finding upon the point if the Company was siphoning its assets to its sister concerns or had in any way eroded its assets and this Court should not act as Court of appeal while deciding a revision petition, the case should be remanded back to the lower appellate Court for deciding the appeal afresh. In this connection, he has placed reliance upon the observations made by R. S. Narula, C.J., in *Ram Singh* v. *Tulsi and another* (5). Of course, that would have been the proper course if the case had been remanded at the commencement of the arguments. However, the records of the trial Court have been called and lengthy arguments have been advanced on the basis thereof. If the case is remanded back, at this stage, then it would cause unnecessary hardship to both the parties. Therefore, I intend to dispose of this revision petition on merits.

(13) The present suit was filed in July, 1981 for the recovery of Rs. 2,27,58,343.70 paise. This amount was said to be due to the Bank from the Company in various accounts. The learned counsel for the petitioner-company argued that as the pledged goods were with the Bank, therefore, the suit is not maintainable. Reliance was placed upon *Lallan Prasad* v. *Rahmat Ali and another* (6). The head-note of that ruling is misleading. In that case, the pledgee had filed a suit and in the plaint had admitted about the execution of an agreement of pledge of some movable property, executed for the debt but had alleged that the pledged goods were not delivered to him. The defendant took an objection that the plaintiff was not entitled to obtain a decree unless he was ready and willing to redeliver the goods pledged with him. The trial Court rejected the defendant's plea and held that there was no completed contract of pledge as he had failed to deliver the goods sought to be pledged. On appeal by the defendant, the High Court disagreed with the finding

(5) C.R. 41 of 1974 decided on 18th August, 1975.
(6) A.I.R. 1967 S.C. 1322.

and set it aside and held that the pledged goods had been delivered to the plaintiff and that he was not entitled to any relief in view of his stand that the goods were never pledged with him and were, therefore, not in his possession. In the result, the High Court dismissed the plaintiff's suit with costs. The plaintiff filed an appeal in the Supreme Court. Their Lordships, after consideration of the various rulings and interpreting the relevant provisions of the Contract Act remarked:

> "The pawnee, therefore, can sue on the debt retaining the pledged goods as collateral security. If the debt is paid he has to return the goods with or without the assistance of the Court and appropriate the sale proceeds towards the debt. But if he sues on the debt denying the pledge, and it is found that he was given possession of the goods pledged and had retained the same, the pawner has the right to redeem the goods so pledged by payment of the debt. If the pawnee is not in a position to redeliver the goods he cannot have both the payment of the debt and also the goods. Where the value of the pledged property is less than the debt and in a suit for recovery of debt by the pledgee, the pledgee denies the pledge or is otherwise not in a position to return the pledged goods he has to give credit for the value of the goods and would be entitled then to recover only the balance. That being the position the appellant would not be entitled to a decree against the said promissory note and also retain the said goods found to have been delivered to him and, therefore, in his custody."

In the present case, the Bank has nowhere denied the pledge of the goods, nor has it averred that the goods so pledged were not given into its possession. Therefore, the above ruling has no application to the facts of the present case and the suit is maintainable.

(14) The learned counsel for the petitioner next argued that the learned trial Court has accepted the application of the Bank for the appointment of the receiver for the assets of the Company merely on the ground that even in the Balance Sheet of the Company for the year ending 30th June, 1980, the Company admitted its liability to the tune of Rs. 1,43,48,000 towards the Bank and that sum did not include the interest from 1st January, 1979, up-to-date and that if the interest was calculated on that amount, at the

Bank rate, then the sum claimed by the Bank must be due from the Company. He argued that the Court has not given any finding if the Company is siphoning its funds to any of its sister-concerns, as alleged by the Bank in the application under consideration and that the Court appointed the receiver, because the sum claimed in the suit appeared to be due and that there was an act of mismanagement and commercial hollowness of the Company and thus there was danger of the Company's property being misused, endangered or dissipated. It was argued that no finding has been given to the effect that the mismanagement, if any, of the Company was directed towards eroding of the securities, nor has it been shown how the hypothecated and pledged property/goods are liable to be misused. It was further argued that it has not been held that there was immediate danger to the assets of the Company or that the situation was such that in case those were not preserved, the Bank might not be able to recover the amount. After hearing the learned counsel for the parties at length, I am of the opinion that the impugned order is liable to be interfered with.

(15) After consideration of the various rulings cited on behalf of the parties, the learned trial Court remarked:

> "A receiver may be appointed where there is a reasonable apprehension to the property, assets, income. A receiver may be appointed where there is a danger of the property being misused, injured and dissipated. Normally a person should not be divested of his possession over his property in the exercise of this discretion. Keeping in view these guidelines, I am of the opinion that ends of justice in this case will best be served if some receiver is appointed with limited role and powers. This is because the stakes in this case are so high that it is desirable to preserve the property and to keep the same intact in order to safeguard the interest of the plaintiff-Bank. This is all the more so, when the defendant company is practically in medio in the sense that it is lying closed and a lock-out has already been declared. It is all the more so, when the defendant company does not *prima facie* seem to be in a position to discharge its various liabilities and obligations including the claim of the plaintiff bank. Financial viability of the defendant company has already been discussed by me in the preceding paragraphs of this order."

After making the above observations, the learned trial Court appointed a receiver and conferred certain powers and duties which have already been noticed. The main factor which appears to have weighed with the trial Court was that the Company was unable to fulfil its obligations, like payment of sales-tax, E.S.I., contribution, etc. The learned trial Court did not take into consideration if the assets of the Company were sufficient to meet the secured debts of the Bank. If the Company has to meet some liabilities which are not secured, the Bank's interests would not be affected.

(16) The learned counsel for the petitioner vehemently argued that the Bank has *prima facie* no case, as it was creating unnecessary obstacles in the working of the Company. He referred to the various documents and according to him, the Bank was liable for the losses suffered by the Company. On the other hand, the learned counsel for the Bank argued that it was giving accommodation, one after the other, to the Company in its operation of the accounts and when it committed persistent defaults in fulfilling its obligations under the various agreements and accounts became irregular the Bank stopped further accommodation and also increased the percentage of margin amount. At this stage, we cannot go into the respective contentions of the parties. If the Company has suffered any loss due to some action of the Bank, that point will be determined in the suit. For the present, we are only concerned, whether the Bank has any *prima facie* case for the recovery of the amount said to be due from the Company and whether it is just and convenient to appoint a receiver.

(17) The learned counsel for the petitioner has referred to the accounts furnished by the Bank and pointed out some discrepancies. If the whole amount claimed is not due, a little less than that must be due. In paragraph 95 of the plaint, it is mentioned that the officers/authorised representatives/Managing Director of the Company signed debit balance confirmations in respect of the various accounts on 20th December, 1979. The balance in the various accounts, as well as interest, have also been given in that paragraph. The Company in its written statement, has of course, denied the correctness of that paragraph. However, those confirmation letters have been produced on the record and are at pages 3341 to 3373 of the suit file. The learned counsel for the Company pointed out certain discrepancies between those confirmation letters and the letters containing the accounts which were sent for confirmation and which have been annexed to this petition as P-10 to P-18. No importance can be given to the discrepancies as the letters of confirmation were signed by the authorised officer of the Company and he must have done so after satisfying

himself about the correctness of the accounts. *Vide* those confirmation letters, total amount that was admitted to be due comes to over Rs. 200 lacs.

(18) There is another letter dated 20th December, 1980. It appears to be a sort of compromise between the parties. This letter shows that the Company had agreed to pay Rs. 1,40,00,000/- in full and final settlement of all the liabilities under the various accounts. Of course, that compromise could not be carried out, because, according to the company, the Bank defaulted in carrying out some of the conditions imposed upon it under the same. However, we are not concerned, why the compromise could not be given effect to. Suffice it to say that at least the Company had agreed to pay Rs. 1,40,00,000/- in full and final settlement of the claim of the Bank. I am not going to believe that the Company agreed to pay that amount without ascertaining if at least that amount was actually due to the Bank or not.

(19) Learned counsel for the petitioner argued that the Bank has calculated interest while claiming the amount due, while, in fact, after 1977 no interest was to be charged by the Bank in the various accounts. It appears that at that time, under the instructions of the Reserve Bank of India, the Bank had agreed not to calculate interest with effect from 26th December, 1977 on the amounts due, and that interest was to be calculated separately to be recovered from the future generation of the surplus of the Company. When the Company did not clear its accounts and the Bank had to file the suit, then naturally the interest had to be calculated on the various amounts.

(20) The learned counsel for the petitioner argued that the Bank has in its possession or control pledged goods worth about Rs. 72,00,000/- and goods of unretired bills worth about Rs. 26,00,000/-. So far as the pledged goods are concerned it has already been noticed above, that a pledgee can sue on the debt retaining the pledged goods as collateral securities. Therefore, for determining the amount due to the Bank, the Company cannot insist at this stage that the amount of the pledged goods or the value of the goods of unretired bills should be taken into consideration for reducing the claims of the plaintiff.

(21) There is a dispute between the parties about the margin money. According to the plaintiff, it is about Rs. 52,00,000/-, while, according to the Company, it is somewhat less. It is a matter of accounts. Even if for argument's sake it is held that the margin money

of the Company is with the Bank and the Bank has not given full adjustment for the whole amount, the claim of the Bank would come to about Rs. 2,00,000/- or a littlt less. It is one thing to say that the plaintiff has no claim at all and another that the claim may be for a little lesser amount. I do not want to go into details of this matter. Suffice it to say that even according to the compromise dated 20th December 1980, the Company agreed to pay Rs. 1,40,00,000/. That sum was arrived at only for affecting the compromise. It does not represent the whole amount due. That suit was filed in July, 1981. Interest must have accrued after 20th December, 1980. Hence, it is held that the plaintiff has a *prima facie* strong case.

(22) Now the next question to be seen is whether taking into account all the circumstances of the case, it was, in the interest of justice, to appoint a receiver to protect the rights of the Bank. The trial Court had appointed Valuers of the choice of the Bank. A copy of valuation report of plant and machinery has been annexed to this revision petition. It contains all the articles and their value. The total valuation of the plant and machinery has been assessed at Rs. 2,99,33,850/-. Copy of the valuation report on the market value of the property of the land and buildings of the Company has been annexed as P-5. That valuation has been assessed Rs. 1,18,00,000/-. It would not be out of place to mention here that the Bank had opposed the prayer of the Company for the appointment of the Valuers. The trial Court has not taken that value into consideration for determination the assets of the Company merely because its books of account do not show that the property and machinery is worth that amount. That is no ground to ignore the said valuation. Property and machinery do exist. As is clear from the report of the Valuers, the machinery is in working order.

(23) In addition to the above assets, as noticed earlier, the Bank has in its possession goods worth Rs. 72,00,000/- pledged with it and goods worth about Rs. 26,00,000/- relating to the unretired bills. There is also a dispute about the margin money. As noticed earlier, according to the Company, the margin money comes to over Rs. 52,00,000/-. According to the Bank, that amount is less. However, it may be mentioned that in spite of the trial Court's order, the plaintiff has not filed the account of margin money so far. Thus, it cannot be said that the assets of the Company are not sufficient to satisfy the decree which might be passed in favour of the Bank.

(24) The learned counsel for the Bank argued that the property in open auction might not fetch the value as given by the assessors

and Valuers. There is no presumption that in Court auction the properties are sold at lesser value than the market one. Therefore, merely because the Bank apprehends that the property might not be sold at the value arrived at by the Valuers, it cannot be said that the assets of the Company are not sufficient to satisfy the claim of the Bank in case a decree is passed in its favour. Thus, it cannot be said that the interest of the Bank will be in jeopardy if the receiver is not appointed.

(25) There is also no imminent danger to the assets of the Company. A comprehensive injunction order has already been issued against the Company, restraining it from alienating or disposing of the hypothecated machinery, etc., in any manner. Upto this time, there is no allegation by the Bank except with respect to some dies that any portion of the hypothecated property or pledged goods have been surreptitiously removed or disposed of by the Company. In respect of the dies, the case of the Company is that during the strike by its workers it wanted to get manufactured some articles and therefore, dies were sent to another concern after preparing proper documents and those have since been received back. Shri A. P. Budhiraja, Advocate had been appointed by the trial Court to prepare an inventory of all the machinery, plant, pledged goods, etc., and he has prepared one. Thus, the property of the Company can be checked any time to find out if any item has been disposed of by the Company in violation of the injunction order.

(26) The Bank has not shown how there is danger to the securities of the Company if immediate action like the appointment of a receiver is not taken. As noticed earlier, while enumerating the principles which should be taken into consideration for the appointment of a receiver, the element of danger to the assets is an important consideration. It is not understood how the appointment of the receiver can help the Bank. Inventories about the assets, both moveable and immovable of the Company, have already been prepared, by the Local Commissioner and the Valuers. The other pledged goods are in the custody and control of the Bank. Some goods relating to the unretired bills were lying with the transporters. Vide order dated 31st March, 1982, a local Commissioner had been appointed to take open delivery of those goods in the presence of the representatives of the parties and he was also required to prepare a detailed inventory of the same and thereafter get those stored in the godowns

of the Bank. At the time of arguments, it was pointed out by the learned counsel for the Company that the said local commissioner has practically completed his job and the goods have been properly stored with the plaintiff-Bank. In such circumstances, I fail to understand how the receiver can further safeguard the assets of the Company. It is settled principle that a receiver cannot be appointed merely on the ground that it will do no harm to the parties.

(27) The main circumstances that has to be taken into consideration for the appointment of the receiver is the preservation of the assets. It was pointed out by the learned counsel for the Company that already there is a large number of watchmen headed by a retired military officer. The learned counsel for the Bank argued that in spite of the watchmen appointed by the Company, there occurred a theft in the premises of the Company. A copy of the First Information Report has also been filed pending this petition. Theft is something that cannot be controlled either by the Bank or the Company. Even if the receiver is there, theft can be committed by the thieves. It cannot be said that the watchmen which the receiver has been authorised to appoint would be more careful than those appointed by the Company. Therefore, it is not understood how the receiver will be able to safeguard the goods in some better way than the owner. I am not going to believe that just to defeat the rights of the Bank, the Company will not protect its property worth crores of rupees from being stolen or destroyed.

(28) The learned counsel for the Bank argued that the Balance Sheets of the Company ending June, 1979 and June, 1980 show that all the assets of the Company have been wiped off by the losses of the Company. The learned counsel for the petitioner explained this fact by stating that all the assets of the Company were not got revalued after the first valuation and therefore, the book value of the assets was less, but as time has elapsed, the value of the immovable property and the machinery of the Company has increased, as is clear from the valuation reports. Merely on the basis of the reports of the auditors incorporated in the Balance Sheets, it is difficult to accept the argument of the learned counsel for the Bank that the Company has gone bankrupt. The Company has still got assets worth about 4 crores of rupees in addition to goods worth Rs. 72,00,000/- pledged with the Bank and goods worth Rs. 26,00,000/- of unretired bills which are in possession of the Bank. According to the Company, margin money amounting to Rs. 52,00,000/- is due to it from the Bank. It may be mentioned here

that the Bank has given credit to the Company for about 24 lacs in respect of the margin money as the Bank's contention is that the margin money comes to that amount.

(29) The alleged deliberate acts of gross violation of the agreed terms and conditions of hypothecation deeds, the alleged irregularities and breach of trust which is said to have jeopardised the debts and securities of the Bank have been enumerated in paragraph 13 of the plaintiff's application filed under Order 38 Rule 5, Order 40 Rule 1 of the Code of Civil Procedure. All those allegations have been duly replied by the Company. I need not discuss those allegations in detail, because *prima facie* the allegations of the plaintiff do not inspire confidence. There are some sister concerns with which one or the other Director of the Company or his relation is connected. One of the main allegations is that the bills relating to the goods despatched to those concerns remained unretired while the Company had taken advances from the Bank while handing over the relevant documents for presentation to those concerns and thus assets of the Company were being siphoned to those concerns. 'If the Company has taken any advance, it is not understood how the assets of the Company have been siphoned to those concerns. Moreover, the transactions with those concerns were upto the limit sanctioned by the Bank. Those concerns are stated to be having their accounts with the plaintiff-Bank. If any money of the Company was being siphoned to those sister concerns or any unauthorised payment was made to them, the auditors of the Company would have detected the same. Therefore, the transactions of the Company with those concerns do not appear to be fraudulent. Further all the unretired bills do not relate to those concerns, but to some others also.

(30) The learned counsel for the Company argued that the Bank had been putting hurdles in the reduction of debts. I am of the opinion that the said argument has force. In 1982, a decree for Rs. 4,21,103.68 paise was passed in favour of the Bank against M/s. Swastika Motors and another. That 'another person' was admittedly the Company. That suit in which the decree was passed had been filed on the allegations that the Bank has provided commercial credit to the Company on the discounting of the bills by purchase of Hundis drawn by it on M/s. Swastika Motors, one of its dealers and that the Bank had delivered the documents intended for delivery to M/s. Swastika Motors on the acceptance of the Hundis and the drawee duly accepted the Hundis and the documents were

delivered, but the drawee had failed to honour the Hundis. That judgment is reported as *Union Bank of India* v. *Swastika Motors and another* (7). Of course, the suit was against both the drawer and the drawee, but the amount was, in fact, due from M/s. Swastika Motors. Instead of taking out execution proceedings against M/s. Swastika Motors, the Bank debited that amount to the account of the Company. The Bank was not to lose anything by executing the decree against the principal debtor. Interest at the rate of 12 per cent per annum till realisation had also been awarded under the decree. If the Bank wanted to reduce the liabilities of the Company, it ought to have applied for execution of the decree, instead of debiting the same to the account of the Company which, in fact, is a sick unit. It may be mentioned that during arguments the learned counsel for the petitioner pointed out that during the pendency of this revision petition, the Bank has applied now for execution of that decree against the principal-debtor.

(31) As noticed earlier, goods worth about Rs. 72,00,000/- are pledged with the Bank. Those pledges were created in various lots. As appeared from the arguments, the Company wants to take delivery of some of the pledged goods after payment. However, the contention of the Bank is that the first pledge should be redeemed and the different lots cannot be allowed to be redeemed at the choice of the Company. The learned counsel for the Company rightly argued that such condition imposed by the Bank is totally unreasonable. The Company manufactures automobile electrical components and while manufacturing one component different items which go in the manufacture thereof might be required. The various types of component would be manufactured as and when the orders are received. Therefore, at the time of the manufacture of one kind of component, the Company would redeem only those lots of items which are required in manufacturing it. The purpose of the Company cannot be served by redeeming the first pledge first and so on. Thus the Bank itself is responsible for not permitting the Company to reduce the debts to some extent.

(32) I now take up the case of the unretired goods worth about Rs. 26,00,000/-. The argument of the learned counsel for the Bank was that the goods sent to the various concerns by the Company of which delivery has not been taken by the consignees, must be of supurious nature or sub-standard quality. This argument is noticed only

(7) A.I.R. 1983 Delhi 240.

to be rejected. In business transactions, many times the consignees do not retire the bills presented to them. Unless the delivery of the goods is taken, the consignee is not expected to know if the goods are of sub-standard quality or not. My attention was drawn by the learned counsel for the Company to a letter dated 14th July, 1979 (at p. 4085) by which certain demand drafts were sent to the Bank for rebooking the goods to M/s. Oxford Motors. In spite of the demand drafts having been received, the Bank neither rebooked the goods to the consingnees, nor returned the relevant documents to the Company. Letter dated 19th December, 1979 (at p. 4419) was written by a firm and addressed to the Union Bank of India, Faridabad Branch, on the subject of payment of bills drawn by the Company. The firm had sent demand drafts to the Bank, but was complaining about the on-supply of the necessary documents. Letter dated 31st January, 1981 (at p. 4147) was written by Rouble Motors to the Company for instructing the Bank tore-present the documents regarding the various bills. They also undertook to honour the documents on presentation within a fortnight. Letter dated 24th May, 1981 (at p. 414) was written by the Company to the Bank for representing the bills to M/s. Rouble Motors. I have taken into account a few letters. It appears that the Bank was claiming inerest from consignees on the amount of the bills. It further appears that the Company had written to the Bank to accept payment of the bills without interest. *Vide* leter dated 22nd Auguts, 1980 (at p. 4493), the Bank wrote to the Company that it was not going to accept the payment of the amounts of the bills sans interest, in respect of the bills drawn upon by the sister-concerns of the Company. With respect to the other drawees, it was further mentioned in the letter that keeping in view the merits of each case, the Bank might do so, provided written undertaking was given as to how the Company proposed to pay interest in future. *Prima facie* the demand of the Bank appears to be unreasonable. Against the amounts of the bills certain advances had been made to the Company and interest was being charged on those amounts. The Bank was authorised to collect the amount of the bills from the consignees.

(33) I have referred to only some of the documents to show that the Bank itself was not helping the Company to liquidate part of the amount due from it to the Bank. On 30th December, 1980 (at p. 6679) the Regional Manager wrote to the Faridabad Branch of the Bank not to make further advances to the Company. He further

instructed to hand over to the Company movable securities which were pledged or charged against the receipt of appropriate advance money value in cash only, i.e., after recovering the sum equal to the amount advanced against a particular security. Thus, it appears doubtful if the Bank could charge interest or demurrage from the Company or the consignees. According to those instructions from the Regional Office, the Faridabad Branch ought to have released movable securities or the bills against payment of the advance money.

(34) In reply to the plaintiff-Bank's application under Order 26, Rules 9, 10 and 12, etc., Code of Civil Procedure for taking open delivery of the goods of non-retired returned bills, Company gave an offer to the effect that the Bank would represent the bills to the consignees to the extent of in voice value and it would itself pay the demmurage of the goods directed to be handed over to the various parties. The defendant had filed a miscellaneous application in the proceedings relating to the plaintiff's application under Order 29, Rules 9, 10, and 12, etc., Code of Civil Procedure and that reply has been annexed as p 6 to the petition. The Company made the following offers :

"The respondent/defendant notwithstanding the reply and contest to the said application submitted that the said bills if represented to various parties would be accepted by the parties on their invoice value only without any additional riders such as interest, demmurage, freight, rebooking charges which is unnecessarily being claimed by the plaintiff Bank which even otherwise, the plaintiff Bank in para 23 of their application has agreed to pay.

That without prejudice to the submissions made hereinabove, the defendant alternatively suggests without prejudice to the ultimate right to seek adjudication on the rights and liabilities arising out of the present application and the ultimate decision of the application on merits, assuming though not admitting that the plaintiff had arrangements of bill discounting with the defendant, then the plaintiff bank was making payment against the bills only to the extent of 65 per cent as against the face value of the bills

and thus a margin of 35 per cent on the invoice value of the goods was retained by the plaintiff bank and credited to the margin money account of the defendant, that the defendant, their agents, distributors, dealers offer to retire the said unpaid/retired bills even on the invoice value of the goods provided the plaintiff-Bank pays the demurrage and freight charges without any rider such as interest, etc. In this eventuality, the question of liability of payment of demurrage, freight, etc., may be left open to be decided at the time of decision of the suit."

While the appeal was pending in the lower Appellate Court, Shri Shani, Managing Director of the Company, field an affidavit which is annexed as P-29 to this revision. Therein he made the following offer:

"That the deponent states on oath that the appellant Company can be in a position to pay off the plaintiff Bank as a result of compromise only if the plaintiff Bank gives a 'No Objection Certificate' to the appellant company for negotiating with any other financial institution in India.

That in case the plff-Bank agrees to give a 'No objection Certificate' to the Appellant Company the entire dispute can be sorted out within a period of 2-3 months."

On the same day he filed another affidavit copy of which is annexed as P-30, making the following offer:

"That the deponent states on oath that the appellant company is prepared to amicably settle the dispute between the bank and is in a position to liquidate the debts of the plff. bank in the following manner:

That the deponent will initially within a period of one month pay in cash a minimum sum of Rs. 5 lakhs and for which the plff. bank shall release the finished goods or raw material as per the requirement of the appellant of the pledged/book value (less margin retained by the Bank).

That the deponent will maintain the circulation of payment of a minimum of Rs. 5 lakhs per month against the release of stocks and finished goods.

That in this manner if an opportunity is given the working of the appellant-unit can be resumed and the debts due to the plff. bank are also liekly to get liquidated in a period of about 14 months or so."

From the above offers, it is clear that the Company is earnesty trying to settle the dispute. In fact, while the case was pending in this Court some terms of compromise were arrived at between the representatives of the parties with the help of their counsel also. These terms were sent to the Head Office of the Bank for sanction. It appears that the Head Office refused to accept the terms of compromise offered by the Company. It has already been noticed that even in 1980 a compromise was arrived at between the parties, but it could not be given effect. I have narrated these facts only to show that it does not appear to be the intention of the Company to defeet the claim of the Bank by resorting to delaying tactics. The Company appears to be in right earnest to restart the working of its factory and to liquidate the debts of the Bank.

(35) During the pendency of this revision petition the Company filed an application, Civil Miscellaneous No. 606-CII of 1985, stating that it was still prepared to get the goods released proportionately by making payment of Rs. 5 lakhs in every 2 months for the withdrawal of the goods in their small lots as per their requirement of production and sale. It was further stated that before instituting the suit, the plaintiff-Bank had undertaken and agreed that it would return the pledged goods on the payment of the money advanced.The learned counsel for the petitioner prayed that the Bank be ordered to allow the Company to withdraw the goods as requested in the application. He has argued that such a direction can be issued to the Bank. Reliance was placed upon the judgment rendered in *Man Singh and another* v. *Shiv Narain Sidheshwar Mandi Sanatan Dharam Sabha, Gurgaon, etc.* (8), in which certain directions were issued. The facts of that case are entirely different from those of the instant case. As noticed earlier, the Bank is entirely to retain the pledged goods as collateral security till the satisfaction of the degree, if any, which might be passed in the suit. Therefore, the prayer of the learned counsel for the petitioner has no force and the said application is dismissed.

(8) C.R. 1277 of 84 decided on 8th June, 1984.

(36) After consideration of the circumstances of the case and the conduct of the parties, I am of the opinion that it was not a fit case wherein a receiver should have been appointed. Accordingly, I accept the revision petition and set aside the impugned orders, so far as those relate to the appointment of a receiver. No order as to costs.

(37) The parties are directed to appear in the trial Court on October 25, 1985. Records be sent back to the trial Court immediately. That Court is directed to dispose of the case as early as possible as it has already become quite old.

N.K.S.

Before : *J. V. Gupta, J.*

TEJ RAM,—*Petitioner.*

versus

AMAR SINGH,—*Respondent.*

Civil Revision No. 1245 *of* 1984.

October 15, 1985.

Code of Civil Procedure (*V of* 1908)—*Section* 145—*Suit for possession of agricultural land decreed—Appeal by the judgment-debtor—Execution of the decree stayed on furnishing security of mesne profits—Appeal subsequently dismissed—Recovery of mesne profits—Persons standing sureties for the judgment-debtor—Whether liable for the amount for which they were sureties.*

Held, that from a reading of Section 145 of the Code of Civil Procedure, 1908, it is quite evident that any person who has furnished a security or given a guarantee, decree against him may be executed in the same manner as provided for the execution of the decrees. Of course, the said persons will be liable to pay the amount for which they were the sureties. If the decree holder claims over and above that amount, then the same will be determined by the executing court and after determination, the amount over and above that, if any, will be recovered from the judgment-debtor. The security bond could be executed in the execution proceedings without any recourse to a fresh suit.

(Para 2).