

**DE JURE NEXUS LAW JOURNAL**

Author:

Parsidha Mehta

Symbiosis Law School, Noida

2<sup>nd</sup> Year, BBA LL.B.



**REVOCATION OF GUARANTEE UNDER INDIAN CONTRACT ACT,  
1872**

**ABSTRACT**

A “Continuing Guarantee” in a contract is defined by Section 129 of the Indian Contract Act, 1972, as a guarantee that extends to a series and multitudes of transactions. These assurances have a predetermined time limit and time frame, or are for a specific period of time, such as a month, a year. The Continuing Guarantee does not cease with the fulfilment of a single promise or the repayment of a single debt. This research paper talks about revocation of continuing guarantee under section 130.

**What is a contract of Guarantee?**

A contract of guarantee is one in which the parties agree to perform the guarantees or discharge the person's responsibilities in the event that he fails to do so. As per Section 126<sup>1</sup> of the Indian Contract Act, 1872, a contract of guarantee has 3 parties –

A surety is a person who provides a guarantee as part of a guarantee contract. Someone who accepts the responsibility to pay cash undertakes any task for another person in the event that the latter fails to do it.

Principal Debtor: During a guarantee contract, a principal debtor could be a person for whom the guarantee is given.

Creditor: The individual to whom the guarantee is given is referred to as the creditor.

**What is a continuing Guarantee?**

A guarantee which is given for more than one transaction or series of transaction is called continuing guidance. S. 129<sup>2</sup> states the meaning of continuing guarantee. According to S. 129- A guarantee which extends to a series of transactions, is called a "continuing guarantee"

---

<sup>1</sup> Section 126, The Indian Contract Act, 1872 (Act no. 9 of 1872).

<sup>2</sup> Section 129, The Indian Contract Act, 1872 (Act no. 9 of 1872).

A seamless guarantee is a type of assurance that applies to multiple transactions at the same time.

Until the surety revokes the continuous guarantee, it applies to any or all transactions entered into by the primary mortal. The surety may remove a seamless guarantee for future transactions at any time by giving notice to the creditors. However, a surety's liability is not lowered in the event of a transgression.

For example- In exchange for B employing C to collect the rent of B's zamindari, A guarantees B to be liable for the collection and payment of those rents by C to the tune of 5,000 rupees. This is a long-term promise.

Some points, in particular, concern the continuation of the guarantee-

(I) The ongoing guarantee does not expire with the discharge of a single promise or the redemption of a single obligation.

(II) Liability regarding time or amount can be limited by surety.

(III) Under this guarantee surety is liable for unpaid balance at the end of the guarantee.

### **Liability of surety in a continuing guarantee-**

In a continuing guarantee, the surety is still accountable for any further goods or loans granted to the principal debtor by the creditor. He is responsible for any amounts that may become payable as a result of interactions or transactions between the creditor and the debtor from time to time. When he revokes his assurance, however, he is released from liability. Whereas in a basic guarantee, the surety's duty is limited to one transaction and ends when the debtor pays his debt, in a continuing guarantee, the surety is liable until the parties' transactions or credits covered by the guarantee have been exhausted or the guarantee has been cancelled.<sup>3</sup>

**A continuing guarantee is said to be revoked as regards to the future transactions to be entered between the debtor and the creditor, in the following ways:**

1. By notice of revocation by the surety (Section 130)
2. By death of the surety (Section 131)
3. Any changes made in the terms of contract without surety's consent (Section 133)

### **Section 130 in The Indian Contract Act, 1872**

"By notice: [S.130]<sup>4</sup>:- S. 130 provides that a continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. Thus, this guarantee may be revoked- (i) by the surety at any time; (ii) by giving notice (iii) notice can be given by surety to creditor (iv) for future transactions only."

**Illustration-** In exchange for B discounting bills of exchange at A's request, A promises to B the timely payment of all such bills to the tune of 5,000 rupees for a period of twelve months. Bills for C are discounted by B to the tune of 2,000 rupees. After that, A revokes the guarantee after three months. This renunciation absolves A of any duty to B in the event of a subsequent discount. However, A is accountable.

<sup>3</sup> Pollock and Mulla, Indian Contract Act, 1872 ,1530 (Lexis Nexis, 15th edn. 2018).

<sup>4</sup> Section 130, The Indian Contract Act, 1872 (Act no. 9 of 1872).

The surety's liability in relation to a transaction that has already been completed cannot be reversed. In one situation, the surety guaranteed the debtor's payback of discounted bills for a period of one year, up to a maximum of \$600. Before any invoices were discounted, the surety cancelled the assurance. However, the creditor continued to discount bills, increasing the debtor's delinquency. It was held that the surety was not liable for the bills discounted after his revocation of guarantee.

There are numerous situations where the guarantors defend themselves by stating that they provided a continuing guarantee and so have the power to rescind it. However, the court has found in favour of the plaintiff in a number of cases. The court considers the facts and circumstances of each case to determine whether the surety has given a particular or continuing guarantee and, if so, whether the surety has given a specific or continuing guarantee.

### Case laws-

#### **Payment of rents in instalments not considered as series of transactions-**

A lease was awarded in *Hasan Ali v. Wali Ullah*<sup>5</sup> for a specified period of five years in exchange for the payment of a certain amount as annual rent. The surety signed a guarantee contract for the debtor's timely fulfilment of his or her obligations. During the term of the lease, the guarantor gave the landlord notice that he was rescinding his guarantee.

The surety argued that because his guarantee was a continuing guarantee, and he had revoked his guarantee contract, he was not liable for the rents due after the notice of revocation.

The Allahabad High Court's experienced judges came to the decision that the assurance for timely rent payment, even though it was paid in instalments, was a one-time transaction rather than an ongoing guarantee. Based on these considerations, it was determined that such a guarantee could not be cancelled while the lease was still in effect. As a result, the surety was found responsible.

#### **Guarantee for an employee's fidelity not a continuing guarantee**

In the case of *S.N. Sen v. Bank of Bengal*<sup>6</sup>, a guarantee was given for the faithful performance of responsibilities as a bank cashier. Plaintiff's father supplied the guarantee in exchange for the plaintiff's employment as a cashier. His father died soon after. The plaintiff was also sued by the bank for misbehaving while on the job.

The plaintiff claimed that the security document constituted a continuing guarantee under Section 129<sup>7</sup> of the Indian Contract Act, and that it was terminated by the surety's death in accordance with Section 131<sup>8</sup>.

The Lordships determined that the plaintiff's appointment as a cashier was a single transaction. There were no transactions in a row. As a result, it was not regarded a continuing assurance and could not be revoked as long as he kept his employment.

The surety in *Offord v Davies*<sup>9</sup> guaranteed the debtor's repayment of invoices discounted by the borrower up to \$600 for a period of one year. The surety revoked the assurance before

<sup>5</sup> AIR 1930 All 730.

<sup>6</sup> AIR 1920 PC 35; Ibid.

<sup>7</sup> Section 129, The Indian Contract Act, 1872 (Act no. 9 of 1872).

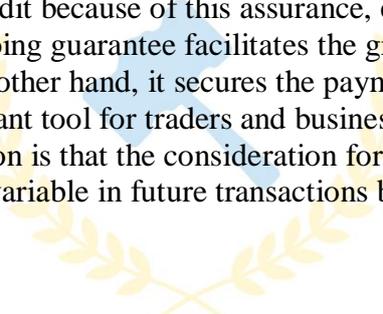
<sup>8</sup> Section 131, The Indian Contract Act, 1872 (Act no. 9 of 1872).

<sup>9</sup> *Offord v Davies* (1862) 6 LT 579; 142 ER 1336.

any invoices were discounted. The creditor, on the other hand, continued to discount bills, and the debtor continued to miss payments. The issue here was that the court had to determine whether the defendant had successfully withdrawn their offer to secure the funds and, more crucially, whether the plaintiff had accepted this withdrawal. In this case, a major question was whether the plaintiff had relied on the parties' agreement. The defendant would not have been able to withdraw their offer if they had. It was held that the court decided that this offer might be withdrawn within the stated time limit, which in this case was twelve months, unless the agreement was accepted. The court also decided that the withdrawal of such an offer must be communicated effectively, or the offer will be invalidated and the opposing party will be able to accept it.

### **CONCLUSION**

A continuing guarantee is commonly used in commercial agreements. It is easier for the debtor to purchase things on credit because of this assurance, even if he lacks the necessary finances. On the one hand, ongoing guarantee facilitates the granting of loans and the opening of a cash credit account; on the other hand, it secures the payment of bills of exchange and promissory notes. It's an important tool for traders and businesses trying to grow their operations. A important condition is that the consideration for a continuing promise should not be indivisible. It should be variable in future transactions between the creditor and the debtor.



# De Jure Nexus

---

## LAW JOURNAL