Bhagyalaxmi Co-operative Bank v. Babaldas Amtharam Patel
Facts of the Case
Loan Sanction
Rs. 4,00,000 cash-credit
Parties
Borrower: M/s Darshak Trading
Sureties: Respondents 1 and 2
Default
Overdrawn amount: Rs. 26,95,196.75
Variance
Lending without surety consent
Legal Issues
Section 133 vs. Section 139
Total vs. Partial discharge
Liability Bifurcation
Original amount vs. Excess
Impairment of Remedy
Effect of overdrawing on sureties
Points of Law
Section 128
Co-extensive liability
Section 133
Discharge for subsequent transactions
Section 139
Discharge due to impaired remedy
Cardinal Rule
Liability within original terms
Lower Courts Decisions
Board of Nominees
Dismissed suit against sureties
Co-operative Tribunal
Liable for original Rs. 4,00,000
High Court of Gujarat
Complete discharge under Section 139
Supreme Court Ruling
Section 133 Applicable
Overdrawing is a variance
Bifurcation Mandated
Liability split at point of variance
Section 139 Inapplicable
Remedy against debtor not impaired
Final Decision
Sureties liable for Rs. 4,00,000 only