

APPELLATE CIVIL

Before G. D. Khosla, J.

ISHAR SINGH,—Appellant.

versus

RAM SARAN AND OTHERS,—Respondents.

Execution First Appeal No. 160 of 1957.

Indian Contract Act (IX of 1872)—Sections 133 to 139—Principles of—Whether apply to successive securities given to the Court—First surety, whether discharged by the execution of the second surety for the same purpose .

1958

Feb. 6th

I. S. gave first security in the sum of Rs. 1000. A few days later D. D. furnished a security of Rs. 10,000 for the same purpose. There was no mention of the first surety at the time the second surety was given and there was nothing to show that the liability arising under the first surety was preserved or excluded from the sum of Rs. 10,000 mentioned in the second surety.

Held, that in these circumstances, the principles set out in sections 133 to 139 of the Contract Act clearly apply and D. D.'s surety took the place of the original surety given by I. S. which, therefore, stood discharged.

Execution first appeal from the order of Shri M. R. Sikka, Sub Judge, 1st Class, Tarn Taran, dated 29th April, 1957, dismissing the objection petition, with costs.

S. D. BAHRI, for Appellant.

C. L. AGGARWAL, G. C. MITAL, A. L. BAHRI AND CHUNI LAL KHANNA, for Respondents.

JUDGMENT

G. D. KHOSLA, J.—The short point for decision in this execution first appeal is whether a surety bond was implicitly discharged by the execution of a subsequent surety bond by another person.

Khosla, J.

The facts of the case are that there was a partnership between two firms relating to a workshop and a foundry. There was an arbitration clause in the partnership agreement, and when was made to the Court for filing the agreement differences between the partners arose, an application under section 20 of the Arbitration Act and for referring the matter to arbitration. On the same day the plaintiffs made an application under Order 38, rule 5, and Order 40, rule 1, Civil Procedure Code, for attachment before judgment of the machinery of the workshop and the foundry

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and for the appointment of a receiver. A conditional warrant of attachment was issued, but this was withdrawn on Ishar Singh furnishing security to the extent of Rs. 1,000. The security was furnished on 24th April, 1951. A few days later on 3rd May, 1951, the plaintiffs made another application under section 41, Schedule II, of the Arbitration Act and Order 39, rule 1, Civil Procedure Code, for the sealing of the factory and appointment of a receiver. This matter was compromised on the defendants furnishing security to the extent of Rs. 10,000 which was given by one Durga Datt. Ultimately, a decree for Rs. 20,000 was passed on 13th January, 1954.

The plaintiffs now sought to enforce both the security bonds, and Ishar Singh's objection was that his security stood discharged by the execution of the subsequent surety by Durga Datt. This objection was overruled by the trial Court and Ishar Singh has come up in appeal.

The argument raised on behalf of Ishar Singh is that by the application of the principles laid down in sections 133 to 139 of the Indian Contract Act there was a variation in the original contract or surety bond executed by Ishar Singh and by this variation he stands discharged. Mr. Bahri, who appeared on behalf of the appellant, contended that although the above-mentioned sections of the Contract Act do not, in terms, apply to a surety bond executed in favour of a Court, its principles do. On an equitable consideration of the circumstances of this case it must be held (so Mr. Bahri argued) that the surety bond of Ishar Singh had been superseded by the bond of Durga Datt and, therefore, any liability which Ishar Singh assumed under this surety bond stood discharged. My attention was drawn to a number of reported cases and among others Mr. Bahri cited *Parvatibai Harivallabhdas Vani v. Vinayak Bulvant*

Jangan and others (1) and *Prithi Singh v. Ram Charan Aggarwal* (2). In the Bombay case it was held that the general principles underlying the law of surety-ship may be applied and ought to be applied, even though the provisions of the Contract Act do not govern the case. In that case security bonds were executed by sureties during the pendency of a suit against the principal debtor. A decree was passed and the decree-holder took out execution. The judgment-debtor went up in appeal and the execution proceedings were stayed on fresh sureties being offered. The case was somewhat similar to the case before me and it was held in that case that the original sureties executed before the decree was passed had been discharged by the subsequent sureties. In the Lahore case the debtor and the creditor agreed to the payment of the debt in instalments. The agreement was arrived at without the consent or even knowledge of the surety. It was held that in these circumstances the surety was discharged from liability by the application of the principles contained in sections 135, 139 and 141 of the Indian Contract Act.

What happened in the present case was that on 17th April, 1951, the day upon which the application under section 20 of the Arbitration Act was presented, the plaintiffs asked for attachment before judgment. They also made a prayer for the appointment of a receiver. The Court did not agree to the appointment of a receiver and issued warrants of attachment conditional upon the furnishing of surety in Rs. 1,000. The surety was furnished by Ishar Singh and the warrants were withdrawn. A few days later the plaintiffs applied for the sealing of the foundry and workshop and for the appointment of a receiver. Durga Datt was produced as surety to the extent of

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(1) A.I.R. 1939 Bom. 23

(2) A.I.R. 1944 Lah. 428

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Rs. 10,000 and the matter was not proceeded with further. Both these sureties were, in substance, intended to safeguard the interests of the plaintiffs to the extent, respectively, of Rs. 1,000 and Rs. 10,000 in case a decree was passed in their favour. There was no mention of the first surety at the time the second surety was given and there is nothing to show that the liability arising under the first surety was preserved or excluded from the sum of Rs. 10,000 mentioned in Durga Datt's surety. What Ishar Singh did was to undertake to pay the plaintiffs Rs. 1,000 in case the decree was passed in their favour. Durga Datt did the same thing to the extent of Rs. 10,000. In these circumstances it must be held that Durga Datt's surety took the place of the original surety given by Ishar Singh which, therefore, stood discharged. The principles set out in sections 133 to 139 of the Contract Act clearly apply to the present case and I, therefore, allow this appeal and set aside the order of the executing Court. The application of the decreeholders against Ishar Singh is dismissed. There will be no order as to costs. This also disposes of Execution First Appeal No. 70 of 1954 which is also allowed.

B.R.T.