

(1957) 09 MP CK 0037

In the Madhya Pradesh High Court

Case No : Rev. Appeal No. 24/XXXIII-7/56

Anantlal Hiralal Maheshwari and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 30-09-1957

Acts Referred:

Contract Act, 1872 — Section 140, 141, 19
Public Accountants Defaults Act, 1850 — Section 4

Citation : (1958) MPLJ 555

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : B.S. Vyas, for the Appellant; Shiv Dayal, By. Govt. Advocate., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Shukla, Member

The admitted facts of this case are that the two Appellants stood surety for one Meghraj, the treasurer in the Chhindwara District Treasury, for a sum of Rs. 5,000 promising to indemnify the Government on account of any default on the part of Meghraj. In 1954, a shortage of Rs. 2,990 was discovered in the remittance of a large sum of money from Chhindwara Treasury to the State Bank of India, at Seoni. The shortage was found due to the negligence of Treasurer Meghraj. Consequently the Deputy Commissioner started proceedings for the recovery of security money from the present Appellants. For a proper appreciation of the case the chronology of the proceedings may be mentioned as below:

On 16-6-55-Deputy Commissioner directed the recovery of Rs. 2,990 from the Appellants as arrears of land revenue.

On 24-9-55-Application for the review of the above order made by the Appellants.

On 31-10-55-The above review application was allowed and recovery

proceedings dropped by the Deputy Commissioner.

On 18-11-55-Order dated 31-10-55 for non-recovery stayed by the Deputy Commissioner suo motu and parties reheard.

On 18-8-56-Deputy Commissioner finally held that the amount could be recovered and revised his order dated 16-6-55 for the recovery of the sum as arrears of land revenue. The order dated 18-8-56 is now under appeal.

A preliminary legal point was raised by the Learned Counsel for the State that from the chronology of the proceedings it would appear that the impugned order dated 18-8-56 was, in fact, an order rejecting finally the application dated 24-9-55 for review of the Deputy Commissioner's original order dated 16-6-1955. As such the present appeal is not tenable because no appeal can lie against" an order rejecting a review application. The Learned Counsel for the Appellants, however, maintained that the present appeal was, in effect, directed against the original order of the Deputy Commissioner dated 16-6-55. This contention loses its force from the fact that in the grounds of appeal the impugned order is referred to as one dated 18-8-56 and it is the copy of the same order that is appended with the memorandum of appeal. There can, therefore, be no denying the fact that the present appeal is directed against the order rejecting the Appellant's review application dated 24-9-55 and, therefore, no appeal can lie against the same.

Quite apart from the above considerations, the appeal cannot succeed on merits also. The stand taken by the Appellants rests on 3 main grounds, viz.-

(i) In the security-bond executed by the Appellants on 4-6-51, which is the subject-matter of this appeal, the other contracting party is the Secretary of State for India and since in 1951, there was no Secretary of State for India as such, the contract is vitiated and cannot be enforced against the Appellants.

(ii) Even if the said bond is enforceable, the fact that a sum of Rs. 5,000, mentioned in the bond to have been deposited by the Treasurer with the District Officer (Deputy Commissioner), was not, in fact, so deposited on the date of the bond; nor was the said sum deposited subsequently with the result that the Treasurer (the Principal) was released of the liability to deposit his personal security. This, according to the Learned Counsel, was a substantial variance in the terms of the bond which impaired the right of the Appellants available to them as guarantors under Sections 140 and 141 of the Indian Contract Act. As such, the sureties are entitled to be discharged of their guarantee.

(iii) The amount in question cannot be recovered by the Deputy Commissioner as arrears of land revenue.

All the above points were also raised before the lower Court and it is not really necessary to deal exhaustively with them here as I agree in substance with the view-point of the lower Court.

The bond in this case appears to be a stereotyped model-form and it seems that, it was filled in by the parties concerned without caring to omit words which were superfluous. Since the Secretary of State for India did not exist in 1951, the sureties would be presumed to know that they were committing themselves to the Government of India and the District Officer and not to the Secretary of State for India. As a matter of fact, the operative part of the bond clearly mentions that the sureties "shall indemnify and save harmless the said Secretary of State in Council, his successors and assigns, the Government of India and all and every person or persons who from time to time has or have or shall hold or exercise the said office of District Officer and all other servants of his and Secretary of State in Council or the said Government of India from and against all and every loss and damage... that has happened or was made any time or time thereafter happen....". The intention and the knowledge of the sureties is very clear from the text of the bond. They knew or, can reasonably be presumed to know, that in the event of the bond being enforced they would be liable to pay the security amount to the Government of India or the District Officer, Chhindwara. They cannot, therefore, now take the plea that their commitment ended with the abolition of the office of the Secretary of State for India.

With regard to the second ground, it may be observed that the deposit of Rs. 5,000 by the Treasurer was not a condition precedent for the fulfilment of Appellant's obligation under the bond. What they guaranteed was, in brief, the good conduct of the Treasurer in the discharge of his official duties. Any loss etc. to Government traceable to the Treasurer's conduct was to be reimbursed by the Appellants to the extent of Rs. 5,000. The deposit of Rs. 5,000 by the Treasurer was to serve as an additional security for his good conduct. If the Treasurer did not deposit this amount, as cited in the bond, it cannot be said that the terms of agreement had been varied. In order to operate as a discharge of the guarantee, a variation of terms must take place after the execution of the agreement or bond. In the instant case what seems to have happened is that a statement regarding the deposit of Rs. 5,000 was inserted which, in fact, was not correct. At best this would be a case in which the consent of the contracting parties (appellants) was obtained on a misrepresentation of a fact. But every misrepresentation of fact is not fatal to the contract. A contract, according to explanation to Section 19 of the Indian Contract Act is not voidable if a given misrepresentation can be removed by the exercise of ordinary diligence on the part of the Petitioner. In the instant case, it was only necessary to ascertain from the Deputy Commissioner whether the said deposit had or had not actually been made. Such an enquiry did not envisage a tedious or a complicated process and the factual position could be ascertained with the aid of very normal and ordinary diligence. In this view I do not think that the Appellants are entitled to claim the discharge of their guarantee.

With regard to the question of recovery of the security amount as arrears of land revenue the position is quite clear if we read Section 144 of the M.P. Code, along with Section 4 of the Public Accounts Defaults Act. There is no room for doubt in

the view taken by the learned Deputy Commissioner and I see no force in the argument of the Learned Counsel for the Appellants.

For reasons stated above, I am unable to support the contention of the Appellants. The appeal, therefore, fails and is dismissed accordingly.