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(1923) 05 AHC CK 0002

In the Allahabad High Court

Beti Mahalakshmi Bai and Another — APPELLANT

Vs

Chaudhari Badan Singh and Another — RESPONDENT

Date of Decision : 23-05-1923

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 145

Citation : 74 Ind. Cas. 927

Hon'ble Judges : Walsh, J;Kanhaiya Lal, J

Bench : Division Bench

Judgement

1. This is an appeal from an older refusing to enforce a security bond, filed under Order XU, Rule 5, CPC by an execution proceedings. In the course of an appeal pending in this Court an order for the stay of execution of a decree for costs was obtained by the judgment-debtor pending the decision of that appeal and a security bond executed by him and his surety Chatudhr Badan Singh was filed where by the latter agreed to stand security for Rs. 15,000 and hypothecated certain property for the payment of the same in case the money which may be found due under the decree was not realised from the judgment debtor. The security bond stated: "We the executants willingly give security for Rs. 15,000 and after hypothecating the property specified before agree that if the Appellate Court affirm the decree of the Court of first instance, then I Rao Narsing Rao will duly carry out the decree of the Appellate Court and whatever costs may be allowed under the said decree on account: of the costs of the Trial Court and of the Appellate Court shall be paid by me (Rao Narsing Rao) with interest irrespective of the above mentioned security for Rs. 15,000,. If Rao Narsing Rao does not do so, then the sum which may be due under the decree may be realised from the hypothecated property of the executants.

2. The Court below has found that no personal liability was undertaken by the surety under the above deed and that the only remedy of the decree-holder was to enforce the mortgage security by a separate suit for sale. Section 145, CPC provides that where any person has become liable as a surety for the

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performance of any decree or any part thereof or for the restitution of any property taken in execution of a decree or for the payment of that any money or for the fulfilment of any condition imposed in any suit or proceeding, the decree or order may be executed against him to the extent to which he has rendered himself personally liable in the manner provided for the execution of decrees, and such person shall, for the purposes of the appeal, be deemed a party within the meaning of Section 47. The object of this section is to provide that, where a person has become liable as a surety, for the performance of a decree or for any of the proposes above specified, the party lot whose benefit the security has been given may enforce the security by executing the decree or order against the surety in the same manner as if the surety had been the party to the decree or order and was died by the decree or order to the obligation undertaken by him. 253 of the old Code of Civil was limited to cases where bond was filed for the per a decree and authored thereof against to which he had rendered himself liable in the same manner as a decree could be executed against the defendant. In the clause "to the extent to which he has rendered himself liable the word "personally" Was added by the present Code of Civil Procedure, but by the addition of that Word it could hardly have been intended to limit the enforcement of the security to a personal liability, for forms Nos. 2,3 and 4 of Appendix G appended to the CPC provide for the hypothecation of property to secure the performance of the obligation undertaken by the surety. The personal or individual liability of the surety under the security bond may not, always be as extensive as that of the judgment-debtor, and the object of the above provision clearly is to limit the enforcement to the extent provided for by the security bond. Beyond a statement that the surety willingly gave security for Rs. 15,000, there was nothing in the terms of the present bond to indicate that he undertook a per Sonal liability. On the other hand, there was a clear indication that the money winch may be found due on the decree passed m appeal would be realizable in the first instance from the judgment-debtor, and that if the judgment debtor did not pay the same it would be recoverable form the property hypothecated by the surety. There was no personal covenant by the surety to pay the same in case the hypothecated property was found to be insufficient. The only question for consideration in these circumstances is whether Section 145. Civil Procedure Code, is applicable and whether the security bond can be enforced by an application for the execution of the decree. The security bond does not purport to have been executed in favour of the decree-holder It contains an undertaking given to an Appellate Court which granted the stay of execution subject to the production of such security, and as held in the case of (Sec) anki Kuar v. Sarup Rani (Sec)(1) such a bond be enforced by the Court in the same way as a decree. In - of Mukta Prasad v. Mahadeo Pra-similar.view was taken (sec). In the case of Raj Raghubar Singh v.Jai Indra Bahadur Singh 55 Ind. Cas. 550 : 42 A. 158 : 22 O.C. 212 : 6 O.L.J. 682 : 38 M.L.J. 302 : 18 A.L.J. 263 : 22 Bom. L.R. 521 : 46 L.A. 228 : 13 L.W. 82 (P.C.), their Lordships of the Privy Council allowed the security bond to be enforced in somewhat similar circumstances against; the hypothecated property without a separate suit for

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sale.

3. The Court below refers to the decision in tie case of Amir v. Mahadeo Prasad 38 Ind. Cas. 33 : 39 A. 225 : 15 A.L.J. 76, but in that case the equity of redemption in the hypothecated property had passed from the surety to a third person who could not be treated for the purposes of Section 145, CPC as a party to the decree and against whom the security could not have been enforced except by a separate suit for sale. In the case of Shyam Sundar Lal V. Bajpai Jainarayan 30 C. 1060 : 7 C.W.N. 914, and in the case of Sribramania Chettiar v. Rajeswara Sethupathi 43 Ind. Cas. 187 : 41 M. 327 : 6 L.W. 762 : (1917) M.W.N. 872 : 34 M.L.J. 84 security bonds hypothecating Immovable property as security for the due performance of a decree have been allowed to be enforced by execution without a separate suit being considered necessary. Where the equity of redemption is still held by the surety the surety is the primary person from whom the amount of security can be recovered, and Section 145, Civil Procedure Code, is intended to enable the enforcement of such Security. The appeal is, therefore, allowed with costs in this Court on the higher scale and the order of the Court below set aside and the case is remanded to that Court with a direction to re-instate it under its original number and to proceed with the disposal of the matter in accordance with law.

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