(1926) 01 BOM CK 0039

In the Bombay High Court

Bhagvandas Rangildas Vani — APPELLANT

Vs

Secretary of State for India — RESPONDENT

Date of Decision : 26-01-1926

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 150
Contract Act, 1872 — Section 129

Citation : AIR 1926 Bom 465

Hon'ble Judges : Macleod, C.J;Coyajee, J

Bench : Full Bench

Judgement

Macleod, C.J.—Two questions arise before us in appeal. The first contention was that the agreement, Ex. 32 of April 8, 1918, constituted a "continuing guarantee" within the meaning of Section 129 of the Indian Contract Act; that it was competent to the plaintiff to revoke it at any time; and that he revoked it, on March 24, 1919, by his application, Ex. 40. I cannot agree with that contention. It is clear that the plaintiff guaranteed payment of eleven instalments. I think that, having regard to the transaction which was being guaranteed, the conditions of the license, and the terms of the security bond, the plaintiff was not entitled to put an end to his liability by arbitrarily revoking his guarantee.

2. The second point was whether the plaintiff was discharged from his suretyship in consequence of the declaration by the revenue authoritities that the money which remained unpaid should not be recovered from the licensee Framji, because he would be ruined if it was; and that the balance should be recovered from the solvent surety who, in his turn, could sue Framji, if he liked, I am of opinion that the inference to be drawn from the documents was that the Collector and the Commissioner decided not to enforce against Framji any of the coercive processes for recovering the arrear, which were available to them, u/s 150 of the Bombay Land Revenue Code, namely, by attachment and sale of his moveable or immovable properties. They decided to adopt those measures against the surety. But Framji was expressly told that Government had no intention of absolving him from his liability, and that the eventual remedy of the

surety against him had been unimpaired. In my opinion, therefore, the Government has not done, or omitted to do, any act, the legal consequence of which would be to discharge the principal debtor. The creditor having done nothing by his own act or omission to destroy the debt, or to impair the surety''s eventual remedy, the liability of the surety still subsists.

3. The appeal will be dismissed with costs.

Coyajee, J.

4. (After stating facts, the judgment proceeded.) Two questions are raised before us on appeal. The first contention, on behalf of the plaintiff, is that the agreement, Ex. 32, of April 8, 1918, constituted a "continuing guarantee" within the meaning of Section 129 of the Indian Contract Act; that it was competent to the plaintiff to revoke it at any time; and that he revoked it, on March 24, 1919, by his application, Ex. 40. Now, a continuing guarantee "is defined in Section 129 as a guarantee which extends to series of transactions." The question whether a guarantee is intended to be continuing is one which is to be decided upon the language of the instrument of security and also with regard to the surrounding circumstances. In this case there was no series of transactions. A license to sell liquor for a period of three years was granted to Framji on the faith of the guarantee given by the plaintiff. The license was granted as a single act done once for all. Framji paid the amount due in respect of the first instalment. The security bond then provides that:

As to the remaining eleven instalments Framji Kavasji will go on paying the same not later than the last day of the month preceding the day on which the period of next instalment of three months commences. We are binding ourselves to the above effect.

5. It is clear that the plaintiff guaranteed payment of eleven instalments. Having regard to the transaction which was being guaranteed, the conditions of the license, and the terms of the security-bond, the plaintiff in my opinion, was not entitled to put an end to his liability by arbitrarily revoking his guarantee.

6. It is next urged, on behalf, of the plaintiff, that the revenue authorities had declared that the money, which remained unpaid, should not be recovered from the licensee, Framji; that the legal consequence of it was the discharge of the principal debtor; and that, therefore, the plaintiff was discharged from his suretyship. Reliance is placed on Sections 63 and 134 of the Indian Contract Act. The difficulty in the way of accepting this contention is that the plaintiff has failed to place before the Court the materials necessary for ascertaining the nature and extent of the concession, indulgence, or forbearance shown by the defendant to the licensee, Framji. As stated above, Framji''s applications to the Collector are not forthcoming. Framji himself is not examined as a witness. The facts bearing on the question have not been elicited from either of the two Mamlatdaras (Exs. 38 and 41) who gave evidence in the case. The available materials are those contained in Ex. 33 and Ex. 45 to which reference has already been made. By Ex.

45, Framji was informed that the revenue authorities would not call upon him to pay any more because he would be ruined if he was; and that the balance would be recovered from the solvent surety who in his turn, could sue Framji if he liked. The inference to be drawn from these documents is that the Collector and the Commissioner decided not to enforce against Framji any of the coercive processes for recovering the arrears, which were available to them, u/s 150 of the Bombay Land Revenue Code, namely, by attachment and sale of his moveable or immovable properties. They decided to, adopt those measures against the surety. But Framji was expressly told that Government had no intention of absolving him from his liability and that the eventual remedy of the surety against him had been left unimpaired. In my opinion, therefore, Government has not done, or omitted to do, any act, the legal consequence of which would be to discharge the principal debtor. The creditor having done nothing by his own act or omission to destroy the debtor to impair the surety''s eventual remedy, the liability of the surety still subsists.

7. These being the only questions raised and discussed before us, I would, for the reasons stated above, dismiss the appeal and affirm the decree with costs.

