

(1966) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 14 of 1964

C. Kanakaiah Textiles and Co.

APPELLANT

Vs

Vallabhaneni Venkata Subbamma and Another

RESPONDENT

Date of Decision : 08-02-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Citation : AIR 1968 AP 272 : (1964) CriLJ 642

Hon'ble Judges : Manohar Pershad, C.J; Mohammed Mirza, J

Bench : Division Bench

Advocate : D. Narasa Raju, for A.S. Prakasam, for the Appellant; P. Ramachandra Reddy and P. Sitaramaraju, for the Respondent

Final Decision : Allowed

Judgement

1. The short point that falls for determination in this Letters Patent Appeal is whether the surety bond furnished by Vallabhaneni Raghavayya in the Sub Court, Vijayawada, in O.S. No. 22/1953 enures to the benefit of the decree holder appellant after the transfer of the said suit to the District Munsifs Court, Vijayawada. In order to appreciate this point, we have to refer to certain facts:

2. The appellant herein, a firm carrying on business at Vijayawada filed a suit in the Subordinate Judges court at Vijayawada for the recovery of a sum of Rs. 4,000 and odd in January 1953. While the suit was pending in that court, the plaintiff-appellant applied for the attachment of the properties of the defendants in the suit. One Vallabhaneni Raghavayya, the predecessor in interest of the respondents in this appeal, filed a surety bond of Immovable property for a sum of Rs. 4,800 Ex. A-1 and the bond was accepted and the properties of the defendants were released from attachment on 17-12-1953. Meanwhile, due to the enhancement of the pecuniary jurisdiction of the District Munsifs Court, the suit was transferred to the District Munsifs, Court, Vijayawada and was numbered as O.S. No. 418/1954. In that suit the plaintiff-appellant got a decree against the defendants and in execution of that decree, he filed E. P. No. 499 of

1956 and sought to enforce the bond against the surety by proceeding against his properties mentioned in the bond. The surety contested that petition and pleaded that he had stood surety and executed the bond in the sub-court, Vijayawada, and was therefore not liable to be proceeded against the execution of the decree by the Munsifs Court Vijayawada. The District Munsif negated this contention of the surety and directed the decree holder to proceed with the execution of the decree by the sale of the properties mentioned in the surety bond. Aggrieved by the order of the District Munsif, the surety preferred an appeal to the District Court but that appeal was dismissed and the order of the trial court was upheld. Aggrieved by that order, the surety came to this court in second appeal C.M.S A 55/1959. This appeal came up before our learned brother Justice Sharfuddin Ahmed who allowed the appeal and set aside the order of the court. Hence this Letters Patent Appeal.

3. In this appeal it is contended by Shri D. Narasaraju, learned counsel for the appellant, that the learned Judge has erred in holding that the surety bond given by Vallabhaneni Raghavayya did not enure to the benefit of the decree holder after the transfer of the suit to the District Munsif's Court as the bond was given only for a decree to be passed by the sub-Court and not the other court, when the intention of the surety was to pay the plaintiff a particular amount that may be decreed in the suit. In this connection, the learned counsel has placed his reliance on the case of Gajula Bapaiah and Others Vs. Velavala Subbaiah and Others, . On behalf of the other side it is contended by Shri P. Ramachandra Reddi, learned counsel, that the terms of the bond have to be strictly construed so as not to impose any obligation on the surety more than what is imposed by the bond itself. The learned counsel further contended that when the bond is that if any decree is passed in the suit on the file of the subordinate Judge, Vijayawada, he has no objection to pay the amount and as the decree now passed is not by that court, but by a different court, the original bond given by the surety would not enure to the benefit of the decree holder. In this connection, the learned counsel relied on the cases of M. Paramasivam Pillai Vs. A.V.R.M.S.P.S. Ramasami Chettiar and Another, ; Dharmapuram Mutt represented by Sri La Sri Shunmuga Desika Gnana Sambanda Pandara Sannadhi Avergal Vs. Muhamad Usman Sahib and Others, and K.A. Mahammad Sheriff Sahib Vs. Hussain Ghouse,

4. We find sufficient force in the contention of Shri Narasaraju, learned counsel for the appellant. It is no doubt true that the bond has to be strictly construed having regard to its terms. The bond in the instant case is in the following terms.

"Security bond in respect of Immovable property for Rs. 4800-00 (rupees four thousand eight hundred only) executed and delivered on the 5th day of February, 1953 in favour of Sri Vuppuluru Satyanarayana Garu, principal subordinate Judge. Vijayawada, the Judge sub-court Vijayawada by Vallabhaneni Raghavayya, son of Seshayya. Kamma, cultivation, resident of Eluru

C. Kanakaiah Textiles Co., the plaintiff in O.S. 22 of 53 on the file of the court of

the subordinate Judge Vijayawada sued White House, Eluru and others and in I.A. No. 292 of 1953 filed a petition for attachment before judgment and got attachment effected. In respect of the amount that may be decreed in the said suit, and subsequent costs amounting in all to Rs. 4,800 (rupees four thousand eight hundred only) without prejudice to the contentions to be urged by defendants 1 and 2. On behalf of defendants 1 and 2 I hereby offer Immovable property as security and accordingly execute the security bond hereof for Rs. 4800. As security for the payment of the amount decreed in favour of the plaintiff in O.S. No 22 of 1953 I hereby offer the Immovable properties specified in the schedule hereunto annexed valued at Rs. 22,500. I hereby represent to you that the said property has not so far been alienated in any manner whatever, to anybody and accordingly offer the said property to you as security. I shall not have any objection to the amount payable under the decree in O.S. 22 of 1953 on the file of your Hon"ble court being recovered from me personally, from my own movable and Immovable properties and the property described hereunder offered as security. Until the suit O.S. 22/53 terminates I shall not in any way alienate the property described hereunder in favour of any whatever. I have only one son."

5. Thus it would appear that by this bond Vallabhaneni Raghavayya undertook to pay the plaintiff a particular amount that may be decreed in the suit O.S. No. 22 of 1953. But as stated earlier, the pecuniary jurisdiction of the Munsif's Court was enhanced and the suit had to be transferred to the District Munsif's Court where a separate number was given to the suit. The question that arises is whether by this transfer of the suit to the District Munsif's Court, the bond furnished by the surety came to an end, or it enured to the benefit of the plaintiff decree holder. To our minds, by transfer of the suit to the District Munsif's Court the surety bond did not cease to have any effect as there was no termination of the litigation. The surety bond therefore would enure to the benefit of the plaintiff and the surety would be bound to pay the amount if ultimately the claim of the plaintiff is decreed by the court

The learned counsel, Shri P. Ramachandra Reddi, lays great stress on the fact that since the surety accepted the liability only if a decree was passed in favour of the plaintiff in O.S. No. 22 of 53 and as no decree has been passed in O.S. No. 22 of 1953, the bond cannot enure to the benefit of the plaintiff. We are not prepared to accept this contention of the learned counsel. What, the surety had undertaken was the payment of a particular amount that may be decreed in the suit The reference to O.S. No. 22 of 1953 in the bond is to identify that claim in that particular suit and nothing more. We are fortified in this view of ours by the case, of Gajula Bapaiah and Others Vs. Velavala Subbaiah and Others, This is also a case where in a suit pending in the court of the District Munsif a surety filed security for mesne profits. Subsequently the plaint was returned for presentation to the proper court and was represented before the subordinate Judge The bond in that suit ran thus:

"If the 1st defendant does not succeed in the litigation and the plaintiffs are given a decree against the defendant for recovery of profits for this year, I undertake to pay personally myself, without reference to the 1st defendant, and from out of my moveable and Immovable properties, the said profits as may be determined by the Hon"ble court."

6. It was held having regard to the terms of the bond that the terms of the bond were sufficiently wide to cover the case of a decree passed in a suit in a court other than that of the District Munsif. In the instant case also the bond is in similar terms. Instead of the word "Dava" the bond mentions the number of the suit. Our learned brother also has referred to this case, but has held that since the instant case is not of that type, this Bench decision does not help. With due respect we cannot agree with this view. The bond given in the Instant case is in similar terms. The only difference, it, as stated earlier, in the Bench decision cited above there is reference to "Dava" which refers to the claim, whereas in the instant case, instead of, the word "Dava" there is the suit number.

7. Our learned brother also relied upon the cases of M. Paramasivam Pillai Vs. A.V.R.M.S.P.S. Ramasami Chettiar and Another, ; Dharmapuram Mutt represented by Sri La Sri Shunmuga Desika Gnana Sambanda Pandara Sannadhi Avergal Vs. Muhamad Usman Sahib and Others, and K.A. Mahammad Sheriff Sahib Vs. Hussain Ghose, To our minds, none of these decisions advances the argument of the respondent. M. Paramasivam Pillai Vs. A.V.R.M.S.P.S. Ramasami Chettiar and Another, was a case where the liability given by the surety was confined to the result of a particular appeal pending in the High Court and not to any further appeal. Dharmapuram Mutt represented by Sri La Sri Shunmuga Desika Gnana Sambanda Pandara Sannadhi Avergal Vs. Muhamad Usman Sahib and Others, was also a case of that type. In this case also the surety confined to a particular appeal only. Both these cases, therefore, cannot be taken as authority for the point in dispute before us. K.A. Mahammad Sheriff Sahib Vs. Hussain Ghose, was a case where the court had held that it had no jurisdiction. When the court holds that it had no jurisdiction, it is the termination of the litigation and the representation starts fresh litigation in a separate court though on the same cause of action. We are, therefore, of the view that the bond given in the Instant case is wide enough to Include the claim of the plaintiff being decreed by another court.

8. The appeal is therefore, allowed and the order of our learned brother is set aside and that of the trial court and the first appellate court restored. The appellant will be entitled to costs throughout.