
(1928) 01 AHC CK 0002
In the Allahabad High Court

Gangadhar

APPELLANT

Vs

Kanhai

RESPONDENT

Date of Decision : 10-01-1928

Acts Referred:

Citation : AIR 1928 All 306 : (1928) ILR (All) 606 : 109 Ind. Cas. 421

Hon'ble Judges : Dalal, J

Bench : Single Bench

Judgement

Dalal, J.—In my opinion the Court of Small Causes has gone wrong on a point of law and this Court must interfere. The plaintiff was surety of the defendant Gangadhar with respect to a particular debt. Gangadhar applied for an order of adjudication subsequent to the debt being contracted and the plaintiff becoming a surety for the payment of that debt. Such an order was passed and subsequently he was discharged u/s 41, Provincial Insolvency Act. Subsequent to the discharge the creditor Daru sued the surety Kanhai and recovered his debt from him. Kanhai was bound to make payment because u/s 44(3) an order of discharge does not release any person who was surety for the person discharged. On making payment to Daru Kanhai brought a suit against Gangadhar for recovery of the amount paid by him to Daru. The question then arises whether Kanhai's debt was provable under the Provincial Insolvency Act or not.

2. It is laid down in Clause 2 of Section 44, that an order of discharge shall release the insolvent from all debts provable under this Act. Section 34 lays down what debts are provable and what not. The only debts which may be excluded from the schedule are those which have been declared by Court to be incapable of being fairly estimated, and demands in the nature of unliquidated damages. The debt of a surety does not come under either head; it is not alleged here that Kanhai's debt was declared by the Court to be incapable of being fairly estimated. There is a very wide scope given to debts and liabilities provable under the Act in Clause 2, Section 34. They include debts and liabilities present or future, certain or contingent. On behalf of the applicant Mr. Laghate referred

to English rulings which leave no doubt that a surety has a right of proof in respect of contingent liability as surety: In re Blackpool Motor Car Co. Ltd [1901] 1 Ch. 77. The defendant Gangadhar was, therefore, released from the debt due to the plaintiff. I set aside the decree of the lower Court and dismiss the plaintiff's suit with costs of all the Courts.