(1990) 04 KL CK 0013

In the High Court Of Kerala

Case No : A.S. No. 88 of 1984

K. Thankappan Nair APPELLANT

Vs

South Indian Bank Ltd. and Others RESPONDENT

Date of Decision : 11-04-1990

Acts Referred:

Contract Act, 1872 — Section 139, 141
Limitation Act, 1963 — Section 19

Citation : (1990) KLJ 752

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : P. Sukumaran Nair and A.K. Chinnan, for the Appellant; S.N. Poti and C.S. Rajan, for the Respondent

Final Decision : Allowed

Judgement

M.M. Pareed Pillay, J.—The third defendant is the appellant. He was a surety to the principal debtor, the first defendant. The appellant''s contention is that as, admittedly, the security for the goods hypothecated was lost, thereby impairing the eventual remedy of the surety against the principal debtor, his liability as surety is discharged and, therefore, exhibit A-6 acknowledgment does not create any liability so far as he is concerned.

2. The court below held that, after October 12, 1977, the first defendant (principal debtor) disposed of the entire stock and closed down his shop and hence, the security of the hypothecated goods was lost. It is in evidence that the first defendant''s business premises was very near the local branch office of the plaintiff-bank. If there was effective supervision of the hypothecated goods by the plaintiff, the first defendant could not have sold the entire stock which formed the security for the amount due under the cash credit loan. The court below held that there was negligence on the part of the employees of the plaintiff-bank and it enabled the first defendant to remove the hypothecated goods from the godown. It is admitted by the plaintiff that the hypothecated goods were

under its surveillance and provision was made for furnishing quarterly stock statement by the first defendant to the bank. As, admittedly, the security of the goods hypothecated was lost, thereby impairing the eventual remedy of the surety against the principal debtor, the appellant''s liability as surety stood discharged.

3. Section 139 of the Contract Act provides that the surety is discharged --

(a) if the creditor does any act which is inconsistent with the rights of the surety ; or

(b) if the creditor omits to do any act which his duty to the surety requires him to do,

and the eventual remedy of the surety himself against the principal debtor is thereby impaired.

4. Where, due to negligence of the creditor, the security given by the principal debtor is lost and the right of the surety against the principal debtor is impaired due to any action or inaction of the creditor, the surety is discharged to that extent under the combined effect of Sections 139 and 141 of the Contract Act (page 753 of the Pollock and Mulla''s Contract Act, tenth edition). Thus, a surety is discharged where a creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty as surety requires him to do and the eventual remedy of the surety against the principal debtor is impaired. In view of the evidence in the case that the plaintiff was negligent in keeping surveillance over the hypothecated goods in the godown the third defendant stood discharged of his obligation as a surety.

5. The question that has to be considered is as to whether a surety, after he has been discharged, becomes liable for the debt by reason of an acknowledgment in writing to save limitation. The contention of the plaintiff is that the third defendant is equally liable for the debt notwithstanding the fact that he stood discharged u/s 139 of the Contract Act in view of exhibit A 6 acknowledgment. Once a debt has been discharged as has been done in this case by the operation of Section 139 of the Contract Act, there cannot be any more claim against him even under exhibit A-6 acknowledgment. Acknowledgment u/s 19 of the Limitation Act merely renews a debt. It does not create a new right of action. As the third defendant stood discharged of his obligation as a surety, there was nothing for him to acknowledge as liability. Acknowledgment definitely relates to a subsisting liability. As the third defendant stood discharged of the debt, he had no liability to be acknowledged. To constitute acknowledgment, a jural relationship between the parties as that" of debtor and creditor must be in existence. No creditor-debtor relationship was in existence as the third defendant stood discharged of his obligation as a surety so far as the plaint claim is concerned. Thus, the legal position is that once a person has been discharged of his debt, the plaintiff cannot claim any amount from him on the ground that he has acknowledged his liability. Thus, when the appellant has been discharged

from the debt by the operation of Section 139 of the Contract Act, he cannot still be saddled with liability on account of any acknowledgment. Section 19 of the Limitation Act cannot have any operation with regard to a debt which has already been discharged. As an acknowledgment, as provided u/s 19 of the Limitation Act merely renews a debt and does not create a new right of action, the plaintiff cannot claim any amount from the appellant on the ground that he has acknowledged the debt as per exhibit A-6.

6. The appellant (third defendant) cannot be held liable for the suit claim. The judgment and decree of the court below against the third defendant are set aside. The result is that there can be a decree against defendants Nos. 1 and 2 only.

7. The judgment and decree of the court below are modified holding that there cannot be any decree against the third defendant. The appeal stands allowed.

