
(1909) 04 CAL CK 0033
In the Calcutta High Court

Kanai Prosad Bose

APPELLANT

Vs

Jotindra Kumar Roy Chowdhury

RESPONDENT

Date of Decision : 02-04-1909

Acts Referred:

Contract Act, 1872 — Section 133

Citation : (1909) ILR (Cal) 626

Hon'ble Judges : Sharfuddin, J;Coxe, J

Bench : Division Bench

Judgement

Sharfuddin and Coxe, JJ.—This was a suit for accounts by the zemindar against his tehsildar and one Kanai Prosad Bose, who stood surety for the due performance of the tehsildars' duties. The Courts below have decreed the suit and the surety appeals. The ground of the appeal is that, as the contract between the zemindars and the tehsildar was varied, the surety was discharged from liability by Section 133 of the Contract Act. The terms of the contract to which reference has been made are as follows: "As long as I do not make over the tehsil in my jimba on clearing my nikash of any year to your satisfaction, I will not be able to take up the work of realizations and collections from the said mehals for the following year." It is said that the tehsildar did not render accounts for the year 1308, but notwithstanding that omission continued to realize rent for 1309. We do not think that this amounted to a variation of the contract. The breach of a contract is not a variation of it. Under the contract it was stipulated that if the accounts were not rendered the tehsildar should pay Rs. 50 a year as the cost of "having them prepared. Doubtless also the zemindar had other remedies. He could probably dismiss the tehsildar, or take the work away from his hands. But the mere fact that he did not enforce any of these remedies immediately did not amount, in our opinion, to a variation of the original contract. The original contract remained the same. If the tehsildar committed a breach of the contract by realizing rent for 1309, the zemindar was able to enforce the original contract and the remedies which he had under it. It is not stated that the zemindar and the tehsildar ever met together and came to

any agreement on the subject. All that happened was that the tehsildar to a certain extent broke his part of the contract and the zemindar did not immediately enforce his remedies under it.

2. It is argued that the surety might in this way become liable for the defalcations of several years, although it was originally intended that the accounts should be completed and rendered at the end of each year. But the security was limited to a fixed amount, and it could at any time have been revoked by the surety.

3. In our opinion, there was no variation in the contract between the parties, and we think, therefore, that the decisions of the Courts below were right, and that this appeal must be dismissed with costs.