

(1938) 01 CAL CK 0035
In the Calcutta High Court

Kumar Narendra Nath Mitter

APPELLANT

Vs

Sm. Bimala Sundari Debi and Others

RESPONDENT

Date of Decision : 31-01-1938

Acts Referred:

Citation : AIR 1938 Cal 573

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—The plaintiff in this suit asks for an account against the first defendant who is the widow and personal representative of one Bangsadhar Chakravarty who died on 5th July 1932. The cause of action arose out of a written agreement dated 10th November 1925, whereby Bangsadhar Chakravarty undertook the duties of Naib of a certain Touzi belonging to the plaintiff. The other defendants are sued as the guarantors or the representatives of the deceased guarantors of the proper performance by Bangsadhar Chakravarty of his obligations under the agreement. The defendants Sridhar and Basanta are brothers of Bangsadhar Chakravarty, and surviving guarantors. The defendants Shibnath and Shambhunath are the representatives of Adhar, a deceased guarantor who died in 1935, and the defendants Madhai, Nitai and Khoka are the representatives of Sreehari another deceased guarantor who died in 1935. No written statements have been filed by the representative of Adhar or by Basanta. Bimala Sundari the widow and the representative of Sreehari have filed a written statement but have not appeared at the hearing, and the only defendant who has effectively contested the plaintiffs' claim is Sridhar. His main defence is based on the fact that the agreement of 10th November 1925, was not executed by him personally but by Bangsadhar Chakravarty purporting to act under a general power of attorney executed by Sridhar and Sreehari in favour of Bangsadhar Chakravarty in January 1910. The Touzi which is the subject-matter of 1925 agreement is situated in the District of Khulna, and the parties are residents of that district, where the properties charged as security under the agreement are also situated. It is admitted that at the date of the execution of

the power-of-attorney Sridhar, who is in Government employment, was stationed at Shillong. Sridhar contends that the execution of the instrument of 1925 by Bangsadhar Chakravarty on his behalf was not authorized by the power.

2. He first submits that what the power contemplates is not authority of the agent to agree on the principal's behalf, but only authority to execute agreements, that is to say, authority to take the steps necessary to reduce an agreement, of which the principal has approved personally to legal or formal shape. He relies on *Janki Pershad v, Yahia Hossain* (1912) 16 CLJ 119 in which it was held that where an agent had authority under a power to execute deeds of sale and to admit execution thereof he could not enter into an enforceable agreement for sale of the principal's property. The case however is no authority for saying that in the absence of express authority by the principal a completed deed of sale executed by the agent would not have effectively transferred the property. The clause in the power relied on by the plaintiff runs thus:

To sign, execute and deliver for us in our names jointly or severally any release or re-conveyances of any money owing, due or payable to us jointly or severally, to execute and deliver any, lease or counterpart or pattah, or kabuliat in respect of any property which we have or which we may secure hereafter jointly or severally and to sign or execute any bond. Indemnity bond, jamini kabuliat, suretyship bond, mortgage or any other documents purporting to create any charge, lien or incumbrances upon our property or upon our claim over any property which we could have signed jointly or severally, were we personally present and did the same.

3. In my opinion it would be unreasonable to construe the concluding words "which we could have signed jointly or severally, were we personally present and did the same" to refer only to the physical act of signature, and I think "sign" in the clause means to render legally effective by signature. Possibly *Puran Chand v. Monmotho Nath* AIR 1928 PC 38 is of some assistance to the plaintiff. Viscount Sumner observes at page 84:

They (the words "person executing") mean something more, namely the person who by a valid execution enters into obligation under the instrument.

4. The second point raised is that Bangsadhar Chakravarty as agent had no authority to enter into the contract whereby his principal became surety for himself. It is said that this follows from *Reckith v. Barnett Pembroke and Slater Ltd.* (1929) AC 176 in which an agent held a power of attorney to manage his principal's affairs, and for that purpose to sign and execute all documents which might be necessary. The agent, as his principal's attorney, drew a cheque on the principal's banking account, and with it fraudulently paid a personal debt due from the agent to the respondents. It was held that the principal was entitled to recover the amount of the cheque from the respondents. Now it will be noticed that in the present case the agent is not alleged to have acted fraudulently. Indeed having regard to the relationship of the principal and agent and the fact

that the document of 1925 is a registered document, I have little doubt that Sridhar has long been aware of its existence without attempting to repudiate his liabilities under it. However there is nothing in the nature of a replication raising an issue of ratification or acquiescence, and therefore these speculations cannot be relevant. In *Reckith v. Barnett Pembroke and Slater Ltd.* (1929) AC 176 the power was construed as one authorizing the agent to manage the principal's affairs when the principal was abroad. The power with which I am dealing is in my opinion not so restricted in its scope. On the pleadings the question raised is purely one of construction. As has been already said there is no charge of a fraudulent exercise of the power, nor is there any evidence pointing to dishonesty. It is to be noticed that in *Hambro v. Burnand* (1904) 2 KB 10, where the agent contracted on behalf of his principal to guarantee a debt due to the plaintiff from a company of which the agent was a director, it was held following *Bank of Bengal v. Fagan* (1849) 7 Moo PC 61 that the principal could not repudiate the contract on the ground that the agent in making it acted in his own interests and not in those of the principal.

5. Neither *Reckith v. Barnett Pembroke and Slater Ltd.* (1929) AC 176 nor *Hambro v. Burnand* (1904) 2 KB 10 exactly corresponds to the present case, but for this defence to succeed, I should have to hold that in the absence of express authority a principal can repudiate a contract within the scope of the agent's general authority if the contract is one prima facie for the benefit of the agent. I do not think this proposition can legitimately be derived from any of the cases cited. I also consider there is no substance in the submission which is not supported by any authority, that it was beyond the scope of the agent's power to enter into the contract of suretyship jointly with other guarantors. I can see no reason for holding that Clause 4 does not give the agent power to impose personal liability on the principal. The words "any bond, indemnity bond, jamini kabuliat, suretyship bond" are very wide, and I do not think the words following them "any other documents purporting to create any charge" can limit them in the manner suggested. The last defence taken is based not on the construction of the power-of-attorney but of the bond itself. It said that the liability of the sureties is limited to Rs. 3000. I cannot accept this view which has nothing to support it except that the kabuliat is described as of the value of Rs. 3000. By the operative part of the document the sureties appear to me to undertake a liability coextensive with that of the principal, including the liability to account.

6. In the circumstances there must be a decree for accounts against all the defendants except the first defendant Bimala Sundari Debi. The accounts are to be taken by an officer of the Court nominated by the Registrar of the Original Side. The Officer taking the accounts will also find what sums, if any, have been misappropriated by Bangsadhar Chakravarty, and if there has been any misappropriation of this kind that is suggested, the first defendant will be liable for it to the extent of her interest in Bangsadhar Chakravarty's estate. Costs will be dealt with after the reference is over.