

(1984) 09 KAR CK 0035
In the Karnataka High Court
Case No : C.R.P. No. 3606 of 1979

Maharashtra Apex Corporation Ltd.

APPELLANT

Vs

Poovappa and Another

RESPONDENT

Date of Decision : 06-09-1984

Acts Referred:

Contract Act, 1872 — Section 135, 140, 141

Citation : (1985) ILR (Kar) 255

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : K. Shivashankar Bhat, for the Appellant; H.G. Hande, for R-1 and U.P. Mallya, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Kulkarni, J.—This is a revision by the decree-holder-Bank against the order dated 3-9-1979 passed by the First Additional Civil Judge, Mangalore, in Execution Case No. 112 of 1977 allowing I.A.IX and dismissing the execution.

2. Judgment-debtor No. 1 Viswanath had borrowed money from the decree-holder-Bank(Maharashtra Apex Corporation Ltd). One Sankappa father of Judgment-debtor No. 2 had stood surety in respect of the said loan. The Maharashtra Apex Corporation Ltd., filed a suit and obtained a decree against the principal debtor as well as the surety. The plaintiff-Bank sued out the execution against both the judgment-debtors. Poovappa is the legal representative of the surety. In the course of the execution, Judgment-debtor No.1 Viswanath requested the decree-holder to grant him monthly instalments at the rate of Rs. 250/- The decree-holder had no objection for the same and agreed to give monthly instalments of Rs. 250/- to the principal judgment-debtor. Poovappa, the L.R. of the original surety was not a party to that arrangement between the Bank and the principal Judgment debtor. So the L.R. of the surety viz. Poovappa filed an application I.A. IX stating that on account of the grant of instalments to the Judgment-debtor No.1 the liability as a surety stood discharged.

The said plea put forth by Poovappa the L.R. of the surety was accepted by the Court below and it allowed IA. IX and ultimately dismissed the execution.

3. The Learned Counsel Sri Shivashankar Bhat urged before me that once a decree is passed against the principal borrower and the surety, the relationship of principal borrower and surety would cease and they would be jointly and several liable to pay the debt. He relied on a decision in Meenakshisundaram Chettiar -v.- Velambal Animal. AIR 1944 Mad 423 It was observed in the said case on page 423 as :

"The second point may be dealt with very briefly, there really being nothing to add to what was said by the lower Appellate Court. We are not, after a joint decree has been passed against principal and surety, any longer dealing with a principal and a surety, but with a joint judgment debtor."

This observation is an obiter dicta. The reasons for that conclusion have not been given by the Madras High Court. Then the learned Counsel Sri Shivashankar Bhat drew my attention to the AIR Manual Volume II, 4th Edition, page 163. It reads as :

"Section 135 does not apply to claim which have been decreed. Liability of surety is not discharged by the decree-holder's giving time to principal judgment-debtor. (1906) 9 Oudh Cas 28 (28, 29)."

Section 135 of the Contract Act reads as :

"A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract."

Section 140 of the Contract Act reads as :

"Where a guaranteed debt has become due or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor."

Section 141 also would be of some use and it reads as :

"A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of surety-ship is entered into, whether the surety knows of the existence of such security or not and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

Therefore, these Sections make it absolutely clear that the surety on payment of the guaranteed debt or amount, is entitled to recover from the principal borrower as though he steps into the shoes of the original creditor himself. There-fore, these Sections make it clear that the right of the surety continues even if the

decree is passed and the relationship between him and the principal debtor continues as a principal debtor and the surety. Therefore, in view of these Sections, the obiter dicta expressed by the Madras High Court and the opinion expressed in the extract of the Oudh case in the AIR Manual Vol.II cannot be accepted. As already stated above, even if the decree is passed, it may be that after the decree is passed, the principal borrower as well as the surety are jointly and severally liable to pay the decree debt. The decree holder may proceed against the surety as the liability is made joint and several by the decree itself. That does not mean that relationship between the principal debtor and the surety has ceased after the decree is passed.

4. The Learned Counsel Sri Mallya for the L.R. of the surety quoted *Lakhi Ram Ram Dass Vs. Har Prasad Syal and Others*, A reading of the said ruling in a way also supports my view that even after the passing of the decree, the relationship between the principal borrower and the surety does not change and it continues.

5. The learned Counsel Sri Shivashankar Bhat then urged that the granting of instalments to the principal judgment debtor was rather more beneficial to the surety and therefore it cannot be said that any prejudice was caused to the surety by the grant of instalments to the principal judgment debtor and that therefore the liability of the surety did not stand discharged on account of the grant of instalments to the principal judgment-debtor. Section 135 of the Indian Contract Act repels the said contention u/s 135, even if the creditor gives sometime to the principal judgment-debtor without the assent of the surety, the surety stands discharged. Sri Mallya, Learned Counsel for the L.R. , of the surety quoted before me the decision in *Amrit Lal Goverdhan Lalan (dead) by his Amrit Lal Goverdhan Lalan Vs. State Bank of Travancore and Others*, It is clearly laid down on page 1436 as:

"The act of the Bank in giving time to the principal debtor to make up the quantity of the goods pledged is not tantamount to the giving of time to the principal debtor for making the payment of the money within the meaning of Section 135 of the Indian Contract Act. What really constitutes giving of time is the extension of the period at which by the contract between them, the principal debtor was originally obliged to pay the creditor by substituting a new and valid contract between the creditor and the principal debtor to which the surety does not assent. The reason why an agreement to give time discharges the surety is because if, after making such an agreement, the creditor were to sue the surety the latter would at once be turned on the principal debtor in breach of the agreement to give time so that the effect of such an agreement is to prevent the surety from either requiring the creditor to call upon the principal debtor to pay off the debt or himself paying off the debt, and then suing the principal debtor, thereby causing prejudice to the surety."

It is further laid down in the Supreme Court case as :

"Thus to substitute for payment in one sum prime. it by instalments amounts to

a giving of time. Again, whatever the taking of a new security from the principal debtor by the creditor operates as a giving of time, the surety is no longer liable, but not where that transaction has no such effect."

Therefore in view of the said Supreme Court decision, the granting of instalments by the decree-holder to the principal debtor amounts to giving of time to the principal debtor. Therefore in view of the clear principle laid down by Section 135, the Trial Court rightly held that the liability of the surety stood discharged.

6. Thus there is no merit in the revision. The revision is dismissed. No costs.