
(1922) 01 PRI CK 0005

In the Privy Council

Case No : Privy Council Appeal No. 108 of 1920

Panna Lal and another

APPELLANT

Vs

Nihai Chand (Substituted for the Marwar Bank, in liquidation)

RESPONDENT

Date of Decision : 31-01-1922

Acts Referred:

Citation : (1922) AIR(PC) 46

Hon'ble Judges : Ameer Ali, Phillimore, Viscount Haldane, JJ.

Advocate : Yglesias, Lew, H.S. L. Polak, Dube, Langden, Wallach, Clauson, for the Appearing Parties.

Judgement

Viscount Haldane, J.

The Luxmi Company, Limited, which was defendant in the suit of which this appeal arises, but which is no party to the appeal, was a company trading at Ambala and elsewhere as bankers, cotton merchants and general commission agents. It obtained certain advances from the respondents, the Marwar Bank. These advances were made under various circumstances, but at the material date with which their Lordships are concerned it was necessary to obtain some security for the assurance of the bank, and accordingly on the 28th December, 1908, the appellants, Lala Panna Lal and Lala Basheshar Nath, and one Lala Ganga Ram executed a security bond, dated the 28th December 1908, in favour of the manager of the Marwar Bank. Lala Ganga Ram and the appellant Lala Panna Lal were directors of the Luxmi Company; other appellant, Lala Basheshar Nath, was manager of one of the branches of the Luxmi Company, and was an alternative director, that is to say, on certain occasions he acted as a director.

The surety bond which the two appellants executed was in these terms It was addressed to the manager of the Marwar Bank, Limited, of Ambala City :

"Dear Sir, - In consideration of your allowing the Luxmi Company, Limited, to overdraw sums not exceeding in the aggregate of rupees fifty thousand only (on the security of Luxmi Company, Limited, demand "pronote in your favour of

date), we hereby pledge for the repayment on demand of the said overdraft, together with interest thereon and of any other sum or sums of money which may be or become due to you from the Luxmi Company, Limited, on any account whatsoever during the continuance of this pronote. And we hereby declare and agree that the overdraft allowed and intended to be secured by the agreement shall be taken to have been allowed by you entirely upon the faith of and relying upon the declaration signed by us at the foot hereof which declaration solemnly we declare to be true in every respect. It is hereby further agreed and declared that these presents shall remain and be a continuing security to you for the balance of the said account for the time being to the extent aforesaid, notwithstanding that at any time or times the balance of the said account may be in your favour, it being expressly intended that these presents shall be a security for the balance of the said account due by the Luxmi Company, Limited, to you while the said account shall continue open. Signed at Ambala City the 18th day of December, in the year one thousand nine hundred and eight."

It is contended on behalf of the appellants that this security bond did not impose upon them any personal liability, inasmuch as they signed as directors, which, it is said, meant as directors binding the Luxmi Company, and the Luxmi Company alone. The first difficulty in the way of that contention is very formidable one. If it were true the bank would get no advantage from this security bond, because it had already the liability of the Luxmi Company for the sums which it had advanced to the Luxmi Company. The only materiality of the security bond would be if it gave some new security and some fresh liability, and therefore the natural construction to put upon what is indicated by the use or the imperfect but definite expression "pledge" is that the fresh liability of the three signatories personally was the new security introduced. Moreover, the whole tenor of the document points to an obligation to pay money. It is suggested that the word "pledge" in the beginning of the second sentence, where the expression is used "we hereby pledge for the repayment on demand" shows that they meant to refer to some specific and tangible securities which they pledged for the advances; but if that were so, then, as these were omitted and not mentioned, the document was bad because of the omission of what was of its essence. The other construction takes the word "pledge" as loosely used, to mean that they pledge their personal credit in support of the obligation of the company. It is said that if one looks at other documents of the kind one will find that this was only a common form intended for cases where there was a pledge of assets, and that if regard is had to the circumstances in other transactions one will find that in other transactions these gentlemen did not pledge themselves personally.

But their Lordships think that this surety bond which was executed on the specific occasion must be taken to have been executed for the purpose of the occasion, and that it cannot be assumed that it had reference to any other circumstances of a different date. On the face of it there is no difficulty in giving it an intelligible meaning as constituting a personal pledge. Their Lordships do not think that extrinsic evidence is admissible in these circumstances to affect its

meaning.

Their Lordships are therefore of opinion, taking this as it stands, that the appeal fails.

The only other point that arises is as to the rate of interest given from the date of the proceedings until judgment. As to that there is a discretion in the judges under the Code of Civil Procedure, and both courts have said that the interest should be 8 per cent. Their Lordships are not prepared to dissent from that view. For the reasons they have stated, they will humbly advise His Majesty that this appeal should be dismissed with costs.