(1998) 10 AHC CK 0020

In the Allahabad High Court

Case No : Civil Revision No. 14 of 1993

Punjab National Bank APPELLANT

Vs

Rishabh Jain and others RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Contract Act, 1872 — Section 137, 138

Citation : (1998) 3 AWC 2237

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : K.L. Grover, for the Appellant;

Judgement

G.P. Mathur, J.—This revision u/s 115, C.P.C. has been filed against the judgment and order dated 3.11.1992 of IXth Addi. District Judge. Gorakhpur in Original Suit No. 338 of 1988.

2. The applicant--Punjab National Bank filed a suit for recovery of Rs. 7,65,533 against defendant Nos. 1 to 5 for advances made to M/s. Vishnu Carbon (India) a partnership firm. At the time of advance of loan, defendant Nos. 4 and 5 and Smt. Janak Dulari, mother of respondent No. 4 had stood as guarantor. The guarantee deed was executed on 15.10.1982. The defendant Nos. 4 and 5 moved an application that as co-guarantor Smt. Janak Dulari had expired, the deed of guarantee executed by them was not enforceable. This application was allowed by the learned Addl. District Judge and it was directed that the names of defendant Nos. 4 and 5 be deleted from the array of parties. It is this order which is subject-matter of challenge in the present revision.

3. I have heard learned counsel Sri K. L. Grover for the applicant and have examined the record. In my opinion, the order is wholly unsustainable in law. A joint guarantee deed was executed by defendant Nos. 4 and 5 and Smt. Janak Dulari. It was a continuing guarantee deed and there was no provision in the same that in the event of death of one of the guarantors, the liability of other

guarantors will also cease to exist. The death of one of the guarantors cannot make the whole guarantee deed invalid or void. The point is fully covered by the decision of the Supreme Court in Sri Chand v. Jagdish Pershad, AIR 1966 SC 1427, wherein it is held as follows :

"Liability of the sureties is under the law joint and several. If a creditor seeks to enforce the surety bond against some only of the joint sureties, the other sureties will not on that account be discharged ; nor will release by the creditor of one of them discharge the other ; vide Sections 137 and 138 of the Contract Act. But the fact that the surety bond is enforceable against each surety severally, and that It is open to the creditor to release one or more of the joint sureties, does not alter the true character of an adjudication of the Court when proceedings are commenced to enforce the covenants of the bond against all the sureties. The mere fact that the obligation arising under a covenant may be enforced severally against all the covenantors does not make the liability of each covenantor distinct. It is true that in enforcement of the claim of the decree-holder the properties belonging to the sureties individually may be sold separately. But that is because the properties are separately owned and not because the liability arises under distinct transactions."

Similar view has been taken by a Division Bench of Calcutta High Court in United Bank of India Vs. Modern Stores (India) Ltd. and Others, . It being well-settled that the liability of the sureties is joint and several, the death of one of the sureties cannot absolve the other sureties. The order passed by the trial court is manifestly erroneous and is liable to be set aside.

4. In the result the revision succeeds and is hereby allowed. The impugned order dated 3.11.1992 passed by IXth Addl. District Judge, Gorakhpur is hereby set aside.

