

(1939) 01 CAL CK 0010
In the Calcutta High Court

Satyendra Lal Choudhury

APPELLANT

Vs

Sadarghat Urban Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 20-01-1939

Acts Referred:

Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1939 Cal 352

Hon'ble Judges : Derbyshire, C.J.; Nasim Ali, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—The appellant is the son of a man who entered into a contract of suretyship on 11th December 1933. The principal debtor was Jogesh Chandra Dhar and the creditor was the Sadarghat Urban Co-operative Bank Ltd. The Bank is an institution registered under and governed by the Co-operative Societies Act (Act 2 of 1912 I.C). The debtor, the appellant, and his co-surety under the contract were all members of that institution; On 3rd December 1935 the principal debtor Jogesh Chandra Dhar was adjudicated an insolvent in the Calcutta High Court at the instance of certain creditors. On 27th January 1936 the creditor Bank started proceedings pursuant to the provisions of the Co-operative Societies Act against the principal debtor who was then an insolvent and also against the sureties for the realisation of their debt. Those proceedings are governed by rules made by the Provincial Government u/s 43 of the Act in question. Section 43(1) provides that rules may be made and such rules may

provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the Committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar of the awards of arbitrators.

2. Rule 22 made by the Government of Bengal pursuant to that sub-section provides inter alia for the decision of the dispute between the Society and its members and the making of an award Rule 22, Sub-rule 6 states:

An award of the arbitrators or a decision of the Registrar under Sub-rule (4), if not appealed against within one month, and an order of the Registrar or of Commissioner in appeal under Sub-rule (5) shall, as between the parties to the dispute, not be liable to be called in question in any Civil or Revenue Court and shall be in all respect final and conclusive.

3. Sub-rule 7 provides:

Decisions and awards mentioned in Sub-rule (6) shall, on application to any Civil Court having local jurisdiction, be enforceable in the same manner as a decree of such Court.

4. On 27th January 1936 when these proceedings before the Society's Tribunal were started, the principal debtor was an insolvent. Section 17, Presidency Towns Insolvency Act, which applies to this case, enacts:

On the making of an order of adjudication no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose:

Provided that this Section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this Section had not been passed.

5. I can see that objections might have been raised to these arbitration proceedings by the principal debtor in view of the provisions of Section 17. I notice on the file of the arbitrator the following record:

Notices duly served on the Official Assignee as per acknowledgment receipt. Babu Jogesh Chandra Dhar has refused to accept the notice. Notices on others duly served. None present. Claim pressed by Bank. Decreed in full for Rs. 2502 against the Official Assignee for and on behalf of Babu Jogesh Chandra Dhar, insolvent, and against surety Jogendra Lal Chowdhury and the heirs of Sarada Charan Choudhury, deceased, namely, Satyendra Lal Chowdhury, Nripendra Lal Chowdhury, Sudhir Chandra Chowdhury and Adhir Chandra Chowdhury alias Badal, all minors represented by their mother Sm, Nirmala Bala Chowdhury, with interest at 15 per cent, per annum from the date of filing namely, 31st September 1935 till realization.

6. I can see that legal objections might have been raised by the insolvent. Perhaps they were. Perhaps there was leave of the Court: it is difficult for us to say. The fact remains that those proceedings went forward. I doubt whether any

objection could have been raised to the proceedings by the bank against the sureties. Be that as it may, we have to take the award which has not been questioned in any Civil Court or Revenue Court as it exists and to take it as good and subsisting. That is an award for Rs. 2502 as against the Official Assignee representing the debtor, and against the sureties. The award was made on 25th June 1936. On 1st August 1936 the bank proved this debt of Rs. 2502 in the insolvency proceedings. On 7th August 1936 there was a meeting of creditors to consider a scheme of composition. The bank by a letter either voted against or protested against the scheme. But this scheme was accepted by the majority of the creditors. On 25th August 1936 the Calcutta High Court approved the scheme u/s 29, Presidency Towns Insolvency Act, as being reasonable and calculated to benefit the general body of the creditors of the Insolvent and the Court then and there annulled the insolvency proceedings. The effect of that order is stated in Section 30 of the Act.

...the composition or scheme shall be binding on all the creditors so far as it relates to any debt due to them from the insolvent and provable in insolvency.

7. As between the bank and the insolvent the only debt payable is that under the scheme of composition. The bank however have put the award of 25th June 1936, to execution in the local Chittagong Court under the provisions of the Rules made under the Co-operative Societies Act mentioned above. It has been objected unsuccessfully before the Subordinate Judge and the District Judge by the sureties that they are by the composition absolved from their liabilities under the contract of suretyship. It seems to me that that contention cannot prevail here. The award of 25th June 1936 against the sureties for Rs. 2502 is valid. The contract of suretyship made on 11th December 1933, was by the award merged into the award so that as and from 25th June 1936, the rights which the creditor bank had against the sureties were rights under the award and not under the contract of suretyship. Those rights accrued to the bank on 25th June 1936, and I cannot see that anything done subsequently in the way of composition between the debtor and his creditors or the annulment of the insolvency proceedings makes any difference to those rights. They were rights which were vested in the bank quite independently of the insolvency proceedings and are not affected by the provisions of Section 30, Presidency Towns Insolvency Act. Consequently in my view the bank are entitled to put their award into execution and have it executed as the Subordinate Judge and the District Judge decided. In my opinion, this appeal must be dismissed with costs - hearing fee being assessed at three gold mohurs. Let the records be sent down to the lower Court forthwith.

Nasim Ali, J.

8. I entirely agree with the order of my Lord, the Chief Justice that this appeal should be dismissed. The principle is well established that if the creditor without the consent of the surety by his own act destroys the debt or derogates from the power which the law confers upon the surety to recover the debt against to debtor, the surety is discharged. This principle has been embodied in the Con.

tract Act. It is not disputed, and it cannot be disputed, that in the present case the respondent bank by their own act did not destroy the judgment debt. They have not by any act or omission of theirs, taken away the right of the surety to recover the money due under the judgment debt against the insolvent if he pays it to the bank. The argument of Dr. Basak, on behalf of the appellant, however, is that the entire judgment debt has been destroyed by operation of law. His argument is this : Section 45, Clause 4, Presidency Towns Insolvency Act, lays down that:

An order of discharge shall not release any person who, at the date of the presentation of the petition...was surety or in the nature of the surety for him.

9. Section 22 of the same Act, which entitles the Bankruptcy Court to annul an order of adjudication, does not however lay down that the order annulling the order of adjudication would not release a surety from the debt though in the corresponding English Statute there is a specific provision in Section 18, Clause 15 that the acceptance by a creditor of a composition of scheme shall not release any person. Though the Indian Act is apparently based on the English Statute, the very fact that the Indian Legislature did not introduce in the Indian Act any provision corresponding to Section 18, Clause 15 of the English Act indicates that the intention of the Indian Legislature was that when there would be an order annulling the adjudication u/s 30, the surety also would be discharged. I am unable to accept this view of the matter. An order u/s 30 has the effect of an order of discharge and is equivalent to it. In short, if a composition or scheme is duly approved by the Insolvency Court, it has the same effect as an order of discharge. By an order of discharge u/s 45 of the Act, even though the insolvent is discharged from the entire debt the surety's liability does not come to an end. It is therefore, difficult to see on what principle it can be said that where a composition scheme is accepted by the Insolvency Court against the wishes of a creditor and the debtor gets either a conditional discharge or his liability is reduced, that creditor cannot proceed against, the surety. I am inclined to think that so far as this point is concerned the law in, this country is the same as that of England though the Legislature has not said so expressly in Section 30.