

(2005) 04 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 2597 of 2002

Smt. Rajamma

APPELLANT

Vs

C. Puttachari and Another

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Citation : (2006) 1 BC 169 : (2005) 2 CivCC 676 : (2005) 4 KarLJ 72 : (2005) 3 RCR(Civil) 366

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : M.S. Purushothama Rao, for the Appellant; G.M. Anand, for the Respondent

Judgement

Chidananda Ullal, J.—This matter was heard by me on 12-4-2005.

It was argued by Sri Purushothama Rao that if the suit has abated as against the principal debtor, the suit gets abated in its totality. In support of his argument, he has cited before me a reported decision of the Supreme Court reported in T. Raju Setty Vs. Bank of Baroda, .

2. On the other side, the Counsel for the respondent, Sri G.M. Anand supported the impugned judgment. He had also cited before me a reported decision of the Supreme Court in Mahabir Prasad Vs. Jage Ram and Others, .

I have gone through both the decisions cited by the contending Counsel. Having gone through the decisions cited, I fee that the decision cited by Sri Rao is on the facts and circumstances of this case. In para 28 of the judgment, the Supreme Court had observed as hereunder:

"28. A decision of a Division Bench of Calcutta in United Bank of India Vs. Modern Stores (India) Ltd. and Others, , was also pressed into service by the learned Counsel for the Bank. In that case a decision of the Supreme Court in Sri Chand and Ors. v. Jagadish Pershad Kishan Chand and Ors. AIR 1966 SC 1427

was distinguished. While referring to Sri Chand's case, it has been held as follows (para 24).--

"The learned Trial Judge has also relied on a decision of the Supreme Court in Sri Chand's case. In our view, the learned Trial Judge had not appreciated the ratio of the decision of the Supreme Court in the said case. In that case the Supreme Court has recognised that the liability of the surety is joint and several and if a guarantor 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. As pointed out by Dr. Banerjee, in our view, rightly that in that case the Supreme Court was concerned with the fact that three of the sureties appealed from the order of the lower Appellate Court and in that appeal one of the appellants died and the Supreme Court had held that the appeal had abated because the representation of the second appellant had not been brought on record. We accept the interpretation put by Dr. Banerjee that the appeal in that case had abated not because the release of sureties could not be taken as discharge of the others but that the appeal would have affected jointly the rights of appellants who were three of the sureties. In our view, this decision is not an authority for the proposition that if the suit against one of the co-guarantors is allowed to be dismissed, then the suit against other co-guarantors should also be dismissed on the basis of the principles of res judicata as held by the learned Trial Judge".

With great respect to the Lordships of the Calcutta High Court who constituted the Bench, we find it difficult to agree with the aforesaid view. While considering Sri Chand's case, we have reproduced para 9 of the judgment in which it has been specifically laid down that the fact that the surety bond is enforceable against each surety severally and that it is open to the creditor to release one of 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 against all the sureties. This and the further observations contained in the latter portion of the para are not correctly appreciated. We have held that even though several options are open to the creditor for recovering the debt either proceeding against the principal debtor or proceeding against sureties or proceeding against principal debtor and the sureties; but in a case whether creditor chooses to proceed against the principal debtor and the sureties; jointly and severally and the suit abates against the principal debtor, the suit cannot be decreed against the sureties because in respect of the same subject-matter of the suit, there will be two conflicting decrees. This is the import of para 9 of the judgment of the Supreme Court in Sri Chand's case. The interpretation placed in Modern Stores case by the Calcutta High Court does not square with the proposition laid down in para 9 of the judgment in Sri Chand's case. Therefore, we disagree with the view taken in Modern Stores (India) Limited's case".

Furthermore, in the head note, it was culled out succinctly as follows.--

"In a case where the creditor chooses to proceed against the principal debtor and

the sureties jointly and severally and the suit abates against the principal debtor, the suit cannot be decreed against the sureties because in respect of the same subject-matter of the suit, there will be two conflicting decrees".

3. I did not entertain the decision cited by Sri Anand for the simple reason that, that is in an appeal, whereas in the instant case, it was a suit and decree as against a surety defendant.

4. Therefore, in my considered view, the impugned judgment passed by the Trial Court decreeing the suit as against the petitioner-defendant cannot sustain in law. I also feel it appropriate to remand the matter to the Trial Court to correct the judgment and decree.

5. Since the Court appears to be on Summer Vacation, both the contending parties, now before Court are directed to appear before the Trial Court on 24-5-2005 i.e., immediately after closure of the Summer Vacation.

6. Let both the parties appear before the Trial Court at 11.00 a.m. on 24-5-2005. The Trial Court is also directed to proceed to carry out the direction as herein above directed within a period of one month from 24-5-2005, if necessary, after hearing the parties formally. It is also made clear that the matter is remanded for the limited purpose of correcting the impugned judgment and decree and no further.

7. Civil revision petition allowed in the above terms. No order is to costs. The records of the Trial Court if secured may be sent back along with the copy of this order.