(1962) 01 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1587 of 1960

The State of Punjab APPELLANT

Vs

Muni Lal and Others RESPONDENT

Date of Decision : 08-01-1962

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1962) 01 P&H CK 0045

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : A.M. Suri, for the Appellant; H.L. Sarin and K.K. Cuccria, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—On 7th January 1950 Manohar Lal, respondent No. 2, took a loan of Rs. 5,000/- from the appellant, State of Punjab, under the East Punjab Refugees Rehabilitation (Loans and Grants) Act (No. 2 of 1948) for installing a sprinting press at Hoshiarpur. He was granted this loan on executing a personal bond, Exhibit D.9, in favour of the Government alongwith two sureties, Roshan Lal and Balak Ram, who also executed surety bonds, Exhibits P.22 and P.23. On 7th February 1951 Muni Lal, plaintiff, also stood surety by executing, a bond, Exhibit D.8, for the loanee, Manohar Lal. It is common ground that Manohar Lal sold the printing press to Amar Nath, respondent No. 3. On 23rd January 1958 the State of Punjab served a notice of demand on the plaintiff requiring him to pay up the amount of loan advanced to Manohar Lal, together with interest, otherwise it was to be recovered as arrears of land revenue from him. This led to the present suit, filed by the plaintiff on 17th May 1958, for an injunction restraining the Punjab State from taking any action against the plaintiff for the recovery of this amount as arrears of land revenue. It was alleged that the plaintiff did not stand surety for the loanee and was not liable to pay the sum of Rs. 5,000/-; that the Punjab State had by its conduct and negligence impaired the security by allowing the loanee to transfer the printing press to Amar Nath, respondent No. 3, and the plaintiff was discharged from his liability to pay the sum in question; and that, in any case, the Punjab State could not recover the disputed amount as arrears of land revenue.

2. The suit was resisted by the State of Punjab on the grounds that the same was not maintainable; that the Court had no jurisdiction to entertain it; that the notice u/s 80 of the Code of Civil Procedure, served by the plaintiff was invalid; that the plaintiff had stood surety for Manohar Lal and was not discharged from this liability; and that this Sum could be recovered from him as arrears of land revenue.

3. Amar Nath, defendant respondent No. 3, averred that he was a purchaser of the printing press for valuable consideration without notice of the fact that it was given as a security by Manohar Lal for the loan received from the Punjab State. It may be mentioned that ex parte proceedings were taken against Manohar Lal.

4. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff did not stand surety for defendant No. 2 for the sum of Rs. 5,000/-?

2. Whether the plaintiff is not liable to pay the sum of Rs. 5,000/-?

3. Whether the plaintiff is discharged from his liability to pay the sum of Rs. 5,000/-?

4. Whether the civil Court has got no jurisdiction to try the suit?

5. Whether the suit of the plaintiff is not competent?

6. Whether notice u/s 80 of the CPC served upon the defendant is invalid?

7. Relief.

5. The trial Judge held that the plaintiff did stand surety for Manohar Lal in the sum of Rs. 5,000/- and that he was not discharged from this liability and was, consequently, liable to pay this sum. It was also held that the suit of the plaintiff was not competent and the civil Courts had no jurisdiction to try the same. It was, however, found that the notice served by the plaintiff u/s 80, Civil Procedure Code, was valid in law. On these findings, the suit of the plaintiff was dismissed, but the parties were left to bear their own costs.

6. Against this decision, Muni Lal went in appeal to the learned Senior Subordinate Judge, Hoshiarpur. He accepted the appeal, reversed the findings of the trial Court on all the issues, except issue No. 6, and decreed the suit of the plaintiff with costs. Against this, the Punjab State has filed the present appeal.

7. The first question for decision in this case is whether the plain-tiff stood surety for Manohar Lal for the loan advanced to him by the Punjab State. On the record there is the printed surety bond. Exhibit D.8, executed by the plaintiff. His case,

however, was that he had executed this document not as a surety but as a witness and that he had signed it when it was a blank paper. This plea was negatived by the trial Court. The learned Senior Subordinate Judge, however, held that the document, Exhibit D.8, executed by the plaintiff could not in law be termed as a surely bond but it was only a contract of indemnity, and on this ground he reversed the decision of the trial Court on issue No. 1. For, this, reliance was placed by him mainly on a decision of the Bombay High Court in Ramchandra B. Loyalka Vs. Shapurji N. Bhownagree, in which it was held -

A contract of guarantee involves three parties, the creditor, the surety and the principal debtor and a contract to which those parties are privy. There must be contract, first of all, between the principal debtor and the creditor. That lays the foundation for the whole transaction. Then there must be a contract between the surely and the creditor, by which the surety guarantees the debt, and no doubt the consideration for that may move either from the creditor or from the principal debtor or both. But if those are the only contracts, the case is one of indemnity. In order to constitute a contract of guarantee there must be a third contract, by which the principal debtor expressly or impliedly requests the surety to act as surety. Unless that element is present, it is impossible to work out the rights and liabilities of the surety under the Contract Act.

He came to the conclusion that in the present case there was no suggestion on the record that Manohar Lal, principal debtor, was a privy to the contract, Exhibit D.8, even by implication. I am, however, of the opinion that this is not correct. Under the provisions of section 6 of East Punjab Act No. 2 of 1948, a security for the repayment of the loan has to be furnished by the loanee. If the loan sanctioned exceeds Rs. 2,000/-, the loanee has to furnish two sureties for the repayment of the loan with interest and costs, if any, incurred in making or recovering the loan. The form of the surety bond is also prescribed in appendix ''C'' to the Rules framed u/s 16 of this Act. Exhibit D.8 is in the same form as provided in the rules. It is common ground that two sureties were furnished by Manohar Lal, when he took the loan on 7th January 1950. It is mentioned in para 4 of the written statement filed by the State in the present case that one of these sureties, namely, Balak Ram, wanted to withdraw and it appears that it was on this account that the plaintiff stood surety for the loanee on 7th February 1951. A perusal of para 3 of the plaint and the statement of the plaintiff in the witness-box, as P.W.4, shows that the loanee had called him from his house at the time of the execution of the document, Exhibit D.8. Under these circumstances, there is no manner of doubt in my mind that it was at the instance of the loanee that the plaintiff stood surety for him. I would, therefore, hold that the document, Exhibit D.8, was a contract of guarantee, but not of indemnity as held by the lower appellate Court.

8. The next question for decision is whether the money due from the loanee could be recovered as arrears of land revenue from the plaintiff. The contention raised by the learned counsel for the plaintiff-respondent was that this amount

could not be recovered from the borrower without complying with the provisions of section 12(1) of East Punjab Act No. 2 of 1948. He submitted that no notice, as contemplated by this sub section, had been served on the borrower and this was a condition which had to be fulfilled before the amount could be recovered as arrears of land revenue under sub-section (2). He further submitted that, at any rate, this sum could not be recovered from the surety as arrears of land revenue.

9. With regard to the issuing of the required notice, no plea to this effect was taken by the plaintiff in the plaint or in any of the Courts below. This was a question of fact and had it been raised at the proper time, the Punjab State could have led evidence to show that such a notice had, in fact, been served on the borrower. So there is no force in the contention of the learned counsel that no notice was served on the borrower under sub-section (1) of section 12 of East Punjab Act No. 2 of 1948. So far as the surety is concerned, he has admitted in the plaint that a notice of demand was served on him by the Punjab State on 23rd January 1958. It is undisputed that the liability of the surety is coextensive with that of the principal debtor and if the amount in dispute could be recovered as arrears of land revenue from the principal debtor, it could also be recovered in the same manner from his surety. Besides, the following provisions of the Punjab Land Revenue Act, 1887, clearly indicate that the Punjab State was wed within its rights to recover the amount in dispute from the surety as arrears of land revenue after having served a writ of demand on him-

S.66. A statement of account certified by Revenue, officer shall be conclusive proof of the existence of an arrear of land revenue, of it''s amount and of the person who is the defaulter.

S.67. Subject to the other provision of, this Act, an arrear of land revenue may be recovered by any one or more of the following processes, namely:-

(a) by service of a writ of demand on the defaulter;

* * *

S.98. In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely:-

* * *

(e) sums payable to the Government by a person who is surety for the payment of any of the foregoing sums or of any other sum recoverable as an arrear of land revenue.

* * * *

Consequently, the amount in question could be recovered from the plaintiff as arrears of land revenue.

10. It was then contended by the learned counsel for the plaintiff-respondent that even if his client was a surety and the amount in dispute could be recovered from him as arrears of land revenue, he could not be held liable because the surety, in the present case, had been discharged by the inaction of the Punjab State inasmuch as they allowed the Security to be impaired by not getting the sale of the printing press made in favour of Amar Nath, respondent No. 3, set aside in spite of the fact that the Punjab Government knew about this transaction. Reliance in this connection was placed on the provisions of section 139 of the Indian Contract Act, 1872.

11. After hearing the counsel for the parties, I am of the view that there is no force in this contention. Section 139 is in the following terms-

If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy or the surety himself against the principal debtor is thereby impaired, the surety is discharged.

A bare reading of this section would show that before the surety is discharged, the following two conditions must be satisfied-

(1) the creditor must do an act which is inconsistent with the rights of the surety;

or

he must omit to do any act which his duty to the surety requires him to do; and

(2) by the action or the inaction of the creditor, referred to in ground (1), the eventual remedy of the surety himself against the principal debtor is impaired.

The provisions of section 6(4) of the East Punjab Refugees Rehabilitation (Loans and Grants) Act (2 of 1948) are as under-

S.6. (4) Any plant or machinery which the borrower purchases with or with the aid of the loan advanced to him shall, until the. loan be repaid in full, remain the sole and absolute property of the State Government and any transfer thereof or assignment of any right, title or interest therein or the creation of any mortgage, encumbrance or any other charge there on by the borrower shall be void against the State Government, unless it has been made with the previous Written consent of the Controlling Authority.

Since the sale of the printing press by Manohar Lal, respondent No. 2, in favour of Amar Nath, respondent No. 3 was not made with the previous written consent of the Controlling Authority, the same is void against the Punjab State. It is not proved on the record that the appellant, in any way, was instrumental in effecting this transaction. As a matter of fact, on coming to know that the loanee had sold the press without obtaining the pet mission of the Controlling Authority and had, thus, contravened the conditions on which the loan was granted to him, the appellant declared the loan as immediately recoverable in full. The loanee was then called upon to make its payment, but in spite of best efforts, no clue of his whereabouts could be found out. Thereupon, the Deputy Commissioner, Hoshiarpur, in order to secure the Government loan, wrote to the Deputy Commissioner, Jullundur, vide memorandum No. 599/RC(U), dated 11th June, 1955, (Exhibit D.1), requesting him to seal the press, which had by then been installed in Jullundur by respondent No. 3. Correspondence was than exchanged between the Deputy Commissioner, Hoshiarpur, and the Deputy Commissioner, Jullundur, regarding the sealing of this press (vide Exhibits D.2 to D.4). On 27th September, 1955, the Deputy Commissioner, Hoshiarpur, sent memorandum No. 1924/RC(U) to the Commissioner, Relief and Rehabilitation, Punjab, Jullundur (vide Exhibit D.5) for passing necessary orders with regard to the sealing of the press. On the same date, another memorandum No. 1925/RC(U) was sent by him to the Deputy Commissioner, Jullundur (vide Exhibit D.6), informing him that the case had been referred to Government for obtaining their orders. In the meantime, however, he was requested to keep a vigilant eye on the press so that the unauthorised occupant might not sell or mortgage the machinery. On 1st December, 1955 the Under Secretary to Government, Punjab, Re-habilitation Department, sent memorandum No. 13128/Reh. (U) to the Deputy Commissioner, Hoshiarpur (Exhibit D.7), informing him, that the matter was referred to the Legal Remembrance to Government, Punjab, who had advised that the press could not be sealed. If, however, he was unable to recover the loan from the sureties, a civil suit for the recovery of the property purchased by the loanee with the aid of the loan might be brought against the person, who was in. possession of that property. Thus, it would be seen that the appellant was taking the necessary steps for safeguarding the security. The sale of the printing press made in favour of respondent No. 3 is, under the law, void against the State Government. The surety, after payment of this Joan to the appellant, would be invested with all the rights which the appellant had, against the loanee (vide section 140 of the Indian Contract Act). Consequently, the eventual remedy of the surety against the principal debtor is not impaired in the present case and the surety is not thus-discharged. It is undisputed that the liability of the plaintiff as surety is co-extensive with that of the principal debtor and the appellant could, therefore, recover this amount from the surety.

12. It may be mentioned that the learned counsel for the appellant, submitted that the civil Courts had no jurisdiction to try the present suit. Since the plaintiff''s suit is being dismissed, it is not necessary to decide this question.

In view of what I have said above, I would accept this appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court, in the circumstances of this case, however, I would leave the parties to bear their own costs throughout.