
(1933) 10 PAT CK 0019
In the Patna High Court

Traders Co-operative Bank Ltd.

APPELLANT

Vs

A.K. Mallick and Others

RESPONDENT

Date of Decision : 17-10-1933

Acts Referred:

Citation : AIR 1934 Patna 52(1)

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—The petitioner, the Traders Co-operative Bank, Limited, sued on the allegation that defendant 3 had borrowed Rs. 300 from the Bank and that defendants 1 and 2 had stood sureties for the debt. The Bank alleged that defendant 3 had paid only Rs. 36 and that the amount due for principal and interest was Rs. 442. Before instituting the present suit the petitioner had taken action against defendant 3, the principal debtor, under the Co-operative Societies Act. The amount awarded to him was less than he had claimed and less than his claim in the present suit. The amount of Rs. 36 paid by defendant 3 was in part satisfaction of that award. The petitioner alleges that he had been unable to secure further payments from defendant 3 who has absconded.

2. The learned Small Cause Court Judge has dismissed the plaintiff's suit on the ground that as the award has the force of a decree against defendant 3, the petitioner is not entitled to obtain another decree against defendants 1 and 2.

It is contended on behalf of the petitioner that the cause of action against the sureties is different from the cause of action against the principal debtor and that as the liability of debtor and sureties is joint and several, the present suit is not barred by reason of the existence of the award. On behalf of the opposite party reliance was placed on the decision in King v. Hoare 153 E.R. 206 in which it was held that a judgment (without satisfaction) recovered against one of two joint debtors is a bar to an action against the other. It is to be observed however that it was expressly stated in that case that the position is otherwise where the debt is joint and several.

3. The learned advocate for the opposite party maintains that the present case furnishes an illustration of the impracticability of holding that a decree obtained against the principal debtor does not bar a suit against the surety. He points out that in the proceeding under the Co operative Societies Act the amount due from the principal debtor has been found to be less than that claimed by the plaintiff and from this he argues that if the plaintiff succeeded in the present suit in obtaining the amount which he claimed, he would not be able to recover from the principal debtor the amount which he himself has to pay. The difficulty is not as great as suggested.

4. In effect the contract between the sureties and the creditor is that they will pay what is due from the debtor up to the limit agreed upon, in the event of the latter failing to fulfil his obligation. The amount that has been found to be due from the principal debtor has been determined by the award. The liability of the sureties therefore is limited to this amount. The suggested difficulty therefore does not present any insuperable obstacle to this question being decided in favour of the creditor.

5. Furthermore, the learned advocate for the petitioner argues with great force that his suit is maintainable unless it is barred by some provision of the law. No question of *res judicata* can arise in this case for the sureties could not have been impleaded in the proceeding resulting in the award. Had the creditor proceeded in the first instance by way of suit against both the principal debtor and the sureties and obtained a decree, that decree would have been executable either against the sureties or the principal debtor.

6. I can see no reason in principle why the obtaining of a decree against the debtor in a proceeding to which the sureties could not be parties should deprive the creditor of his remedy against the sureties. The order of the Court below must therefore be set aside and the case sent back for trial according to law.