

(1974) 09 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : CMP No. 432 of 1974 in Regular First Appeal No. 7 of 1970

Union of India (UOI) and Another

APPELLANT

Vs

Rajkumar Rajindera Singh and Another

RESPONDENT

Date of Decision : 11-09-1974

Acts Referred:

Registration Act, 1908 — Section 17(2)

Citation : (1974) 3 ILR HP 821

Hon'ble Judges : R.S. Pathak, C.J.; D.B. Lal, J.; C.R. Thakur, J

Bench : Full Bench

Advocate : B. Sita Ram, General, for the Appellant; H.S. Thakur, for the Respondent

Judgement

R.S. Pathak, C.J.—The respondent filed a suit against the State for a declaration that he was owner of the property specified in the plaint. The suit was decreed, and the State has filed an appeal. During the pendency of the appeal an order was made on December 14, 1970 directing sale of the mature forest trees situated in the property, and deposit of the sale proceeds in the State Bank of India, Simla. It appears that some trees were sold and the sale proceeds were paid over to the Registrar of this Court for depositing in the Bank. The respondent then applied for permission to withdraw Rs. 60,000/- out of the said amount and on May 10, 1974 this Court granted the prayer subject to the respondent furnishing security to the satisfaction of the Registrar for re-payment of that amount in case the appeal was allowed. The respondent filed a surety bond before the Registrar, and an objection has been taken by the learned Advocate General on behalf of the State that the surety bond requires to be registered under the Indian Registration Act and also that its terms are not properly framed so as to sufficiently bind the surety. The objection is now before us.

2. The surety bond has been executed by one Surat Ram Jhingta and recites:

"I do hereby stand surety for the respondent-Raj Kumar Rajindera Singh and

undertake that in case the said R. F. A7/70 pending in the Hon''ble Court is decided against him, the said respondent who holds movable and immovable property within the District Simla will deposit the said amount in the Hon''ble Court or such amount as the Hon''ble Court may deem fit and proper as and when directed to do so and in case of his making default therein I hereby undertake for myself and also for and on behalf of my heirs, successors, executors, assigns and representatives that I shall be liable to pay the said amount of Rs. 60,000/- (Sixty Thousand) or such lesser amount as the Hon''ble Court shall deem fit and proper and in case of my failure to do so I agree that the Court may recover the same from my properties, (both immovable and movable) situate anywhere in India."

3. In our opinion the position approximates to that obtaining under Order 41 Rule 6 of the Code of Civil Procedure, under which on execution of the decree being taken out during the pendency of an appeal against the decree the Court may require security to be taken from the plaintiff decree-holder for restitution of any property which may be or has been taken in execution of the decree.

4. The first question is whether the surety bond needs to be registered under the Indian Registration Act. There is a sharp cleavage of opinion between the courts in India on this question. One view is expressed in *Kasturi Lal v. Goverdhan Dass* AIR 1934 Lah 138 (FB), where a Full Bench of the Lahore High Court has laid down that no registration is required. The other has been enunciated in *Bishnath Sahu Vs. Prayag Din and Another*, where a Division Bench of the Allahabad High Court has held that registration is mandatory. In our judgment, the view taken by the Lahore High Court should be preferred. The learned Judges of the Lahore High Court approved of the view taken by the Bombay High Court in *Jayappa Lokappa Narsinganawar Vs. Shivangouda Dyamangouda Patil*, where it was pointed out that documents of this kind are not executed between the decree holder and the surety, but between the surety and the Court and are steps in judicial proceedings and therefore, they fall within the purview of the broad general principle laid down by the Privy Council that proceedings of the Court do not require registration. In this regard reference was made to the opinions of the Privy Council in *Bindesri Naik v. Ganga Saran Sahu*. ILR (1898) All 171 (PC), *Pran Lal Annee v. Lakhshmi Annee* ILR (1899) Mad 508 and *Hemanta Kumari Debi v. Midnapur Zamindari Co.* AIR 1919 PC 79 . It is apparent, as the learned Judges observed, that it is not the execution of the bond which affects the transfer of rights in the property described therein so as to make it available for the satisfaction of the decree which might be passed by the appellate court, but it is the order of the Court accepting the bond which creates those rights. The bond does not become operative so long as it is not accepted by the Court and that would be so even if the bond has been duly registered immediately after its execution, It was pointed out that if by reason of the insufficiency of the security or on some other ground the court chose not to accept the bond, it would remain a wholly ineffectual and inoperative document despite the fact that it contained all the terms of the transaction and had been duly executed and registered.

Accordingly, as it is the order of the Court accepting the bond which makes it an operative document the case would fall within the provisions of Sub-section 2 (vi) of Section 17 of the Indian Registration Act. The bond will thus be excluded from the necessity of registration required, by Section 17 (1) of the Act. This view has been followed by the Nagpur High Court in AIR 1947 26 (Nagpur) by the Madhya Pradesh High Court in Hajjiwakhan v. Gulabchand Harakchand AIR 1961 Madh Pra 2 by the Mysore High Court in B. Rama Bhatta v. B. Kodandarama Bhatta AIR 1963 Mys 332 and by the Delhi High Court in Label Art Press and Another Vs. Indo European Machinery Co. (P.) Ltd.,

5. The opposite view has been taken by the Allahabad High Court in Bishnath Sahu Vs. Prayag Din and Another, where the learned Judges have observed that the order of the Court accepting the bond amounts merely to this that the property tendered as security is deemed to be sufficient, and that it approves the substance and not the form of the security. The same view has been taken by the Kerala High Court in R.M. Palat Vs. P.A. Nedungadi, With great respect to the learned Judges who decided those cases, we are unable to agree. The learned Judges omitted to consider that until the court passes an order accepting the bond, the bond does not become operative.

6. In our judgment, the bond does not require registration under the Indian Registration Act.

7. Turning to the second question, that is to say, the terms in which the bond has been framed, we are of opinion that the bond should specify clearly the particulars of the property of the surety which is being brought within the scope of the bond. It should also recite in clear terms that the property is being pledged by the surety. Reference may be made to Form No. 160 prescribed in Part A-I of Volume VI of the Rules of Court.

8. The objection raised by the learned Advocate General is disposed of accordingly.

9. The respondent will furnish a fresh surety bond in accordance with the observations made above.

10. The case will now be placed before the Registrar of this Court for taking further steps in the matter.