The Nellore Co-operative Urban Bank Ltd. by Its Secretary, Mr. V. Venkatappayya Vs. Akili Mallikarjunayya

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Court : Chennai

Decided On : Sep-02-1947

Reported in : AIR1948Mad252; (1947)2MLJ487

Appellant : The Nellore Co-operative Urban Bank Ltd. by Its Secretary, Mr. V. Venkatappayya

Respondent : Akili Mallikarjunayya

Judgement :

Patanjali Sastri, J.

1. This second appeal was heard by Rajamannar, J., in the first instance but the learned Judge by his order dated, the 12th March, I947 referred the case to a Division Bench as it raised important points on which there is no direct authority.

2. The facts are not in dispute and may be briefly stated. One Yarramreddi Balakrishna Reddi borrowed Rs. 500 on the 20th May, 1932, from the Nellore Cooperative Urban Bank, Ltd. (hereinafter called 'the Bank'), and the respondent herein guaranteed the due repayment of the debt. As the debt was not, however, duly paid, the bank preferred a claim under Section 51 of the Madras Co-operative Societies Act (VI of 1932) and the claim having been referred to an arbitrator, an award was passed against both Balakrishna Reddi and the respondent on the 13th July, 1936.

3. The award runs thus:

That the defendants 1 and 2 do pay plaintiff Rs. 469-14-1 with interest thereon at 1 and 1 1/5 pies per rupee per mensem from this date until realisation.

In 1939 Balakrishna Reddi applied under Section 4 of the Madras Debt Conciliation Act (XI of 1936) to the Debt Conciliation Board of Nellore (hereinafter referred to as 'the Board'), for the settlement of his debts including the one due to the bank under the award aforesaid. The bank was served with a notice under Section 10(1) of that Act calling upon it to submit a statement of debts owed to it, but it failed to do so within the time fixed, with the result that the Board in its, proceedings dated the 21st April, 1939, recorded that the debt due to the bank 'will be deemed to have been discharged.' The bank took no steps to get the debt 'revived' under Sub-section (3) of Section 10.

4. The bank attempted to recover the amount under the award from the respondent by filing an execution application on the 12th August, 1940, before the Deputy

Registrar of Co-operative Societies, Nellore, for attachment and sale of certain, moveable properties of the respondent, and it was sent to the sale officer, North Nellore, for effecting the attachment and sale. Thereupon the respondent preferred a 'claim petition' before that officer on the 9th June, 1942, objecting to the execution of the award against him on the ground that inasmuch as the liability of the principal debtor Balakrishna Reddi had been extinguished as a result of the proceedings before the Board and as he was only a surety, there was no subsisting award of which execution could be ordered against him. The sale officer by his order dated the 19th December, 1942, upheld the objection and allowed the ' claim petition '. The bank thereupon instituted the suit in the District Munsiff's Court, Nellore, out of which this appeal arises for a declaration that it is entitled to proceed against the respondent for recovery of the amount due under the award dated the 13th July, 1936, and that the order of the sale officer dated the 19th December, 1942, is illegal. The District Munsiff decreed the suit holding that the proceedings before the Board did not affect the liability of the respondent under the award and that the order of the sale officer was therefore contrary to law. On appeal, however, the District Judge of Nellore held that the statutory discharge of the debt of the principal debtor Balakrishna Reddi operated as a discharge of the liability of the surety, the respondent, as well, and, accordingly,, he dismissed the suit. Hence this second appeal.

5. It is manifest that under the terms of the award an unconditional liability to pay the amount therein mentioned was imposed on the respondent as well as on the principal debtor on an equal footing. Though under his contract of guarantee his obligation was only dependent on Balakrishna Reddi's default, such default having occurred before the bank preferred its claim the respondent had become actually liable for the debt, and the award was passed on that footing directing both Balakrishna Reddi and the respondent to pay the sum found due. Under Section 57 -A of the Co-operative Societies Act the Registrar or a duly empowered subordinate officer is entitled to recover any amount due under an award together with the interest, if any, due thereon by the attachment and sale of ' property of the person against whom such award has been obtained or passed.' Rule 15(7)(a) of the Rules framed under the Act provides that on an application to the appropriate officer the award shall be enforced as provided in Rule 22, and the latter rule contains elaborate provisions for the execution of the award by attachment and sale of the property of the ' defaulter ' which expression includes any person against whom an award has been obtained. Prima facie, therefore, the respondent is a defaulter, and by attachment and sale of his property the bank is entitled to recover the amount due under the award from him. The question: is whether Section 10, Sub-section (2) of the Debt Conciliation Act relied on by the respondent in the Court below or Section 134 of the Indian Contract Act which his learned counsel Mr. Ramachandra Rao relied on before us as an additional ground of exoneration operates to effect a valid discharge of the respondent's liability under the award.

6. Section 10(2) provides:

Subject to the provisions of Sub-section (3), every debt of which a statement is not submitted to the board in compliance with the provisions of Sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

It was argued on behalf of the respondent, and the argument found favour with the learned District Judge, that the debt due by the principal debtor is the foundation of the surety's liability to the creditor who, in enforcing his remedy against the surety, is

enforcing that debt. But as there has been a statutory discharge of that debt ' for all purposes and all occasions ', the debt cannot be deemed to exist for the purpose of its being enforced against the surety. Reliance was placed on the decision of a single Judge of the Nagpur High Court in Babu Rao v. Babu Manaklal I.L.R. (1939) Nag. 175 which no doubt supports the argument. The learned Judge (Niyogi, J.) says:

Where the creditor seeks to enforce the debt against the surety, the latter is legitimately entitled to ask Is the principal debtor himself liable to you? If not, he has committed no default and you cannot compel me to discharge an obligation, which has no existence. If, on the other hand, I pay you, how can I recover it from the principal debtor whose liability, the debt itself having vanished, has ceased? ' When the surety seeks his remedy against the principal debtor, he does it in respect of the same debt as the one owed by the principal debtor to the creditor. It is clear that the debt must exist although the creditor may choose to enforce his remedy against the surety only to the exclusion of the principal debtor.

We consider that these observations are too wide. The liability of the surety postulates the existence of the liability of the principal debtor only in the sense that the creditor should not by any agreement, act or omission of his destroy that debt. If he does so, the surety's liability is gone (Section 134 of the Indian Contract Act). But if the debt of the principal is discharged by operation of law it has been held that the surety is not discharged (see Subramanian Chettiar v. Batcha Rowther : AIR1942Mad145 . As, however, the discharge of a debt under Section 10(2) of the Debt Conciliation Act is the legal consequence of the creditor's omission to submit a statement of debts in compliance with the provisions of Sub-section (1), the surety will also be discharged, not by the operation of Section 10(2) of the Debt Conciliation Act which by itself does not affect the remedy of the creditor against the principal debtor but by virtue of Section 134 of the Indian Contract Act. The real and only question, therefore, is whether Section 134 of the Indian Contract Act is applicable to a case where, as here, the creditor has obtained a decree against both the principal debtor and the surety. We are clearly of opinion that it is not. This is, however, not to say that once a decree is passed against the principal debtor and the surety, all the provisions of the Indian Contract Act defining the rights and liabilities of the parties to a contract of guarantee cease to have operation. The effect of a decree, and the award passed by a competent authority under a special statute such as we have here stands on the same footing, is to determine conclusively the rights and liabilities as between the decree-holder and the judgment-debtor, and such rights and liabilities cannot be altered save by procedure known to law such as appeal, review, etc., or by special statutory provisions such as Section 10(2) expressly affecting decrees. The decree must rule with regard to matters, which are the subject of adjudication, but all outside the scope of the adjudication is still governed by the general law. If, for instance, the decree directs the judgment-debtors jointly and severally to pay unconditionally a certain sum of money to the decree-holder, the liability as determined by the decree cannot thereafter be modified by anything, which the decree-holder may do or omit to do. Accordingly it was held in In re A Debtor (1913) 3 K.B.11 that the rule of law that time given to the principal debtor discharges surety (of. Section 135 of the Indian Contract Act) did not apply when the time was given after judgment for the debt had been recovered by the creditor against both the principal debtor and the surety. Phillimore, J., explained the ground of the decision thus:

The original debt has now become merged in the judgment and all the defendants

against whom judgment has passed stand on an equal footing. Each judgment-debtor is liable to pay to the judgment-creditor the whole of the debt.... There is no question as to one judgment-debtor being liable to a greater extent than the others; as far as the judgment-creditor is concerned they are all equally liable.

The learned Judge pointed out that ' the law is well and concisely put in Jenkins v. Robertson (1854) 2 Drew. 351 : 61 E.R. 755' where Kindersley, V.C., said:

The subsequent dealing with the principal debtor does not operate to discharge the surety from a liability under which he is, no longer as a surety, but under the decree.

The same principle must rule out the application of Section 134 of the Indian Contract Act to the present case, and we entirely agree with the tersely expressed view of Horwill, J., in Meenakshi Sundaram Chetti v. Velambal Ammal (1944) 1 M.L.J. 301 where the learned Judge said:

We are not, after a joint decree has been passed against principal and surety, any longer dealing with a principal and a surety but with a joint judgment-debtor.

Rajamannar, J., was apparently inclined to doubt the correctness of this view. He observed in his referring order:

The learned Judge does not cite any authority for the position, nor is it easy to understand the full implications of the learned Judge's statements. Does it mean that once a decree is passed against a principal debtor and a surety none of the rights and obligations laid down from Section 134 onwards applies to them? Does it mean for instance that a surety on satisfaction of decree is not entitled to the securities which the creditor had as against the principal debtor If it is said that the rights and liabilities of the parties under the contract of surety ship merge in the decree, is it tantamount to saying that they have ceased to exist?

As we have already observed, it is only those rules of law which govern the creditor's rights against principal debtor and surety that cease to operate so far as' to affect such rights after they are determined and declared by a decree for they alone are the subject of adjudication. Section 135 of the Indian Contract Act is one such rule and Section 134 is another. But, as the decree does not purport to determine the rights and liabilities as between the principal debtor and the surety these will remain unaffected, and the provisions, such as Section 141 which govern such rights and liabilities will operate in full force.

7. The decision in Zibal v. Rqinachandra (1939) N.L.J. 402 to which our attention has been drawn exactly covers the present case. There Niyogi J., refused to apply Section 134 to the case of a surety who resisted execution of a decree passed against him and the principal debtor, on the ground that the decree debt was discharged against the principal debtor by reason of the decree-holder having failed to submit a statement of his debt under Section 8(2) of the Central Provinces Debt Conciliation Act which is in the same terms as Section 10(2) of the Madras Act. Distinguishing his earlier decision in Babu Rao v. Babu Manaklal I.L.R. 1939 Nag. 175 to which reference has been made already, the learned Judge observed,

His rights and liabilities as a surety were replaced by those created by the decree. Consequently he is not entitled to invoke Section 134 of the Contract Act.

Mr. Ramachandra Rao placed strong reliance on the decision in In re E.W.A. a debtor (1901) 2 K.B. 642 where a creditor, who had obtained judgment against two sureties, jointly and severally, entered into an agreement with one of them which was held to have the effect of accord and satisfaction, and then presented a bankruptcy petition against the other for half of the judgment debt and it was held that the rule of law that the release of one of two joint debtors under a joint and several obli-gation operates as a release of the other applies as much to a judgment debt as to any other obligation. This decision is not opposed to the principle laid down In re A Debtor (1913) 3 K.B. 11. for the rule referred to in the decision is under the English law one of general application to all joint debts whether the joint obligation arises on a judgment or other security. The decision is referred to and distinguished on that ground by Horridge, J. in the later case cited above. In Rowlett on Principal and Surety also the decision in In re E.W.A. a debtor (1901) 2 K.B. 642 is referred to as proceeding ' on the ordinary principles applicable to judgments.' Our attention was drawn to the remarks on that case in Moolchand v. Alwar Chetti I.L.R.(1915) .Mad. 548 as indicating that the case was regarded as laying down the proposition that rights arising under an original contractual liability cannot be enlarged or curtailed by the fact that a liability under a judgment has been substituted for the original liability. We do not read the decision in In re E.W.A., a debtor (1901) 2 K.B. 642 in that way and cannot regard it as an authority laying down generally that all incidents of a contractual liability continue to be applicable even where it is merged in a decree.

8. It was next urged that inasmuch as the principal debtor's liability has been discharged under Section 10(2) of the Debt Conciliation Act, the respondent would have no right of reimbursement, as the existence of the debt is a condition of such right, and that it would be anomalous and unjust to the respondent to enforce his liability under the award in such circumstances. We fail to see how the respondent's right of reimbursement against the principal debtor can be regarded as a condition of the bank's right as a decree-holder to enforce the unconditional liability of the respondent under the award. Apart from this, the argument proceeds on a misconception. Under Section 145 of the Contract Act, the respondent would, on payment to the bank, be entitled to recover the amount from the principal debtor, and the discharge of the latter's liability to the creditor cannot affect his obligation under the implied covenant to indemnify the respondent. It was then said that if the bank could recover the amount due under the award from the respondent and the latter in his turn could recover it from the principal debtor by way of reimbursement, the bank would, in effect, be recovering indirectly the debt which the statute says ' shall be deemed for all purposes and all occasions to have been discharged ', and the object which the statute has in view would be defeated. We see no force in this argument. The liability of the principal debtor to pay to the respondent whatever sum the latter has rightfully paid under the guarantee will not arise until the bank has recovered from the respondent the amount due under the award, and such contingent and future liability was obviously not within the purview of the proceedings under the Debt Conciliation Act, and cannot be affected by the discharge of the principal debtor's liability to the bank under Section 10(2).

9. Lastly Mr. Ramachandra Rao raised a new point with regard to the competency of the Civil Court to entertain a suit of this kind. He contended that the claim of the bank, which was a society, registered under the Madras Co-operative Societies Act, to recover, the amount due under the award from the respondent who was a member of the society was a ' dispute ' within the meaning of Section 51 of that Act, and could only be referred to the Registrar for decision as provided in-that section, and that the

jurisdiction of the Civil Courts to deal with it was barred. We cannot accede to this contention. It will be recalled that the award in question was itself passed on a reference to an arbitrator under that section, and it was sought to be executed, as already stated, under the special procedure prescribed by the rules framed under the Act. Rule XXII, Sub-rule 17 Clause (a) provides for investigation of claims and objections to attachment of property by the sale Officer and Clause (c), under which the present suit was instituted, provides for the institution of a suit by the party against whom an order has been made by the sale Officer. The argument now is that the respondent wrongly preferred his objection to the execution of the award before the sale Officer under rule XXII, Sub-rule 17(a) which relates only to claims and objections to attachment of property, and that objections to the execution of the decree do not fall within its purview, with the result that rule XXII, Sub-rule 17(c) is inapplicable to the-case. Apart from the question as to whether the respondent is not stopped from contending that the sale officer before whom he himself preferred his objection had no jurisdiction to deal with it, the plain implication of that contention is that the sale officer's order against the bank was ultra vires with the-result that it can be challenged in a civil Court, although the special right of suit under rule XXII, Sub-rule 17(c) may not, on a correct interpretation of Clauses (a) and (c) of that sub-rule be available to the bank in the circumstances of the case. We therefore overrule this objection.

10. The appeal is allowed and the decree of the lower appellate Court will be set aside and that of the trial Court restored with costs here and in the Court below. Advocate's fee Rs. 75.