

A

AMAR CHAND

v.

BHANO AND ANR.

DECEMBER 1, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Code of Civil Procedure, 1908 :

Sections 47, 145 and Order 21:

C

Surety for a certain sum including mesne profits—Compromise between decree-holder and principal judgement debtor without reference to surety— Whether mesne profits could be recovered from the surety—Held: No.

D

The appellant had undertaken as a surety on behalf of the defendant for a sum of Rs.10,000 including *mesne* profits payable by the defendant to the decree-holder. Subsequently the decree holder compromised with the principal judgement debtor and a compromise was recorded without reference to the surety.

E

In this appeal, the appellant raised the question as to whether the amount undertaken by him towards *mesne* profits as surety could be recovered from him.

Allowing the appeal, this Court

F

HELD : 1.1. A conjoint reading of the clause under S.145 C. P. C. do clearly indicate that when a person has undertaken as a guarantor or a surety for the due performance of a decree or any part thereof, to the extent of the undertaking or guarantee, the guarantor or the surety is personally liable for due performance of the liability of the judgement debtor to the decree holder and the later is entitled to proceed against him in the manner laid down in s.145. But when the decree holder himself had comprised with the principal debtor and had discharged himself from the liability to the performance of the decree, in law it must be a full satisfaction of the decree under section 47 and the relevant rule in order 21 CPC. Thus it relieves the guarantor or surety from the obligation with the decree holder and the decree holder cannot seek any further remedy against the surety. [254 A to D]

H

1.2. The liability of the guarantor or surety is co-extensive with the judgement debtor. The compromise entered by the decree holder binds himself by his conduct and releases the guarantor or surety from the liability undertaken in the guarantee or surety bond for due performance of the decree. In case the compromise was with the consent of the guarantor or surety compromise with the principal judgement debtor is for other liability other than the extent of the liability undertaken by the guarantor or surety, in that event the guarantor or surety is not relieved from his liability for due performance of the decree. [254 E]

1.3. In the instant case, the compromise was without reference to the appellant. The appellant must be deemed to be relieved from the liability from surety bond and the decree holder no longer is entitled to proceed against the appellant to recover Rs. 10,000 from the appellant. [254 F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9225 of 1994.

From the Judgment and Order dated 29-1-90 of the Punjab and Haryana High Court in C. R. No. 3040 of 1989.

Anant Palli and E. C. Agarwala for the Appellant

The following Order of the Court was delivered

Leave granted.

Though the respondents have been served, they are not appearing either in person or through counsel. We have heard the counsel for the appellant. Admittedly, the appellant had undertaken as a surety, on behalf of the defendant Dia Singh, for the due performance of the decree for a sum of Rs.10,000 including *mesne* profits payable by Dia Singh to the Decree holder. By the subsequent conduct, the decree holder compromised with the principal judgement-debtor and a compromise was recorded in that behalf without reference to the surety.

The question, therefore, is whether the amount undertaken by the appellant towards *mesne* profits as surety could be recovered from him. Section 145 of C. P. C. provides thus :

“Where any person has furnished security or given a guarantee

- A (a) for the performance of any decree or any part thereof.....
the decree or order may be executed in the manner herein
provided for the execution of the decrees, namely,
- (i) if he has rendered himself personally liable, against him to
that extent.... and such person shall be deemed to be a party
- B within meaning of section 47.”

- A conjoint reading these clause do clearly indicate that when a person
has undertaken as a guarantor or a surety for the due performance of a
decree or any part thereof, to the extent of the undertaking or guarantee, the
guarantor or the surety is personally liable for due performance of the
- C liability of the judgement debtor to the decree holder and the later is entitled
to proceed against him in the manner laid down in s.145. But when the
decree holder himself had compromised with the principal debtor and had
discharged himself from the liability to the performance of the decree, in
law it must be a full satisfaction of the decree under section 47 and the
relevant rule in Order 21 CPC. Full satisfaction recorded in that behalf
- D relieves the guarantor or surety from the obligation with the decree holder
and the decree holder cannot seek any further remedy against the surety.
The liability of the guarantor or surety is co-extensive with the judgement
debtor. The compromise entered by the decree holder binds himself by his
conduct and releases the guarantor or surety from the liability undertaken in
the guarantee or surety bound for due performance of the decree. In case
- E the compromise was with the consent of the guarantor or surety
compromise with the principal judgement debtor is for other liability other
than the extent of the liability undertaken by the guarantor or surety, in that
event the guarantor or surety is not relieved from his liability for due
performance of the decree. Such is not the case here. The compromise was
without reference to the appellant. The appellant must be deemed to be
- F relieved from the liability from surety bond and the decree holder, no
longer is entitled to proceed against the appellant to recover Rs. 10,000
from the appellant. The High Court is clearly in error in the impugned order
made in C. R. N. 3040/89 dated January 29, 1990 dismissing his revision.
The appeal is allowed. The execution petition shall stand closed as full
satisfaction must be deemed to have been recorded. No Costs.

G

G. N.

Appeal allowed.