

Wali Mohammad Vs. Ganpat and anr.

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Court : Allahabad

Decided On : May-23-1930

Reported in : AIR1931All243

Appellant : Wali Mohammad

Respondent : Ganpat and anr.

Judgement :

Sen, J.

1. Ganpat and another obtained a money decree from the Court of Small Causes against one Baldeo for Rs. 144 and costs on 3rd August 1928. The decree-holders applied on 2nd August 1929 for execution of their decree by-arrest of the judgment-debtor. The judgment-debtor was arrested and brought in Court on 3rd August 1928. He asked for time to pay the decretal amount. The Court ordered him to produce a surety to guarantee his appearance in Court on the various and several dates when his attendance might be required. Wali Mohammad, the applicant, undertook to become a . surety for him and executed a surety bond on 3rd August 1928. He stipulated as follows:

I, the executant, agree to become surety for , the judgment-debtor and covenant that I shall produce the judgment-debtor in Court on each and every occasion when his attendance is called for by the order of the Court.

2. The Court directed that a month's time be allowed to the judgment-debtor to pay up the decretal amount, and the surety was directed to produce the judgment-debtor in Court on 3rd September 1929.

3. The surety appeared in Court, along with the judgment-debtor on 2nd September 1929, when the judgment-debtor deposited Rs. 15 in part payment of the decree and prayed for further time up to the month of Aghan. The surety applied to the Court to be released from his contract of guarantee and protested that no further time should be allowed to the judgment-debtor. The Court refused the: prayer of the surety. It did not discharge him from his liability, granted time to the judgment-debtor for payment of money up to 21st October 1929 and directed that the surety should be produced , in Court on that date. On 21st. October 1929, the judgment-debtor did not appear in Court, nor did he pay the balance of the decretal amount. The surety appeared and submitted that the judgment-debtor could not be prevailed upon by him to attend the Court. Thereupon the Court directed that the surety should be sent to the civil jail for a period of six months for non-payment of the decretal amount. This order has given rise to the present application for revision. The judgment of the Court below is sketchy and unsatisfactory. The crucial question in the case was whether the contract entered into by Wali Mohammad was one of continuing guarantee or otherwise. In order to determine this question the Court ought to have examined the terms of the contract. The Court ought to have addressed itself to the further question whether the contract came within the definition of a continuing guarantee as given in Section 129, Contract Act. If the Court held that it was a continuing guarantee, a further question remained to be answered as to whether the guarantor could or could not revoke his guarantee as to future transactions by giving the necessary notice to the creditor. These vital questions have been completely ignored and by an arbitrary judgment the surety has been directed to be detained in the civil prison for a period of six months. One cannot withhold the feeling that : the liberty of the King's subject has been trenched upon by the Court below most unreasonably, and, I may add, almost oppressively.

4. It is contended that the contract entered into by the surety was of the nature of a 'continuing guarantee' within the meaning of Section 129, Contract Act. The

guarantee was evidently given for the performance of a series of acts whenever they might happen. It extended to each and every occasion when the presence of the judgment-debtor was to be directed for fulfilment of his obligation to pay the decretal amount in whole or in part. Under Section 130, Contract Act, a continuing guarantee may at any time be revoked by the surety, as to future transactions by notice to the creditor. The Court below is of opinion that, in the absence of an especial stipulation in the contract of guarantee reserving to the guarantor a right of revocation, the said right cannot be exercised. If the contract be one of Continuing guarantee, as I hold it to be in the present case, it can be revoked by the guarantor as to future transactions by notice to the creditor. The fact that the revocation took place a day before the date which had been fixed for the appearance of the judgment-debtor in Court does not in any way militate against the right of the guarantor to revoke the guarantee as to future transactions. The surety under the contract was bound to produce the judgment-debtor in Court on 3rd September 1929. The surety was not prepared to be responsible for the appearance of the judgment-debtor in Court after the last mentioned date. He was quite within his rights to give a notice of a revocation of his contract with reference to any future date of attendance which might be fixed by the Court. The Court below has not considered the scope and effect of Sections 129 and 130, Contract Act, and has erred in holding that the surety was not competent to revoke the contract of guarantee with reference to future transactions. I am clearly of opinion that the order passed by the Court below, directing detention of the applicant in jail for a period of six months by reason of the non-appearance or in default of appearance of the judgment-debtor on 21st October 1929. is illegal and unjustified. I accordingly allow this application, set aside the order of the Court below and direct that Wali Mohammad be discharged at once.