

In Re: Dr. Avinas Chandra Banerji

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Court : Allahabad

Decided On : Jul-27-1931

Reported in : 140Ind.Cas.127

Judge : Sulaiman, C.J. and; Bajpai, J.

Appellant : In Re: Dr. Avinas Chandra Banerji

Judgement :

1. This is an application by the surety for Dr. P.D. Banerji who was at one time appointed an administrator of the State of his deceased father Dr. Abinash Chandra Banerji.

2. A preliminary objection is taken to the bearing of this application on the ground that there is no provision of law under which a surety can be discharged and the High Court has no jurisdiction to entertain such an application. Reliance is placed by the learned Counsel for the opposite party on the case of Kandhya Lal v. Manki 1 Ind. Cas. 143 : 31 A. 56 : 6 A.L.J. 19 : A.W.N. 1908 : 288 but in that case the learned Judges did not expressly lay down that they had no jurisdiction to direct that a surety be discharged. They certainly held that he could not of his own free will withdraw from his suretyship and they also remarked that there was no express provision in the Probate and Administration Act. But that case is no authority for the proposition that the High Court to which, the security bond is given has no power whatsoever to relieve the surety from all future liability. The case direct by in favour of the applicant is Raj Narain Mookerjee v. Ful Kumari Debi 29

C. 68 although it went to a length to which it is not necessary for us in this case to go. That case accordingly was not approved of by the Madras High Court in the case of In the matter of Arthur Gerald Norton Knight 5 Ind. Cas. 311 : 33 M. 373 : 7 M.L.T. 160. The case decided by their Lordships of the Privy Council in Debendra Nath Dutty, Administrator General of Bengal 35 C. 955 : 35 I.A. 109 : 10 Bom. L.R. 648 : 12 C.W.N. 802 : 14 Bur. L.R. 197 : 4 M.L.T. 21 : 18 M.L.J. 367 : 8 C.L.J. 94 (P.C.) is distinguishable because their Lordships merely held that the security bond given by the surety did not become void when the Letters of Administration were cancelled and that while they remained unrevoked, the grantee was to all intents and purposes administrator of the estate and for his acts and defaults as administrator the sureties were and remained responsible.

3. It seems to us that although it is true that a surety cannot claim as of right to be relieved of all liability by merely expressing his intention to do so either by notice or by a proper application to the court and although it is also true that the case of a surety whose security has been accepted by court, cannot, be treated as one falling under Sections 129 and 130 of the Indian Contract Act so as to entitle him to put an end of the guarantee at his will, yet that is quite a different thing from saying that the High Court to which the guarantee is given has itself no power to exonerate the surety from all liability for future transactions. It may well be that at the time when the surety furnished security, the administrator was honest and was believed to be capable of administering the estate in a proper way but he might subsequently become dishonest or might mismanage the estate, and so it would, be astonishing if there were no provisions of law which would give the surety remedy by way of objecting to the court and asking to be relieved. He cannot merely sit idle and watch the administrator committing the waste and misappropriation, knowing fully well that the liability will be his own. Similarly there may be a case where the security bond becomes inoperative subsequently as where after a security bond is accepted by the court the surety becomes an insolvent. If the preliminary objection is sound, the court shall become functus officio after the earlier document was filed, and would be, unable to direct a fresh security to be filed in another surety. It seems to us that when the guarantee or undertaking is given to the Court itself, there is nothing to prevent the court if satisfied, when good cause is shown from cancelling that undertaking. In the

present case the Letters of Administration were subsequently revoked because it was found that the administrator had omitted to bring to the knowledge of the court certain facts relating to a will of the deceased which had been said to remain in big possession at the moment of revocation, and the administrator ceased to be liable from the administration of the estate. We think that this is a sufficient ground for the surety to be relieved from all further liability from a date when full accounts are rendered and the assets duly accounted for. In ordinary, assets of surety for appearance of the partita there is express provision in the Code of Civil Procedure for release. Similarly the surety, can under certain circumstances be relieved from further liability under the Contract Act. On the same analogy it would seem that we have full power to grant release if satisfied that there is ground for it, after providing safeguards for the heirs of the deceased. Such release however will only be operative after the date of the release and the surety will continue to be liable for any mal administration that might hereafter be discovered and which was committed prior to the date of release. We accordingly overrule the preliminary objection.

4. It, however, appears that the opposite party does not think that the account has been fully rendered. We accordingly allow three months' time for the oppose party to file written objections of which a copy should be supplied to the applicant accordingly.