

CASE LAW: DURGA PRASAD CHAUDHARY V DURGA PADA ROY

Punya Satheesh***INTRODUCTION**

Surety is a third person to a contract of guarantee according to the Indian Contract Act. Section 126 of the Indian Contract Act deals with surety. It states as follows, “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety.” Therefore, the surety is a person who undertakes to pay the creditor the debt if there occurs any default in the payment by the principal debtor. He is also known as a guarantor. Discharge of surety’s liability could be done in various ways. They are:-

1. Discharge by Revocation:- Section 130 of the Indian Contract Act¹ states that a continuing guarantee, i.e., a guarantee for a series of transactions, can be revoked if a notice is served to the creditor. However, revocation for a specific guarantee is not possible if the contract entered into has already been acted upon. And also could be revoked by death which will be explained in this project.
2. Discharge by variance in terms of the contract:- Section 133 of the Indian Contract Act, 1872 provides for the discharge of the liability of the surety, in case of material alteration or variance in the terms of the contract.
3. Discharge by Invalidation of a Contract:- A surety can be discharged of his liability if the contract of guarantee is invalidated. The Indian Contract Act provides for three circumstances under which a contract of guarantee can become invalidated. They are Guarantee by misrepresentation (Section 142), Guarantee by concealment (Section 143) and Failure of a co-surety to join a surety (Section 144).

The case law discussed in this paper is based on revoking a surety’s liability by death. Section 131 of the Indian Contract Act deals with revocation by death of surety. The section states that *“The death of the surety operates, in the absence of any contract to the contrary, as a*

*BA LLB, THIRD YEAR, THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES (NUALS) KOCHI.

¹ <https://indiankanoon.org/doc/883728/>

revocation of a continuing guarantee, so far as regards future transactions.” It states that by the death of the surety if there is no contract to the contrary, which means if there is no agreement made which states that even after the death, the surety will be liable for the default in the payment, it will be treated as the revocation by death. The case discussed is Durga Prasad Chaudhary v Durga Pada Roy, a Calcutta High Court decision of 1927 in which the legal representatives of the surety, after his death, were held liable under section 131 of the Indian Contract Act.

FACTS OF THE CASE

The case was an appeal that was filed against the order passed by the District Judge. The case was filed against a gomasta(defendant 1) who worked under the plaintiff, and the other defendants were the legal representatives of the deceased surety(Mahendra Nath Roy). The principal defendant was appointed to collect rents of the plaintiff's zamindari, and Mahendra Nath Roy held himself responsible for the due collection and payment by defendant 1 of those rents to the extent of Rs. 600 by a security bond executed by him. The surety bond was initiated on 27th March 1914, but the surety died on 10th August 1914. In this case, a decree was passed by the subordinate judge in 1923. According to this decree, the plaintiff was entitled to get from the principal defendant Rs. 2,000 odds for not accounting for money received on behalf of the plaintiff. The final decree was made by him against defendants 1 to 8. It was directed that if the money were not paid by defendant 1 within a month of the date of the decree passed, the plaintiff would be entitled to realize the money by the sale of the property hypothecated by the surety bond and if the entire sum was not realized by that, the balance was to be recovered from any property left by Mahendra Nath Roy in the hands of his representatives.

The legal representatives of the deceased surety appealed against this order in the District Court. The district court passed an order in favour of the plaintiffs in this case as he reversed the order. This order was passed by the provisions of section 131 of the Indian Contract Act and stated that “the death of the surety operated as a revocation of the contract of guarantee so far as regards all future transactions.” Also, the judge stated that in the lifetime of the surety, the principal debtor hasn't made any default, so the surety or his representatives cannot be held liable. If it was the opposite scenario, then the surety or his representatives could be held liable. It was this decree that made the other party appeal to the High Court of Calcutta.

SURETY BOND

I (Mahendra Nath Boy) shall continue to stand surety for him (Nagendra Nath Mukerji) and shall be bound by all the debts incurred by him. If the said Nagendra Nath Mukerji does not voluntarily pay up his debts and render account of the works done by him during his incumbency and make over the papers, or if he fails to do the same then I shall pay the same out of my own pocket, and if I do not pay it voluntarily you shall be at liberty to bring a suit against us and realize the amount by causing the mortgaged properties mentioned in the schedule below to be attached and sold at auction. To that the heirs and legal representatives of none of us both parties shall be entitled to raise any objection or plea. Our heirs and legal representatives shall be bound by the terms of this security bond in the same way in which we are bound by them.

ISSUES OF THE CASE

1. Whether the properties of the late Mahendra Nath Roy liable for the debt of defendant 1? If so, for what amount are the properties liable? What other relief, if any, is the plaintiff entitled to?

REASONING AND JUDGEMENT

From these provisions, it appears that the surety was obligated by the terms of the agreement he had with the plaintiff to stand in for defendant 1 on behalf of himself, his heirs, and his legal representatives. This contract contains the provision that the representatives of Mahendra Nath Roy would be liable for any act committed by defendant 1 while he was still employed, even after Mahendra Nath Roy passed away. This provision is contemplated under Section 131 of the Contract Act. The final clause of the bond, which I have already cited, was disregarded by the learned judge below in his ruling. Most likely, as a result of that omission, the defendants were granted a favourable judgment. Secondly, the appellant has contended that the defendants could not have appealed the final decree to the District Judge, raising the issue of defendant 1's liability for the time that he was employed following the surety's death, Mahendra Nath Roy.

According to the clause, the surety's death serves as the withdrawal of a continuous guarantee without a contract to the contrary. Therefore, it is necessary to examine each case's contract between the parties to ascertain whether or not the surety's death has revoked the surety's contract. If it is clear from the contract, either explicitly or through logical implication, that the surety's death would not be interpreted as a revocation of the agreement, then the guarantee

contract must be upheld even in the surety's absence. If no such provision is found in the surety's contract, then things would be otherwise. In this instance, the surety, Mahendra Nath Boy, and defendant 1, Nagendra Nath Mukerji, executed the security bond.

The same point might be raised without raising any objections before the District Judge, who ruled in favour of the defendants during the appeal. In light of the circumstances, the court believes that it is appropriate to argue that these defendants shouldn't have been able to bring this issue after the preliminary order was issued. Nevertheless, this question loses significance when it is determined that there was a contract to the contrary, as mentioned in Section 131 of the Contract Act, which stated that these defendants would be obligated to the suretyship agreement their father, Mahendra Nath Roy, had made for the duration even after his death. Now, it's important to determine how much those defendants are liable for. On their side, they have argued that they cannot, under any circumstances, be held liable for any amount above Rs. 600 and that the only way that they may recoup this amount is if their father, Mahendra Nath Roy, sells the land that is pledged as security for the surety bond. It is reasonable for the skilled vakil representing the appellant to acknowledge that he is limited in what he can assert.

As a result, the District Judge's judgment and decree regarding Defendants 2 through 8 must be set aside. In its place, a decree should be modified to change the Subordinate Judge's decree, stating that in the event that Plaintiff is unable to collect the amount decreed from Defendant 1, he will be entitled to collect by sale of the property mortgaged in the security bond dated March 27, 1924, the amount owed to him in excess of Rs. 600. The lower appellate court's and this appeal's expenses will be based on how well each party does in court.

ANALYSIS OF THE JUDGEMENT

The decision in this matter was not in favour of the defendants. However, it does not appear that the Subordinate Judge was expressly made aware of the issue regarding these defendants' liability following Mahendra's death. A preliminary decree for rendition of accounts was ordered in this matter ex parte against defendant 1 and on contest against defendants 2 through 8. This was the ordering portion of the judgment. In terms of costs, there was then a specific direction. According to the plaintiff, these defendants might have and should have filed an appeal against this preliminary ruling. If they fail to do so, they cannot challenge the validity of the preliminary order in an appeal that is filed from the final decision in accordance with Section 97 of the Civil Procedure Code. In contrast, the learned vakil representing the

respondents contended that there was no decree from which the defendants could appeal since the evidence indicated that in order to determine whether the defendants were liable for any sum for which defendant 1 had not provided an account while their father Mahendra Nath Roy was alive, accounts had to be taken in the defendants' presence. Because of how perfunctory the former Subordinate Judge's judgment and decree were prepared, I feel as though the question has been left unanswered. However, it appears that the second Subordinate Judge heard a thorough argument on defendants 2 to 8's liability for the final decree at the time of the case's hearing, and no objection was raised to it. He rendered a decision that dismissed the defendant's argument.

However, upon the finding that there was a contract to the contrary, as referred to in Section 131², Contract Act, that these defendants would be bound by the contract of suretyship entered into by their father, Mahendra Nath Roy, for the period even after his death, this question becomes of no importance. It is now necessary to find what the extent of liability of those defendants is. It has been contended on their behalf that they cannot, under any circumstance, be made liable for anything in excess of Rs. 600, which can only be recovered by the sale of the property mortgaged in the surety bond by their father Mahendra Nath Roy.

CONCLUSION

The Indian Contract Act of 1872 defines the discharge of surety responsibility in specific circumstances, with the aim of protecting the interests of the surety, which guarantees payment of the debt in the event of a default. The death of a surety does not automatically revoke a specific guarantee. The surety's estate remains liable for the specific debt guaranteed if there is such an agreement. While the death of a surety revokes their liability for future transactions, their legal heirs or representatives inherit the estate, which may include assets used to fulfil the guarantee for past transactions. If the principal debtor defaults on a debt incurred before the surety's death, the creditor can claim compensation from the estate to the extent of the guarantee.

Section 131 protects the property of the deceased sureties. Creditors should ensure that the guarantee explicitly mentions its applicability beyond the surety's lifetime if that's their intention. Similarly, sureties should be aware of the potential implications of their guarantee and act wisely in the agreement which otherwise would become a burden. Even if the surety

² <https://indiankanoon.org/doc/1676570/>

pays the debt off in any kind of default by the principal debtor, the surety would be subrogated to the position of the creditor. Thus, he/she will not sustain any loss in the contract. Section 140 of the Indian Contract Act covers it. The section says that,

“Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.”

Apart from that, whether or not the surety is aware of the existence of a security, the surety is entitled to all security that the creditor has against the principal debtor at the time the suretyship contract is entered into. If the creditor loses or parts with the security without the surety's consent, the surety is released to the extent of the security's value, which is dealt with under section 141 of the aforementioned act.

The practical aspect of this above-mentioned explanation could be derived from the case of Durga Priya Chowdhury vs. Durga Pada Roy, which clarifies that a surety's death doesn't necessarily extinguish their guarantee obligation. The type of guarantee and the specific terms of the agreement are crucial factors in determining the impact of death. Also, the judgment highlights the concept in English law where the nature of the guarantee determines the impact of the surety's death.