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February 21

SMT. KAMALA DEVI

v.

SETH TAKHATMAL AND ANOTHER

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR JJ.)

Surety Bond—Construction of—Conditions for enforcement —If fulfilled—Displaced debtor—Application for adjustment of debts—Return for want of territorial jurisdiction—Appeal—Civil Court, if must stay execution proceedings—Code of Civil Procedure, 1908 (Act V of 1908), s. 145—Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951), ss. 5, 15.

T filed a suit against M and obtained an order for attachment before judgment of certain bills due for payment to M. The bills were released from attachment upon M furnishing sureties including the appellant. Under the surety bond the appellant bound herself that M "shall produce and place at the disposal of the court, *when required*", the bills or the value of the same and "*in default* of his so doing" to pay a sum of Rs 12,000 to the Court. After the passing of the decree, T, without taking any steps against M, applied for execution of the decree by enforcement of the surety bonds. The sureties filed objections. In the meantime, M applied to the Dehradun Tribunal under s. 5 of the Displaced Persons (Debt Adjustment) Act, 1951, for adjustment of his debts and the appellant applied to the executing Court under s. 15 of the Act for staying the proceedings. The Court refused to stay holding that the Dehradun Tribunal had no jurisdiction to entertain the application and rejected the objections to the enforcement of the surety bonds. Subsequently, the Tribunal also held that it had no territorial jurisdiction to entertain the application and returned the same for presentation to the proper Tribunal. M preferred an appeal against this order. The appellant contended that the executing Court was bound to stay the execution proceedings and that the surety bond was not enforceable as the conditions necessary for its enforcement had not been fulfilled.

Held, that the executing Court was right in refusing to stay the proceedings. Under s. 15 of the Act, all proceedings pending in a Civil Court have to be stayed provided two conditions are satisfied, i. e. (i) that the Tribunal before which the application under s. 5 is filed has territorial jurisdiction to

entertain it and (ii) that the proceedings are in respect of a debt owed by the displaced person. The Tribunal had returned the application for want of territorial jurisdiction and the mere filing of the appeal did not suspend the order of the Tribunal. The effect was that there was no application under s. 5 pending.

Juscurn Boid v. *Pirthichand Lal*, (1918) L. R. 46 I. A. 52, referred to.

Held, further, that the surety bond was not enforceable. A surety bond had to be strictly construed; it was permissible to look at the surrounding circumstances only when the language used was ambiguous. In the present case the language was clear. A strict construction of the bond led to the only conclusion that a demand by the Court to M to produce the bills or their value and a default made by him were necessary conditions for the enforcement of the bond against the surety. These conditions were not fulfilled.

Raghunandan v. *Kirtyanand* A. I. R. 1932 P. C. 131, *The State of Bihar* v. *M. Homi*. [1955] 2 S. C. R. 78 and *The State of Uttar Pradesh* v. *Mohammad Syeed*, [1957] S.C.R. 770, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 72 of 1961.

Appeal by special leave from the judgment and order dated March 12, 1957, of the Madhya Pradesh High Court in Letters Patent No. 212 of 1956.

G. C. Mathur, for the appellant.

H. N. Sanyal, Additional Solicitor-General of India and *S S. Shukla*, for respondent No. 1.

1963. February 21. The Judgment of the Court was delivered by

SUBBA RAO J.—This appeal by special leave raises, *inter alia*, the question of construction of the terms of a surety bond. *Subba Rao J.*

The material facts are as follows : On August 26, 1947, Seth Takhatmal, respondent 1,

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filed Civil Suit No. 9-A of 1947 in the Court of the First Additional District Judge, Jabalpur, against Mulkraj Malhotra, the second respondent, for dissolution of their partnership and rendition of accounts. On August 27, 1947, the first respondent applied for attachment before judgment of all the bills payable to "M. R. Malhotra and Company", as per description given in Schedule A attached thereto and for the issue of an order to C.M.A.S.C., Poona, prohibiting them from issuing any cheque due to M. R. Malhotra and Company, and on the same day the Court issued notice of the said application. On August 28, 1947, the Court issued a conditional order of attachment before judgment in respect of the said bills. On September 9, 1947, the second respondent applied for vacating the order of attachment. On September 11, 1947, the second respondent offered to give security if time was granted to him. On October 17, 1947, 5 surety bonds were executed by the appellant and 4 others for different amounts and presented to the Court. The Court accepted the bonds and withdrew the order of attachment. The appellant's surety bond to the Court was for a sum of Rs. 12,000/-. Under that bond she agreed, if the second respondent made a default in producing and placing at the disposal of the Court when required the properties specified in the Schedule attached thereto or the value of the same or such portion of the same as may be sufficient to satisfy the decree, to pay to the Court a sum not exceeding Rs. 12,000/-. On October 13, 1948, a preliminary decree was made in the said suit. On August 1, 1951, the second respondent was adjudged as an insolvent by the High Court at Calcutta. On September 20, 1951, a final decree was passed in the said suit against the second respondent for a sum of Rs. 1,74,906/4/0 plus Rs. 7868/10/0 as costs. On October 19, 1951, the first respondent filed an application for execution of the decree by enforcement of the surety bonds under s. 145 of the Code of Civil Procedure. On

December 7, 1951, the appellant filed objections raising various pleas, *inter alia*, contending that the decree was passed without jurisdiction and that the surety bond was void. On May 28, 1952, the second respondent filed an application under s. 5 of the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951), hereinafter called the Act, before the Tribunal at Dehra Dun for adjustment of his debts under the provisions of the Act. On July 9, 1952, the adjudication of the second respondent as an insolvent was annulled. On August 2, 1952, the appellant filed an application before the District Court under s. 15 of the Act for stay of the execution proceedings and for the transfer of all the records to the Tribunal at Dehra Dun. On August 20, 1956, the Tribunal at Dehra Dun, holding that it had no territorial jurisdiction to entertain the application filed by the second respondent under the Act, returned it for presentation to a proper tribunal. On August 22, 1952, the executing Court rejected all the contentions of the appellant. On August 29, 1956, the second respondent preferred an appeal against the order of the Tribunal at Dehra Dun returning his application filed under s. 5 of the Act. It is represented to us by the learned counsel for the respondent on instructions that the said appeal was dismissed. The appellant preferred Miscellaneous First Appeal No. 44 of 1952 against the order of the executing Court rejecting her objections to the High Court of Judicature at Nagpur. That Court, by its order dated October 1, 1956, dismissed the appeal. The Letters Patent Appeal No. 212 of 1956 preferred by the appellant against the order of the single Judge of the High Court was also dismissed by a Division Bench of that Court on March 12, 1957. The present appeal has been preferred by the appellant by special leave.

Mr. Mathur, learned counsel for the appellant raised before us the following points : (1) The

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executing Court acted without jurisdiction in refusing to stay the execution proceedings against the appellant contrary to the express provisions of s. 15 of the Act. And (2) a surety bond has to be strictly construed and if so construed it would be obvious on the express terms of the bond that the necessary conditions for its enforceability were not fulfilled.

We shall notice the arguments of the learned Additional Solicitor-General on behalf of the first respondent at proper places in the course of our judgment.

The first question turns upon the relevant provisions of the Act and they read :

> *Section 5.* (1) At any time within one year after the date on which this Act comes into force in any local area, a displaced debtor may make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain.
>
> *Section 15.* Where a displaced debtor has made an application to the Tribunal under section 5 or under sub-section (2) of section 11, the following consequences shall ensue, namely :—
>
> (a) all proceedings pending at the date of the said application in any civil court in respect of any debt to which the displaced debtor is subject (except proceedings by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, and the records of all such proceedings other than those relating to the appeals,

> review, or revisions as aforesaid shall be transferred to the Tribunal and consolidated.

Under the said provisions if a displaced debtor filed an application before a Tribunal described under s. 5 of the Act, all proceedings pending in a civil Court at the date of the said application in respect of any debt to which the displaced debtor is subject shall be stayed. The statutory stay can be invoked only if two conditions are satisfied, namely, (i) the Tribunal before which the application under s. 5 is filed shall be one within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides or carries on business or personally works for gain, that is to say the Tribunal shall be one which has territorial jurisdiction to entertain the application ; and (ii) the proceedings shall be in respect of a debt owed by the said displaced person. From the earlier narration of facts it is manifest that the Dehra Dun Tribunal held that it had no territorial jurisdiction to entertain the petition and returned it to be represented to a proper tribunal. The application so returned was not re-presented to the proper tribunal. The appeal filed against the said order was dismissed. As there was no application pending before any Tribunal, the Court was well within its rights in not acting under s. 15 of the Act.

Learned counsel for the appellant contended that he had no instructions that the appeal filed in the Allahabad High Court was dismissed. Assuming that the appeal is still pending against the order made by the Tribunal, Dehra Dun, returning the petition filed by the second respondent under s. 5 of the Act, the appellant would not be in a better position. It is not stated that after filing an appeal his client had obtained any interim suspension of the order of the Tribunal ; indeed, it is not disputed

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that there was no such order. If so, the legal position would be that the order of the Tribunal would be in force till it was modified or set aside by the appellate Court. The filing of an appeal does not automatically suspend the operation of an order appealed from unless the appellate Court stays it or a statute conferring a right of appeal provides for such a stay. Section 40 of the Act confers a right of appeal on an aggrieved party against the final order of a Tribunal to the High Court. The section conferring the said power does not provide for a statutory stay of the order of the Tribunal till the disposal of the appeal. Indeed, Order XLI, r. 5, of the Code of Civil Procedure, which embodies the general principle of law says that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far the appellate Court may order. This principle which applies to stay of proceedings under an order will apply with greater force to a suspension of an order. The Judicial Committee, in *Juscurn Boid v. Pirthichand Lal* (1), summarized the Indian Law of procedure thus :

> ".....under the Indian Law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal."

Here, the application filed by the second respondent before the Tribunal, Dehra Dun, was rejected and the said order holds the field till it is reversed by the appellate Court. As the order of the Tribunal was not suspended, the effect was that there was no application pending in a Tribunal as defined in s. 5 of the Act. The order of the High Court, in our view, is correct on this point.

The second question turns upon the interpretation of the surety bond executed by the appellant

(1) (1918) L. R. 46 I. A. 52, 56.

in favour of the Court. As the argument turns upon the terms of the said bond, it will be convenient at the outset to read the material part of it. It reads :

> "Whereas at the instance of Takhatmal, the plaintiff in the above suit ; Mr. Mulkraj the defendant has been directed by the Court to furnish security in the sum of Rs. 1,00,000/- (one lac only) to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed ;
>
> Therefore, I Kamla Devi have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, *when required*, the property specified in the said schedule or the value of the same, or such portion thereof as may be sufficient to satisfy the said decree ; and in default of his so doing, I bind myself, my heirs, and executors, to pay to the said Court, at its order, the said sum of Rs. 12,000/- only or such sum not exceeding the said sum as the Court may adjudge."

Schedule 'A'

x x x x x x x

(ii items)

Approximate grand total...Rs. 1,10,000/-

Learned counsel for the appellant contended that the surety bond must be strictly construed, that under the terms of the surety bond the liability of the surety arises only if the principal debtor is required to produce and place at the disposal of the Court the said bills or the value of the same and if he

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makes a default in doing so, and that in the present case it has not been established, and indeed it is not the case of the respondent, that any such demand was made on the second respondent and that he made a default in doing so. Learned Additional Solicitor-General for the first respondent argued that the said plea was not taken by the appellant and that she should not be allowed to raise it at this stage, for, if it was raised, in the pleadings his client might have been in a position to allege and prove that the said condition had been fulfilled or at any rate waived by the appellant. He further contended that on a fair reading of the terms of the surety bond, having regard to the circumstances under which it was executed, it would be manifest that the appellant had accepted the liability to satisfy the decree debt if the second respondent failed to do so, upto a sum of Rs. 12,000/-. He would say that, as the surety bond was executed for raising the attachment, the amount for which it was given was clearly intended by the party to be paid towards the decree amount in case the judgment-debtor made a default to place at the disposal of the Court the said bills or their value and that in the said circumstances a reasonable interpretation of the terms of the bond without doing violence to the language would disclose the said intention. It is true that the plea now raised was not specifically taken in the objections filed by the appellant and it was not specifically advanced before the learned District Judge also. It was rejected by Kotval J. on the ground that it was not raised in the pleadings, and by the Division Bench on merits. But the question raised is one of construction of a surety bond and all the facts on which the respondent seeks to rely upon should only be found in the order sheet. If a demand was made or if the judgment-debtor or the surety waived the fulfilment of a condition, the order sheet must disclose the issue of a notice or the facts constituting a waiver. There cannot possibly be any facts outside the record. The entir

order sheet is on the file. The learned counsel is not able to show any entry therein which will support the fact of a demand or a waiver. In the circumstances, even if we remand the case, no useful purpose will be served for the necessary facts could only be gathered from the order sheet. That apart, before the Division Bench of the High Court the first respondent does not appear to have contended that he had sources other than the order sheet to prove that either a demand was made or the surety waived the fulfilment of the condition, and indeed his Advocate appears to have contended that in view of the subsequent events that happened such a demand would only be an idle formality. In the circumstances, we are satisfied that the respondent would not be prejudiced if the appellant was allowed to argue on the construction of the surety bond, as she did in the courts below.

Now coming to the construction of the surety bond, the first question raised by the learned Additional Solicitor-General is that the terms of the surety bond should be construed in the context of the surrounding circumstances, namely, the circumstances under which the surety bond came to be executed. In support of this contention he relied upon the judgment of the Judicial Committee in *Raghunandan* v. *Kirtyanand* (1). There, the Judicial Committee was asked to construe a surety bond. The question raised was whether under the terms of the bond the liability undertaken by the surety was to pay the entire decree amount or to pay the balance of the amount due under the decree after the mortgage security was realized, up to the limit of the amount guaranteed under the bond. The terms of the document were not clear and unambiguous. In those circumstances, Lord Tomlin, speaking for the Board, observed :

> "The bond must be considered in the light of the order directing the security to be given.

(1) A.I.R. 1932 P.C. 131, 132-33.

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.....In those circumstances what is the meaning of the language employed in the bond?"

These observations only apply the well settled rule of construction of documents to a surety-bond. Sections 94 to 98 of the Indian Evidence Act afford guidance in the construction of documents; they also indicate when and under what circumstances extrinsic-evidence could be relied upon in construing the terms of a document. Section 94 of the Evidence Act lays down a rule of interpretation of the language of a document when it is plain and applies accurately to existing facts. It says that evidence may be given to show that it was not meant to apply to such facts. When a court is asked to interpret a document, it looks at its language. If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the Court is not to delve deep into the intricacies of the human mind to ascertain one's undisclosed intention, but only to take the meaning of the words used by him, that is to say his expressed intentions. Sometimes when it is said that a Court should look into all the circumstances to find an author's intention, it is only for the purpose of finding out whether the words apply accurately to existing facts. But if the words are clear in the context of the surrounding circumstances, the Court cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document. The other sections in the said group of sections deal with ambiguities, peculiarities in expression and the inconsistencies between the written words and the existing facts. In the instant case, no such ambiguity or inconsistency exists as we shall demonstrate presently. The Privy Council's case was one of ambiguity and the surrounding circumstances gave the clue to find out the real intention of the parties as expressed by them.

Bearing the said principles in mind, let us look at the document closely. The preamble to the surety bond in clear terms gives the object of the bond. It says that "the defendant has been directed by the Court to furnish security in the sum of Rs. 1,00,000/- to produce and place at the disposal of the Court the property specified in the Schedule hereunto annexed". Therefore, the object is to see that the said direction is properly carried out, and to provide for a contingency if a default is made by the judgment-debtor in complying with the said direction. The second paragraph of the bond binds the surety to Court in that the said defendant shall produce and place at the disposal of the Court, when required, the said property or the value of the same. The words used in this part of the undertaking given by the surety is clear and unambiguous. The judgment-debtor shall produce the bills or their value and place them at the disposal of the Court *when required* to do so. The expression "when required" can only mean "when required by the Court". The obligation undertaken by the surety is that the judgment-debtor shall produce the said property when required by the Court. Her obligation does not arise at all till the Court makes the requisition. In this case there is no order or entry in the order sheet requiring the judgment-debtor to produce and place the property in Court; nor even the execution petition though it describes the judgment-debtor in one of the columns, asks for any relief against him. But it is said that the words "when required" must be confined only to a situation when the bills could be produced or the value of the same could be paid by the judgment-debtor; and that in this case, as the bills were cashed and the money misappropriated by him and as he had been adjudged an insolvent, it would be an empty formality to call upon him to do so. It is also said that the condition could apply only when the money could lawfully be paid by the judgment-debtor; but,

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as the judgment-debtor had become an insolvent, neither the Court could demand of him to pay the amount, nor could he pay it. The construction of the word "when required" suggested by the learned counsel for the respondent, if accepted, would make those words unnecessary: it would mean that the judgment-debtor should be required to produce the property only if he could do so and need not be required to produce it if he could not do so; in such a case those words could as well be excluded from the sentence, for they would not serve any purpose. If the words were retained there to accept the argument of the learned counsel, they should be qualified by adding "if the bills could be produced and when the money could lawfully be paid by the judgment-debtor". But those words are not there and we cannot add them, for without adding them, full meaning could be given to the words used in the clause. But whatever ambiguity there may be—in our view there is none—the words "in default of his doing so" make it absolutely clear that the surety binds herself only if the judgment-debtor makes a default when he is required to produce the document. The intention of the parties is very clear. The surety undertook that the judgment-debtor would produce the bills if required by the Court and that if he made a default, she would be bound to pay the decree amount up to a particular limit. A court cannot possibly decide beforehand that the judgment-debtor would not produce the bills or at any rate the value of the same if demanded; for ought we know he might have paid that amount from other sources or he would have taken out an application to the Official Receiver to do so, or on the events that subsequently happened, *i.e.*, on the annulment of the adjudication, he could have paid that amount. It is well settled that a surety bond has to be strictly construed. In *The State of Bihar* v. *M. Homi* (1), this Court ruled that provisions in a surety bond which are penal in nature must be very

(1) [1955] 2 S. C. R. 78.

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strictly construed. This Court again in *The State of Uttar Pradesh* v. *Mohammed Sayeed* (1), applied the strict rule of construction of a surety bond in that case. In the present case a strict construction of the bond leads to the only conclusion that a demand of the Court on the judgment-debtor and a default made by him were necessary conditions for the enforcement of the bond against the appellant.

In the result, we set aside the order of the High Court and dismiss the application for execution filed by the first respondent against the appellant. But we do not think that this is fit case for awarding costs to the appellant. She has failed to raise this objection specifically in her objections or to place before the learned District Judge the present contention. In the circumstances we direct each party to bear his or her own costs throughout.

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MEENGLAS TEA ESTATE

v.

ITS WORKMEN

(P. B. GAJENDRAGADKAR, M. HIDAYATULLAH and J. C. SHAH JJ.)

Industrial Dispute—Requirements of valid inquiry—Principles of natural justice—Practice of Supreme Court not to enter into evidence to find facts for itself—Case of no evidence.

In January, 1956, there was an incident in which a group of workmen assaulted the Manager and two Assistant Managers of the appellant company. All the three officers were wounded. Some workmen were suspended, and charge-sheets were served on them, charging them with participation in the riot. After an inquiry the workmen were dismissed. The inquiry was held by the Manager and one of the Assistant Managers. During the inquiry, no witness was examined and no statement made by any witness was tendered in evidence.

(1) [1957] S. C. R. 770.