

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.630 of 1994 (O&M)

Date of decision: 21.09.2018

DCM Limited

..... Appellant

Versus

Satya Prakash Goyal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. O.P. Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Despite of publication of notice, no one has come present on behalf of the respondents.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court dismissing the suit filed against defendant No.6. The limited issue which arise for consideration is:-

“Whether a surety bond which provide for personal surety as well as creates a charge on the immovable property and is unregistered can be enforced qua personal guarantee?”

Both the Courts have found that the suit filed by the plaintiff has merit and amount is payable by defendants No.1 to 5. However, the learned First Appellate Court has held that since the document which is surety bond Annexure P-38 dated 12.09.1972 is unregistered, therefore, it cannot be held to be creating a charge on the immovable property and since such document is single contract, therefore, it cannot even been forced

personally against defendant No.6. It will be noted that defendant No.6 vide Ex.P-38 which is a surety bond executed by him, had undertaken to pay to the plaintiff-company amount upto Rs.3,00,000/- in case defendants No.1 to 5 default in payment of their liability. Both the Courts have found that defendants No.1 to 5 have defaulted and therefore, the suit against them has been decreed by both the Courts below. However, learned First Appellate Court as noticed has absolved defendant No.6 on the ground that the document (Ex.P-38) cannot divide into two parts, therefore, it is not enforceable against defendant No.6 even as a personal surety.

This Court has carefully examined the photocopy of the Ex.P-38 produced by counsel for the appellant. It is clear from the reading of the aforesaid document that defendant No.6 had undertaken as a surety to pay upto Rs.3,00,000/- in case defendants No.1 to 5 defaults in payment to the plaintiff. No doubt, in the last line, it was written that the amount can be recovered from the property detailed. However, apart from the last line, the entire surety bond is referring to the personal guarantee of defendant No.6 to pay the amount. It has been provided in the aforesaid document that if any one of them dies, the personal surety would not come to an end. However, such clause would not render the aforesaid document to inadmissible in evidence with respect to a personal guarantee. In absence of a registration is not admissible in evidence vis-a-vis creating charge on the immovable property but for enforcing the personal surety, the documents can still be read in evidence. In the considered view of this Court, the aforesaid document is in two parts. First part deals with personal guarantee whereas the subsequent part deals with creating a charge on the immovable property. Even if the document is not admissible in evidence for the

purpose of creating a charge on the immovable property, however, the aforesaid document is admissible for the purpose of considering the personal liability without creating a charge on the immovable property. Hence, the learned First Appellate Court has erred in rejecting the claim of the appellant-company against defendant No.6. Learned First Appellate Court clearly erred by observing that the surety bond cannot be read even for the purpose of enforcing personal surety of the executant. The Court further erred in returning a finding that Ex.P-38 is a single and indivisible document which cannot be at all considered in evidence.

Learned First Appellate Court has further erred in returning a finding that the Ex.P-38 is surrounded by mystery. The reasons given by the learned First Appellate Court are that

1. In the plaint, the date of surety bond has been mentioned as 11.09.1972 whereas it is in fact 12.09.1972.
2. Sh. S.P. Garg who was marginal witness of the surety bond is an employee of the appellant-company.
3. The marginal witness Sh. S.P. Garg could not disclose who had typed the aforesaid document.

In the considered view of this Court, a written contract between the parties signed by them cannot be ignored on conjectures and surmises. A typographical mistake in the plaint while referring to the date of surety bond cannot result in fatal consequences to the plaintiff. Still further, merely because Sh. S.P. Garg was an employee of the company, his evidence could not be ignored by the Court. At the most, the evidence of Sh. S.P. Garg could be most closely scrutinized to arrive at a conclusion.

As regards the reason that Sh. S.P. Garg could not tell the name of the typist

who typed the document, it will be noticed that it is nowhere stated by Sh. S.P. Garg that the aforesaid surety bond was typed before him. He has only stated that the parties are signed the document in his presence and he signed the same as a marginal witness. The parties in the present case are not rustic villagers but they are well established business men. They were aware of the consequences of giving an undertaking/surety given by them. Once an undertaking has been given, it will be unjust if defendant No.6 is totally absolved of the liability only on the ground that it cannot be read for the purpose of creating a charge on the property.

Hence, the question as framed is answered in favour of the appellant.

Keeping in view the aforesaid facts, the decree passed by the First Appellate Court is modified. There shall be decree for recovery of the amount to the extent of Rs.3,00,000/- against defendant No.6 also along with interest as ordered by the learned First Appellate Court. However, the plaintiff-appellant shall not be entitled to enforce the surety bond as a charge on the immovable property.

Appeal is partly allowed.

21.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No