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Case Comment: A.L.S.P.Pl. Subramania Chettiar and Ors vs Moniam P. Narayanaswami Gounder

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INTRODUCTION

Hon'ble Judges/Coram: K. Subba Rao, A.S. Panchapakesa Ayyar and Balakrishna Aiyar, JJ.

Case Summary:[1] The case revolves around the question that where the liability of the principal debtor is reduced under the provisions of a statute, whether the liability of the surety is also diminished accordingly. This question was first raised before the bench of Nagpur High court. The bench took the contrary opinion however, the reasoning of the Nagpur High Court has been overturned by the following case. The ratio dicedendi of the present case has been held as the final standing on this issue and it has been cited in a number of cases, In Aypunni Mani vs Devassy Kochuesph the High court of Kerala have adopted similar reasoning and gave the judgement on a similar line.

Relevant Section/Acts:

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[1] *A L S P Pl Subramania Chettiar & Ors v Moniam P Narayanaswami Gounder* AIR 1951 Mad 48

Sec 128 of Indian Contract Act, 18722 - The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.[3]

Sec 134 of Indian Contract Act, 1872[4] - The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.[5]

FACTS OF THE CASE

In the present, case there were 5 defendant and two plaintiffs. Plaintiff 1 (Creditor/deceased) filed a suit against the 5 defendants to recover Rs. 6746, which was the principal amount and interest due on a promissory note dated 22-9-1933, executed by defendants 1 and 2 in favour of the plaintiff for Rs. 1500 repayable with interest at 86 percent per year, but he claimed only at 24 percent per year. A letter of guarantee has been signed by defendant 3 who is the surety in the present case, renewing his responsibility under the contract as under endorsements, the principal debtors had done the same.

Following that, an act was passed in Madras named Madras Agriculturists' Relief Act[6] that reduced the liability of the people belonging to the agriculturist community against the creditor.[7] Section 7 of the Act,[8] states that all those debts which are payable before the commencement of the Act shall be reduced or scaled down in accordance with the provision of the Act.[9] Though the reduction in the liability of the principal debtor was allowed by the creditor the same wasn't allowed to the surety. The surety argued that though non-agriculturists, they were entitled to a debt reduction under the Madras Agriculturists' Relief

[2] Indian Contract Act 1872, s 128
[3] *Ibid*
[4] Indian Contract Act 1872, s 134
[5] *Ibid*
[6] Specific Relief Act 1963
[7] *Ibid*
[8] Specific Relief Act 1963, s 7
[9] *Ibid*

Act.[10] The surety further claimed that under the Madras Agriculturists' Relief Act,[11] he was entitled to a reduction in the total amount, since in his letter of guarantee which he renewed states that he would be liable for the amount due under the promissory note and since the liability of the principal debtor under the promissory note is reduced, his liability should also be reduced and if not provided it would be a gross injustice with him.

Case Travel: The Case was first filed in the Subordinate court which allowed the reduction in the liability of the surety on the ground it is co-extensive to that of the principal debtor, aggrieved by the decision of the subordinate Judge the plaintiff 2 (Legal Representative of P-1) filed the current suit before the High court of Madras.

ISSUE RAISED

Will the surety's obligation be lowered if the principal debtor's responsibility is reduced as a result of the provisions of a statute or some statutory effect?

CONTENTION

On behalf of Appellant:

According to the learned counsel for the Appellant, The surety in the present case should not stand discharge because the liability of the principal debtor is not discharged by any voluntary act or omission of the creditor, but because of the effect of the statute later passed, the surety cannot claim a pro tanto reduction in his liability with that of the principal debtor because Section 128 of the Contract Act, only defines the surety's obligation on the date of the guaranteed contract. The Madras Agriculturists' Relief Act's sole purpose is to benefit "agriculturist" debtors, and that, as a result, A non-agriculturist surety could never have been contemplated to be a beneficiary under the present Act, or could ever have been, benefited under any provision of the Madras Agriculturists' Relief Act.

[10] Madras Agriculturists' Relief Act

[11] *Ibid*

The liability of the surety can only be scaled down if the reduction in the liability of the principal debtor takes place because of some act or omission on the part of the creditor as covered under sec 133,[12] 135,[13] and 141[14] among others. Since the obligation of the principal debtor was scaled down because of some statutory provisions, the surety cannot reap the benefits of the provisions in the Act.

On behalf of Respondent:

Mr. M.S. Venkatarama Aiyar, counsel standing on behalf of the Respondent, vehemently contested this position of the Appellant's learned counsel, claiming that the Madras Agriculturists' Relief Act's intention is to discharge or extinguish the debt to the extent contemplated by the Act. And if such benefits are not provided to the surety, the Act would fall short of its purpose, and the ruling will be in violation of section 128 of the Indian Contract Act. Under sec 128 of the Indian Contract Act, it is expressively mentioned that the liability of the surety will be co-extensive to that of the principal debtor, and as stated in the letter of guarantee that the surety will only be liable for the amount due under the promissory note. The surety cannot be made liable for the whole amount.

REASONING

The Court held that while it is definitely true that only agriculturist debtors are entitled to the relief offered by the Act, which does not envision any scaling down of debts due by others, it is difficult to believe that a non-agriculturist surety can benefit from the reduced obligations under the Madras Relief Act under any circumstances. Unless otherwise specified in the contract, the surety's liability is co-extensive with that of the principal debtor, as stated in Section 128 of the Indian Contract Act. It is a well-established legal principle that the surety's obligation is only incidental and secondary. That can only imply that his liability is the same as or less than that of the principal debtor, so if the debt payable by the debtor is discharged in part, the surety's liability also is pro tanto reduced. Sec 128 does not confine its applicability or

[12] Indian Contract Act 1872, s 133
[13] Indian Contract Act 1872, s 135
[14] Indian Contract Act 1872, s 141

its operation only to the liability reduced by the acts or omissions of the parties...Regardless of how the principal debtor's obligation is reduced, the benefit must also go to the surety, otherwise, the release of the debtor would be illusionary because as soon the surety pays the debt he would turn back to the principal debtor for his money since his liability is secondary, not primary.

The Contract Act does not exhaust the forms of surety discharges because it does not even mention the case of the principal debtor's voluntary payment of the full debt or a portion of the debt to the creditor as effecting a discharge of the surety entirely or pro tanto. Thus, the liability of the surety can only be reduced by some act or omission by the creditor is untenable. Also, in the Halsbury's Laws of England (Hailsham) 2nd Edn. Vol. 15,[15] the learned author states that: "Whatever expressly or impliedly discharges the principal debtor from liability usually discharges the surety also by implication, as his position is thereby altered without his consent, notwithstanding that the alteration is accomplished by operation of law.[16]

As specified under sec 140 of the Contract Act,[17] The surety, on the dischargement of the debt which the creditor holds against the principal debtor, gains or receives all the rights and securities which creditor has against the principal debtor,[18] now if the principal debtor is only liable for the reduced amount under the Madras Relief Act and the creditor cannot claim the whole indebtedness, It demonstrates that, in such circumstances, even the surety could not recover the aforementioned amount from the principal debtor and that would be very arbitrary and unjust to the surety and would cause him an inappropriate loss. Therefore, the true intention of the Madras Agriculturists' Relief Act is to extinguish the portion of the debt affected by the scaling down and not merely to bar the remedy. It was meant to prevent the surety from suffering an injustice. Because the surety's obligation is coextensive with the principal debtor's, if the latter's obligation is lowered or extinguished in whole or in part by statute, the surety's liability is also lessened or extinguished.

[15] Hailsham, *Halsbury's Laws of England* (2nd edn, vol 15)
[16] *Ibid*
[17] Indian Contract Act 1872, s 140
[18] *Ibid*

DECISION

The surety's obligation will stand discharged to that of the principal debtor's liability under the following Act. The effect of any statutory reduction on the rights and duties of the principal debtor will have a pro tanto effect on surety as well unless the contract to contrary.

CONCLUSION

In this instance, the court's stance was extremely important. It's important to realise that the surety's obligation is secondary and ancillary. The interest of surety should be protected in any case, first of all, because the surety is not directly involved in the dealings between the creditor and the principal debtor, and also, he does not get any direct benefit from the contract, it is critical to safeguard his interests. Furthermore, because the principal debtor's liability was lowered by statute, it would have been unfair for the court to not decrease the surety's liability to that of the principal debtor. Because the surety's liability is coextensive with the principal debtor's, the court is justified in ruling that if the debtor's liability is lessened or eliminated as a result of an act or otherwise in whole or in part under the statute, the surety's liability is also lowered or extinguished. Moreover, as mentioned above the surety after paying the whole debt would be entitled to all the rights which the creditor has against the principal debtor as covered under sec 140. Since in the present case the creditor can only recover the reduced amount as mentioned in the Act, not providing the same reduction in the surety's obligation would be very unjust because he would not be entitled to recover the money from the principal debtor. Hence it has become very clear that the debt must exist even though the creditor chooses to enforce his remedy not on the principal debtor but on the surety.

This judgement illustrates how we should approach surety obligation and the applicability of Section 128 and other pertinent sections in this context. As already mentioned, the case is significant not only because it was the first to establish this position on a surety's duty in the event of statutory actions, but also because it clarifies the section's applicability that deals with the surety's liability.