



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: State of Madhya Pradesh vs Kaluram

Anamika Dinkar^a

^aNational University of Study and Research in Law, Ranchi, India

Received 17 January 2022; Accepted 31 January 2022; Published 03 February 2022

INTRODUCTION

A divisional forest officer of the Hosangabaad division held an auction on 20 July 1954 for the sale of the felled tree. Jag tram has been declared the highest bidder of the auction. It has been decided that said forest produce was sold to him for Rs 12,100 i.e, in the four equal installments of Rs. 3025 each. The first installment is to be paid immediately upon acceptance of the bid. A contract has been executed between Jagataram and the governor of Madhyapradesh incorporated certain terms and conditions which are as follows:

- The contractor may collect all forest produce that exists at the time of executing this indenture or that may come into existence in the contract area thereafter.
- After furnishing the necessary certificate, the forest contractor may begin collecting the aforementioned forest produce within a month.
- The forest contractor is responsible for removing the aforementioned forest produce from the contract area via the route specified.

- Forest contract rule will be applied to forest contractor i.e, if any default is made by the contractor in payment of the installment due, then the contractor could be stopped by the forest department from removing the felled tree.

Jagataram paid the first installment due on July 28, 1954. Nathuram and kaluram stood as security for Jagataram i.e if any default is done by jagataram then the contract can enforce against Nathuram and Kaluram for that default. Jagataram removed all the forest produce which is sold to him by the forest department without paying the remaining three installments. The forest department approach the kaluram, who is the surety of the contract, to recover the due amount, the surety claimed that he is not liable for the due amount because the forest officer had lost the security after allowing the jagtaram to remove the forest produce without paying the second installment.

ISSUE

Whether the kaluram, who is the surety of the contract is liable to pay the due amount to the creditor?

ARGUMENT FROM THE PETITIONER SIDE

- It was argued by the petitioner that according to Section 141 of the Indian Contract Act, 1872¹ if the creditor loses or disposes of such security, the surety is released to the extent of the security's value. In this case, the state had the power under section 83 of the Forest Act to prohibit tree removal and to sell them for nonpayment of the fee, but even after the second installment was not paid, the state did not take the required procedures to prevent the contractor from removing the forest produce.
- The forest officials had given Jag tram time and had failed to take actions that were their responsibility to the guarantor, such as swift seizure and sale of the trees once the second installment was due.

¹ Indian Contract Act, 1872, s 141

- His final recourse against Jag tram was hindered since they had not completed those procedures and had not seized those trees, according to section 141 of the Indian Contract Act, 1872. As a surety, Kaluram was released from responsibility.
- Kaluram argued that an injunction should be issued preventing the State from realizing or continuing the recovery actions against him for forest dues.

ARGUMENT FROM RESPONDENT SIDE

The defendant argued that there is no place in Section 141 of the Indian Contract Act, 1872 that it is specified that simple inaction on the side of forest authorities equates to parting with security, and so the guarantor should not be released from his responsibility

JUDGEMENT

Justice Shah has delivered the judgment but before it, the trial court and high court had delivered the judgment in favor of kaluram. Later on, the state of Madhya Pradesh filed a special leave petition in the Supreme Court. before delivering the judgment the court has seen every aspect of the case. Here, the contemplation of the defendant i.e. kaluram, was that the forest authority was at their fault in losing the surety so, I am not liable for that to pay the amount that occur due to the default of the contractor. The court has observed the following rules of the forest that was binding on the contractor by virtue of the contract. Which are as follows:-

- By r.8, it says that when the amount payable to the government in the form of installment under the contract but if, the forest produce removed by the contractor exceeds the amount paid then the divisional forest officer, not below the rank of range officer can stop the contractor from removing the forest produce before the last payment is made
- By r. 29(1), it is provided that if the forest contractor fails to pay an installment or commits a breach of duty in any part of the contract, the contract can be terminated by the office authorized to execute it on the government's behalf.

- By r.33(2), It is provided that the forest contractor may assign any forest produce that has not been removed, but such assignment will be invalid unless made with the prior written sanction of the forest officer who executed the contract.
- Section 82 of Indian forest act 16 of 1927², provides that All money payable to the Government under the Act or any rule made under the Act, or on account of the price of any forest produce, or of expenses incurred in carrying out the Act about such produce, maybe recovered if not paid when due, as if it were an arrear of land-revenue.
- Section 83 of Indian forest act 16 of 1927³, provides "(1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be the first charge on such products, and such products may be taken into possession by a Forest-officer until such amount has been paid." (2) If such amount is not paid when due, the Forest Officer may sell such products at public auction, with the proceeds going first toward discharging such amount.

After seeing all that rule, on the following ground the judgment has been delivered:-

Firstly the Supreme Court thought that the term "security" used in Section 141 has no technical meaning; it simply talks about all the rights that the creditor had against the property after enforcing the contract. The security is entitled to the payment of debt or performance for which he is liable, as well as the creditor's benefit against the principal debtor arising out of the transaction that gives rise to the right or liability. That means if the principal debtor occurs default in payment to the creditor then it will be the surety's responsibility to put the creditor in the same position that the creditor was in relation to the principal debtor. However, if the creditor lost the security without the surety's consent, Section 141 discharged the liability of the surety to the extent of the security's value lost or parted.

Secondly, the court has observed that when the forest produce area was in the possession of the contractor still the state government has a certain right by the virtue of the forest act are as follows:-

² Indian Forest Act, 1927, s 82

³ Indian Forest Act, 1927, s 83

- The right to cease the remaining quantity of goods and sell them at auction if the due amount is not paid.
- The state also has the authority to stop the removal of goods if the quantity of goods removed exceeds the amount has paid.
- To terminate the contract if the due amount is not paid by the contractor and take possession of the goods that are in the contract area.
- To check and examine the goods.

In this case, the forest authority was at default in using this right to prevent the removal of goods as security and allowed the jagataram to remove the goods even when the second installment was due. Thirdly, the court contemplated that, the forest authority was at default in issuing the coupe certificate to jag tram and allowed him to remove the goods so, according to section 141 they lost the security, and surety is discharged from liability

CRITICAL ANALYSIS

This case revolves around section 141 of the Indian contract act 1872, which clearly states that surety will discharge from the liability if any inconsistent act was done by the creditor with the rights of the surety .and in this case, the court decided that the creditor was negligent because he doesn't take any step to stop the jagataram from the removal of forest produce when they have the right to stop and that rights provided them from the forest act. And because of that, they lost the security, and surety stands discharged from his liability.

In the case of *Wulff and Billing v Jay*⁴. It was held that the defendant became surety on the faith that some real and substantial security, as well as his credit, had been pledged to the plaintiff and that he was thus entitled to the benefit of that real and substantial security if he was called on to fulfill his duty as a surety, and to pay the debt for which he had become surety. He will, however, be released from his liability as a surety if the creditors have made it impossible for the surety to recoup himself through the security provided by the principal. So, the decision taken by the supreme court is justified because it is cleared from section 141, if the

⁴ *Wulff and Billing v Jay* [1872] 7 [QB] 756

creditor is at their fault for losing the security then surety liability will be discharged but if a case arises where the principal debtor is not at their fault in losing security and in that case the security is lost then the surety will not be discharged from their liability so, in that case, forest authority was at fault in losing in the security it makes the surety discharged from the liability. So, judgment is justified.