

APPELLATE CIVIL.

Before Mr. Justice Maung Ba and Mr. Justice Brown.

D. MANACKJEE

v.

R.M.N. CHETTYAR FIRM. (II)*

1926

July 13.

Surety's liability for satisfaction of a decree sought to be set aside by judgment-debtor—Decree set aside by trial Court but restored by Appellate Court—Effect on surety's liability.

The surety of a judgment-debtor undertook to satisfy a decree against the judgment-debtor which decree the judgment-debtor sought to set aside in a suit. Execution was accordingly stayed. The trial Court set aside the decree, but the Appellate Court restored the decree. *Held*, that the surety was liable on his bond to satisfy the decree.

D. Manackjee v. R.M.N. Chettyar firm (I) 5 Ran. 492—distinguished.

Mitter—for Appellant.

Sanyal—for Respondents.

MAUNG BA AND BROWN, JJ.—In this case the respondent Chettyar firm obtained a decree against one Ma Ywet and took steps in execution of that decree. Ma Ywet then filed a suit for cancellation of the decree passed against her, and execution against her was stayed on the appellants furnishing security. In the bond signed by him he undertakes: "If the said judgment-debtor, Ma Ywet, shall duly restore any property which may be taken in execution of the decree in the said suit which under the decree of this Court she may be bound to restore (or if she shall pay into Court the value of any property which may be taken in execution of the decree in the said suit) and if she duly perform, comply with, and satisfy the decree of this Court, then this obligation shall be void,

* Civil Miscellaneous Appeal No. 14 of 1926 (Mandalay).

otherwise, it shall remain in full force, and I shall pay into the said Court the said sum of Rs. 1,211-12-3 as directed by the Judge of the said Court in and towards satisfaction of the decree of this Court.”

On the execution of this bond the execution of the decree was stayed and the trial of the suit brought by Ma Ywet for cancellation of the decree proceeded. Ma Ywet was successful in the trial Court in obtaining a decree for cancellation of the earlier decree ; but the Chettyar firm appealed and the Appellate Court reversed the decree of the trial Court. The result of the Appellate Court's decree is that the original decree passed against Ma Ywet is now in full force and effect and the Chettyar firm wish to execute it against the surety. The surety, however, objects that his liability ceased when the original decree was set aside by the trial Court, and that he is no longer bound by the original decree.

We are unable to uphold this contention. The wording of the bond signed by him seems to us to be clear. He undertakes very definitely that the judgment-debtor shall comply with the decree of this Court. There is no limitation as to his liability in any way, and nothing to suggest that he should be liable only if the trial Court were to dismiss the suit brought by Ma Ywet.

The result of the orders passed by the Appellate Court is that Ma Ywet's attempt to have the decree set aside has failed.

The circumstances of this case appear to us to be very different from those in Civil Miscellaneous Appeal No. 13 of 1926,* where we have held that the appellant's liability as surety has ceased. In that case security was given in order to have a merely temporary attachment released, and that temporary

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attachment would in any case have ceased at the conclusion of the suit, by dismissal.

Here security has been given for the satisfaction of a permanent decree. The result of the giving of security was that the decree-holder ceased to take any further steps in execution, and it is quite impossible to say that he will not have been very seriously prejudiced by not being allowed to proceed with the execution in the first instance if the present appellant is not now held liable on his bond.

There is, to our minds, nothing in the security bond itself to suggest that the obligation of the surety was limited in the manner suggested. Nor do we think it reasonable to hold that that could have been his intention when he executed the bond.

In our opinion the District Court was right in holding that the surety, D. Manackjee, is still liable on his bond. We therefore, dismiss this appeal with costs, advocate's fee two gold mohurs.