

Having regard to all the circumstances of the case, I would leave the parties to bear their own costs throughout.

AGHA HAIDAR J.—I agree.

N. F. E.

1929

WARYAM SINGH

v.

GOPI CHAND.

AGHA HAIDAR J.

*Appeal accepted,
as against defendants 1 and 2.*

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

GURDAS MAL-RAM CHAND (Decree-holders)

Appellants

versus

GURANDITTA MAL (Surety)

NARSINGH DAS-SHIV LAL

(Judgment-debtors)

} Respondents.

1929

April 25.

Letters Patent Appeal No. 235 of 1925.

Indian Stamp Act, II of 1899, section 36—Admission of document in evidence—what constitutes—whether written order essential—Surety's guarantee—failure of consideration—effect of.

Held, that once the trial Judge (with the question of the want of proper stamp present in his mind) has actually admitted a document in evidence, section 36 of the Stamp Act prevents such admission being called in question (except as provided in section 61) at any stage of the same suit or proceeding (and hence in appeal) on the ground that the instrument has not been properly stamped ;

And, that it is nowhere laid down that a document cannot be treated as admitted in evidence unless there is a separate written order deciding the admissibility of the document.

Held also, that the rule of law is firmly established that the total failure of the consideration for a surety's promise of guarantee has the effect of discharging him.

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GURDAS MAL-
RAM CHAND

v.

GURANDITTA
MAL.

Appeal under clause 10 of the Letters Patent from the judgment of Martineau J., dated the 15th June, 1925.

MOTI SAGAR, for Appellants.

BADRI DAS, QABUL CHAND and DESH RAJ, for Respondents.

SHADI LAL C.J.

SHADI LAL, C.J.—The question for determination in this appeal is whether the decree-holders, Gurdas Mal-Ram Chand, are entitled to execute their decree against one Guranditta Mal, who, in December, 1920, executed a security bond by which he undertook to pay the amount which might be found to be payable to the decree-holders as a result of the decision of the appeal preferred by the judgment-debtors. Narsingh Das-Shiv Lal, in the event of their failure to discharge their liability. The circumstances which led to the furnishing of the security may be shortly stated: In May, 1920, the decree-holders obtained from the Court of the Judicial Commissioner of Sindh a decree for a certain sum of money against the judgment-debtors; and in August, 1920, this decree was transferred for execution to the Court of the Senior Subordinate Judge at Sargodha. On an application made by the decree-holders for the execution of the decree the Subordinate Judge issued a warrant attaching the property of the judgment-debtors, but the execution of the decree was ultimately stayed when, on the 18th December, 1920, the judgment-debtors furnished the security bond executed by Guranditta Mal.

This bond was written on a plain paper bearing only an eight-anna court-fee stamp, and it was contended before the trial Judge that the document was inadmissible in evidence for want of a proper stamp. The objection appears to have been withdrawn subsequently but, whatever the reason may be, the fact

remains that the learned Judge recorded evidence proving the execution of the bond by the surety, and then gave judgment directing the surety to pay the decretal amount to the decree-holders. Now, section 36 of the Indian Stamp Act, 1899, provides that, where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. It was urged before the learned Judge, from whose judgment this appeal has been preferred under clause 10 of the Letters Patent, that there is no order of the Court admitting the document, but it is nowhere laid down that a document cannot be treated as admitted in evidence unless there is a separate written order deciding the admissibility of the document. There can be no doubt that the question of the want of proper stamp was present to the mind of the Subordinate Judge, but he let in the document; and after examining witnesses as to its execution acted upon it and held the surety liable on the strength of it. The document should, therefore, be held to have been admitted in evidence within the meaning of section 36, and the admission cannot now be called in question.

There is, however, no reason for dissenting from the conclusion of the Single Judge that the consideration for the surety's promise to pay the money was the decree-holders' promise to abstain from continuing to take legal proceedings against the judgment-debtors; and the facts set out in the judgment of the learned Judge leave no doubt that after the 18th December, 1920, the decree-holders took various steps to execute their decree, and that on the 12th March, 1921, they agreed to the stay of execution on the judgment-debtors' promising to pay interest at 9 per cent. in-

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stead of 6 *per cent. per annum.* The rule of law is firmly established that total failure of the consideration for the surety's promise of guarantee has the effect of discharging him.

SHADI LAL C.J. I would accordingly confirm the judgment of the Single Judge, holding that the surety has been discharged from his liability, and dismiss the appeal with costs.

BROADWAY J.

BROADWAY J.—I CONCUR.

N. F. E.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

TIKAM CHAND (PLAINTIFF) Appellant

versus

HARISH CHANDRA AND OTHERS (DEFENDANTS)

Respondents.

Letters Patent Appeal No. 183 of 1927.

Indian Companies Act, VII of 1913, section 163 (1)—Winding up order—creditor—rights of—Articles of Association—Managing Director's power to borrow—Company's liability.

The Articles of Association of the International Ayurvedic Company, Limited, empowered its Managing Director to borrow money on its behalf, and he borrowed sums of Rs. 5,000 and Rs. 20,000 from the appellant, which were placed in the company's books to the latter's credit. The shareholders acknowledged the receipt of, paid interest on, and confirmed, the said loans taken on behalf of the company by the Managing Director. After suffering heavy losses, the company's condition being moribund and its assets negligible, the appellant as the principal creditor, having served on the company a demand for payment and received no satisfaction, applied for the winding up of the company, relying upon section 163 of the Indian Companies Act. It was con-

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April 30.