

LETTERS PATENT APPEAL.

Before Addison and Abdul Rashid JJ.
DALIP SINGH (SURETY) Appellant

versus

KISHAN CHAND (DECREE-HOLDER) AND OTHERS
Respondents.

1936

June 2.

Letters Patent Appeal No. 59 of 1936.

Civil Procedure Code, Act V of 1908, section 145 — Enforcement of decree against surety — where suit has been settled by compromise — Interpretation of surety bond.

On an application to set aside an *ex parte* decree by the defendants (judgment-debtors), the Court ordered that it be set aside on security being given. D. S. the present appellant stood security and in his surety bond expressly agreed—“ I stand surety for the defendants and agree that if a decision is given against the defendants (*agar mukadama mazkur khilaf muda-alaiham faisil hua*), whatever amount is found due by the decree-holder I shall pay.” The suit was compromised and the decree-holder took steps to enforce the surety bond against the surety in process of execution.

Held, that it is well established that the question whether a compromise was or was not excluded under the terms of a surety bond is a question of fact in each case.

Also, that as the words used in the present bond indicated clearly that there had to be a decision of the Court against the defendants, it followed that the surety was discharged by the compromise on a proper interpretation of his contract of suretyship.

Narsingh Mahton v. Nirpat Singh (1), followed.

Appeal under the Letters Patent from the order of Jai Lal J., passed in Civil Appeal No. 2309 of 1935, on 13th February, 1936, affirming that of Mr. S. M. Haq, District Judge, Hissar, dated 7th November, 1935 (who affirmed that of Sardar Sewa Singh, Senior Subordinate Judge, Hissar, dated 18th December

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1934), holding that Kishan Chand can execute the decree against Dalip Singh after proper notices.

J. R. AGNIHOTRI, for NANAK CHAND PANDIT, for Appellant.

J. L. KAPUR, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—The sole question in this appeal under the Letters Patent is whether the decree can be executed against the surety-appellant, Dalip Singh. A money decree was passed against Sher Singh and others *ex parte*. Sher Singh applied to have this decree set aside, and an order was made to the effect that it would be set aside if security was given for payment of the amount decreed. Dalip Singh stood surety, the bond being, dated the 21st March, 1931. It runs as follows :—

“ I, Pandit Dalip Singh, am a resident of Hansi. In the above application for setting aside the *ex parte* decree it has been ordered that the *ex parte* decree be set aside on the defendants furnishing security. Accordingly I stand surety for the defendants and agree that if a decision is given against the defendants in the above case (*agar mukadama nazkur khilaf muda-alaiham faisil hua*), whatever amount is found due to the decree-holder, I shall pay.”

It is well established that the question whether a compromise was or was not excluded under the terms of a surety bond is a question of fact in each case. A Division Bench of the Patna High Court in *Narsingh Mahton v. Nirpat Singh* (1) had to consider a bond very similar to the bond in dispute before us, the terms of which were :—

“ If, God forbid, the suit is decided against the defendants and a decree for mesne profits is passed in

favour of the plaintiffs, the plaintiffs would realise the amount of decree for mesne profits from the property mentioned in this deed.”

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The suit was compromised and the decree-holder took steps to enforce the surety bond against the surety in the process of execution. The surety objected that by reason of the compromise he was discharged from his liability. It was held on the construction of the document that the liability envisaged by the surety was that if a decree for mesne profits was passed *by the Court* against the defendants, he would be liable for such amount as might be decreed up to Rs.500, and, therefore, that by reason of the compromise the surety was discharged from liability. The case before us is much stronger in that the words used, which I have set forth both in English and the vernacular, indicate very clearly that there had to be a decision of the Court against the defendants. This follows from the use of the word ‘*faisil*.’ In this view it seems unnecessary to discuss the other authorities and it follows that the surety was discharged by the compromise between the parties, on a proper interpretation of his contract of suretyship.

We, therefore, accept the appeal and set aside the orders of the Courts below allowing execution to proceed against the surety. The appellant will have his costs before us and before the Single Judge but the parties will bear their own costs elsewhere.

A. N. C.

Appeal accepted.