

PETITIONER:
HOWRAH INSURANCE CO. LTD

Vs.

RESPONDENT:
SOCHINDRA MOHAN DAS GUPTA

DATE OF JUDGMENT 20/08/1975

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN

CITATION:
1975 AIR 2051 1976 SCR (1) 356
1975 SCC (2) 523
CITATOR INFO :
RF 1988 SC 654 (10,13)

ACT:
Surety Bond enforcement of-Bond in favour of District Judge of Agartala, "his successors, successors-in-office and assigns"-Transfer of suit to the Court of Subordinate Judge, Agartala-Subordinate Judge, if incompetent to enforce surety bond.

Code of Civil Procedure. Sections 145(c) and 150.

HEADNOTE:

Messers Das Bank Ltd. instituted a mortgage suit against the responded on January 19, 1950 in respect of the tea garden mortgaged with them in 1943. On reorganisation of the Judicial Administration in Tripura, the suit was transferred from the Tripura High Court to the court of the District Judge, Agartala. On the application by the Bank for appointment of a receiver, an employee of the Bank was appointed as the receiver subject to his furnishing security in the sum of Rs. 50,000. The Receiver took possession of the estate on 22nd January, on February 26, 1950 the tea garden was damaged by a fire which destroyed over 3,000 tea saplings. The respondent moved an application asking for damages from the Receiver on the ground that the fire had occurred due to his negligence. He also renewed his request that the receiver be asked to furnish security.

On August 26, 1950, the appellant M/s. Howrah Insurance Co. executed a surety bond in the sum of Rs. 50,000 in favour of Shri R. M. Goswami, District Judge, Agartala, his successors, successors-in-office and assigns. The bond was approved and accepted by the District judge on October 10, 1950. The bond was executed both by the Receiver and the appellant in favour of "Sri Ramani Mohan Goswami the District Judge of Agartala, his successors, successors-in-office and assigns." By the bond, the executants bound themselves jointly and severally in the whole of the amount of Rs. 50,000 up to the District Judge Agartala, his successors, successors-in-office and assigns. The bond, though executed on August 26, 1950, related back to January 22, 1950 being the date when the Receiver took possession of the property. By virtue of the powers conferred by the

Tripura (Courts) order of 1950 which came into force on December 31, 1950 the District Judge transferred the mortgage suit to the court of the Subordinate Judge, Agartala. The transferee court was created under the order of 1950. The Subordinate Judge decreed the suit and also allowed the respondent's application for damages to the extent of Rs. 32,525. The appeal filed by the Receiver was dismissed for default by the Judicial Commissioner, Tripura, but he allowed the respondent's cross-objections and enhanced the damages to Rs. 41,525. On the Execution Petition filed by the respondent, the Subordinate Judge directed that the damages awarded to the respondent be recovered from the appellant. The appeal filed by the appellant against that order was dismissed by the Judicial Commissioner and this appeal has been preferred on the basis of the special leave granted by this Court.

It was contended for the appellant that (1) 'The Subordinate Judge who tried the suit was incompetent to enforce the surety bond executed by the appellant as he was neither the successor nor the successor-in-office nor the assign of The District Judge; and (2) Under the terms of the bond, the appellant was not answerable for the loss caused to the tea garden by fire.

Rejecting the contentions and dismissing the appeal,

HELD: (I) (i) The Subordinate Judge of Agartala may not be the successor-in-office of the District Judge because "successor-in-office" would mean successor of the District Judge in the post or office of the District Judge. But the Subordinate Judge, Agartala is, for the purposes of the present proceedings, a

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successor of the District Judge who was seized of the suit and who transferred it to the Subordinate Judge under the Tripura (Courts) order of 1950. The surety bond was executed in and for the purposes of the particular proceedings which were Pending before the District Judge, in order that the bond should be enforceable at the instance of the presiding officer of the court. "Successor", therefore, must in the context mean the court which for the time being is seized of the proceedings. [359B-C]

(ii) By virtue of s. 150 C.P.C., the Subordinate Judge was entitled to exercise the same powers in the matter of the enforcement of the bond as the District Judge himself. [359D-E]

(iii) As laid down by section 145(c) of the C.P.C., by the surety bond, the appellant rendered itself liable as a surety for the fulfilment of the conditions imposed on the Receiver under the orders passed by the Court. Therefore, the order for the recovery of damages obtained by respondent against the Receiver can be executed against the appellant to the extent to which it rendered itself personally liable under the terms of the bond. [359-FG]

(2) 'The Receiver was put in possession of the tea garden in his capacity as a Receiver and parties had made contentions from time to time as to whether the tea garden was managed by the Receiver economically and efficiently. The surety bond which was given retrospective operation with effect from the date on which the Receiver had taken Possession of the mortgaged property including the tea garden, would therefore cover the loss occasioned to the tea garden due to the Receiver's default. [360B-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1611 of 1971.

Appeal by special leave from the Judgment and order dated 29-70 of the Judicial Commissioner's Court Tripura, Agartala in Civil Misc. 1st Appeal No. 4 of 1964.

S. V. Gupte, D. N. Mukherjee and G. S. Chatterjee, for the appellant.

P. K. Chatterjee and Rathin Das, for the respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J. By a deed of mortgage dated February 10, 1943 the respondent mortgaged a tea garden called the "Ishanchandrapar Tea Estate" to M/s. Das Bank Ltd. On January 19, 1950 the Bank instituted Mortgage Suit No. 2/1950 against the respondent on the original Side of the Tripura High Court, for recovering the amount due under the mortgage. On reorganisation of the Judicial Administration in Tripura, the suit was transferred to the court of the District Judge, Agartala. On January 20, 1950 the Bank applied for the appointment of a Receiver. On the District.. Judge directing that the Bank should nominate a Receiver in terms of clause 12 of the mortgage deed, first the Secretary of the Bank and later another employee called Adhir Ranjan Dutta was appointed as the Receiver subject to his furnishing security in the sum of Rs. 50,000. The Receiver took possession of the estate on 22nd January but since the security was not furnished, the court directed on an application of the respondent that the Receiver should furnish the requisite security within the time allowed to him. On February 26, 1950 the tea garden was damaged by a fire which destroyed over 3,000 tea saplings. On 28th February, the respondent moved an application asking for damages from the Receiver
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on the ground that the fire had occurred Due to his negligence. The respondent also renewed his request that the Receiver be asked to furnish security.

On August 26, 1950 the appellant M/s. Howrah Insurance Co. Ltd. executed a surety bond in the sum of Rs. 50,000 in favour of Shri R. M. Goswami, District Judge, Agartala, his successors successors-in-office and assigns. The bond was approved and accepted by the District Judge on October 10, 1950.

By virtue of the powers conferred by the Tripura (Courts) order of 1950 which came into force on December 31, 1950 the District Judge transferred the mortgage suit to the court of the Subordinate Judge, Agartala. The transferee court was created under the order of 1950. C

The application filed by the respondent on February 28, 1950 for damages was heard along with the mortgage suit. The learned Subordinate Judge decreed the suit on May 31, 1956, but he also allowed the respondent's application for damages to the extent of Rs. 32,525. He directed that the Receiver should pay the amount within two months, failing which the amount should be recovered from the security of Rs. 50,000. Civil Miscellaneous First Appeal No. 22 of 1956 filed by the Receiver against that order was dismissed for default by the Judicial commissioner, Tripura on December 18, 1959. But, he allowed the respondent's cross-objections and enhanced the damages to Rs. 4],525.

On October 4, 1961 respondent filed in the court of the Subordinate Judge, Execution Petition No. 39 of 1961 against the Receiver and the appellant praying that execution do issue, against the appellant as directed by the Court. The appellant filed this objections to that petition but the learned Judge rejected the objections and directed that the

damages awarded to the respondent be recovered from the appellant. The appellant filed an appeal against that order but it was dismissed by the learned Judicial Commissioner on June 29, 1970. This appeal by special leave is directed against that judgment.

Learned counsel appearing on behalf of the appellant has raised two contentions (1) The Subordinate Judge who tried the suit is incompetent to enforce the surety bond executed by the appellant as he is neither the successor nor the successor-in-office nor the assign of the District Judge; and (2) Under the terms of the bond, the appellant is not answerable for the loss caused to the tea garden by fire.

Both of these contentions turn on the terms of the surety bond and it is therefore necessary to have a look at that bond.

The bond is executed both by the Receiver and the appellant in favour of "Sri Ramani Mohan Goswami the District Judge of Agartala his successors, successors-in-office and assigns". By the bond, the executants bound themselves jointly and severally in the whole of the amount of Rs. 50,000 up to the District Judge. Agartala, his successors,

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successors-in-office and assigns. The bond, though executed on August 26, 1950, relates back to January 22, 1950 being the date when the Receiver took possession of the property.

It is urged that the bond can be enforced only by or at the instance of the District Judge, Agartala, or his successors, successors-in-office or assigns and the Subordinate Judge, Agartala not being either of these, it is incompetent for him to enforce the bond. We see no substance in this contention. The Subordinate Judge of Agartala may not be the successors-in-office of the District Judge because "successor-in-office" would mean successor of the District Judge in the post or office of the District Judge. But the Subordinate Judge, Agartala is, for the purposes of the present proceedings, a successor of the District Judge who was seized of the suit and who transferred it to the Subordinate Judge under the Tripura (Courts) order of 1950. The surety bond was executed in and for the purposes of the particular proceedings which were pending before the District Judge, in order that the bond should be enforceable at the instance of the presiding officer of the court. "Successor", therefore, must in the context mean the court which for the time being is seized of the proceedings.

Under section 150 of the Code of Civil Procedure, save as otherwise provided, where the business of any Court is transferred to any other Court, the transferee Court has the same powers and is entitled to perform the same duties as those respectively conferred and imposed by the Code upon the transferor Court. The surety bond was a part of the proceedings pending before the District Judge and on the transfer of the suit the entire proceedings, including the bond, stood validly transferred to the Court of the Subordinate Judge. Thus, by virtue of section 150, the Subordinate Judge was entitled to exercise the same powers in the matter of the enforcement of the bond as the District Judge himself.

Section 145(c) of the Code of Civil Procedure provides, to the extent material, that where any person has become liable as a surety for the fulfilment of any condition imposed on any person under an order of the Court in any suit or in any proceeding consequent thereon, the decree

or order may be executed against the surety to the extent to which he has rendered himself personally liable, in the manner provided for the execution of decrees. By the surety bond, the appellant rendered itself liable as a surety for the fulfilment of the conditions imposed on the Receiver under the orders passed by the court. Therefore, the order for the recovery of damages obtained by the respondent against the Receiver can be executed against the appellant to the extent to which it rendered itself personally liable under the terms of the bond.

There is no substance in the second contention either. Under the bond, the appellant rendered itself liable "in respect of any loss or damage occasioned by any act or default of the Receiver in relation to his duties as such Receiver as aforesaid". The fire having been caused due to the Receiver's negligence in the performance of his duties the appellant is liable to make good the loss caused to the tea garden by the

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fire. Learned counsel for the appellant however urged that the appointment of the Receiver was limited to the stock-in-trade, machinery and movables in the tea garden and to the factory premises and since the Receiver owed no obligation in relation to the tea garden, the appellant would not be liable for the loss caused thereto by the fire. Reliance is placed in support of this argument on the words "as aforesaid" which qualify the words "in relation to his duties". The surety bond has, undoubtedly, to be construed strictly but it is impossible to accept the contention that the Receiver owed no duty or obligation in respect of the tea garden. He was put in possession of the tea garden in his capacity as a Receiver and indeed parties had made contentions from time to time as to whether the tea garden was managed by the Receiver economically and efficiently. The surety bond would therefore cover the loss occasioned to the tea garden due to the Receiver's default. It is significant that though the bond was executed six months after the tea garden was damaged by the fire it was given retrospective operation with effect from January 22, 1950 being the date on which the Receiver had taken possession of the mortgaged property including the tea garden.

For these reasons we confirm the judgment of the learned Judicial Commissioner and dismiss this appeal with costs.

V.M.K.

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Appeal dismissed.