

For these reasons I am of the opinion that the Custodian did not agree to extend the lease of the appellant after the 31st March, 1955, and that if the appellant continued to retain possession of the premises thereafter he did so in contravention of the provisions of law. I would accordingly uphold the order of the learned Single Judge and dismiss the appeal with costs. Ordered accordingly.

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v.  
Chief Settlement  
Commissioner  
Bhandari, C. J.

FALSHAW, J.—I agree.

Falshaw, J.

B.R.T.

APPELLATE CIVIL

Before A. N. Bhandari, C. J.

AMAR SINGH,—Plaintiff-Appellant

versus

THE STATE OF PUNJAB,—Defendant-Respondent

Regular Second Appeal No. 264 of 1957.

*Indian Contract Act (IX of 1872)—Section 62—Novation—Meaning of—Discharge of liability—Various methods of—Words and Phrases—Accord and satisfaction, assignment, compromise and settlements, release—Meaning of.*

1959  
Oct., 11th

*Held*, that a novation is generally defined as a mutual agreement among all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor or another or a like agreement for the discharge of a debtor to his creditor by the substitution of a new creditor. But novation is not the only method of discharging liabilities: Liabilities may be discharged by accord and satisfaction, assignments, compromise and settlement, payment or release. In novation a new promise is accepted in satisfaction of a previously existing claim while in accord and satisfaction it is not the new promise itself but the performance of the new promise that is accepted as satisfaction. In an assignment

only the rights under a contract can be assigned, for a party to a contract has no power to assign an obligation and thereby to escape the liability which devolves on him. A compromise can be affected only when the parties to a controversy disagree among themselves as to their respective rights and adjust their dispute by making mutual concessions. A release involves a surrender of rights and the acquittance of a duty.

*Second appeal from the decree of the Court of Shri Sant Ram Garg, Additional District Judge, Patiala, dated 20th February, 1957, affirming that of Shri Banwari Lal, Single Sub-Judge, II Class, Nabha, dated the 13th December, 1956, dismissing the suit of the plaintiff's with costs. The costs in the 1st Appeal were ordered to be paid by the plaintiff appellant.*

BABU RAM AGGARWAL, for Appellant.

K. S. CHAWLA, for Respondent.

#### JUDGMENT

**Bhandari, C. J.** BHANDARI, C.J.—This appeal from Pepsu raises the question whether a certain agreement can be regarded as a contract of novation.

The facts of the case are very simple indeed. Amar Singh, plaintiff, owed the State of Pepsu a sum of Rs. 35,000 or thereabouts on account of a contract for the sale of country liquor. It appears that a similar sum was due by the State to Balak Ram and certain other contractors for distillation of liquor. Balak Ram and others owed a sum of Rs. 35,000 or thereabouts to Amar Singh plaintiff. The Excise Commissioner had issued a warrant for the recovery of the amount due from Amar Singh as arrears of land revenue but on the 28th November, 1950, Balak Ram, Lehna Singh and Jagdish Ram made a statement before him (Exhibit P. A) that they had no objection to the amount due to

the State from Amar Singh being deducted from the amount due to them from the State. The Excise Commissioner appears to have agreed to this proposal for he issued an order staying the recovery of the amount due to the State from Amar Singh.

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Unfortunately certain disputes arose between Balak Ram and the State concerning the amount which was due from Balak Ram and the State was unable to adjust the sum of Rs. 35,000 which was due from Amar Singh. The Excise Commissioner accordingly issued a fresh warrant for the recovery of the amount as arrears of land revenue. Amar Singh thereupon brought a suit for the issue of an injunction restraining the State from recovering the amount. The trial Court dismissed the suit and the order of the trial Court was upheld by the learned Additional District Judge of Patiala. The plaintiff is dissatisfied with the orders of the Courts below and has come to this Court in second appeal.

Section 62 of the Indian Contract Act provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Mr. Aggarwal, who appears for Amar Singh, contends that although there was no express contract between his client and the Commissioner of Excise for the replacement of the old contract by a new contract, there can be no manner of doubt that Balak Ram and others made a statement to the Excise Commissioner that any amount due to the State from Amar Singh could be adjusted against their claim against the State. To this the Commissioner assented as is clear from the fact that he issued an order staying recovery of the amount which was due from Amar Singh and took no action against Amar Singh for as long a period

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as five years. As the Commissioner entered into a new contract for the purpose and with the effect of dissolving the contract with Amar Singh, a contract of novation came into being and it would be extremely inequitable if the plaintiff was compelled to repay the money to the Excise Commissioner when he has already adjusted the amount with Balak Ram and others.

A novation is generally defined as a mutual agreement among all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor or another or a like agreement for the discharge of a debtor to his creditor by the substitution of a new creditor. But novation is not the only method of discharging liabilities. Liabilities may be discharged by accord and satisfaction, assignments, compromise and settlement, payment or release. In novation a new promise is accepted in satisfaction of a previously existing claim while in accord and satisfaction it is not the new promise itself but the performance of the new promise that is accepted as satisfaction. In an assignment only the rights under a contract can be assigned, for a party to a contract has no power to assign an obligation and thereby to escape the liability which devolves on him. A compromise can be effected only when the parties to a controversy disagree among themselves as to their respective rights and adjust their dispute by making mutual concessions. A release involves a surrender of rights and the acquittance of a duty.

The agreement which appears to have taken place in the present case cannot be said to constitute a novation. . . . There were three parties to this case, namely the Excise Commissioner, Amar Singh, plaintiff, and Balak Ram and others. There

was no mutual agreement among all these parties to substitute a new contract for the old contract, Amar Singh himself was not a party to the settlement which is incorporated in Exhibit P.A. dated the 28th November, 1950. The Excise Commissioner never agreed to absolve Amar Singh from his liability to the State. He appears to have agreed merely that on the performance of the new agreement the old obligation shall be discharged. The new agreement was never performed and the old agreement continued to regulate the relations between the parties. There was no new agreement which of itself affected the discharge of the obligation. At no stage did the Commissioner agree that he would not recover the amount from Amar Singh. In any case, there is nothing on the record to indicate that the Commissioner had power to rescind the old contract, to enter into a fresh contract on behalf of the State or to substitute Balak Ram and others as the debtors of the State.

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For these reasons I am of the opinion that the original contract continues to bind the parties to this litigation. I would accordingly uphold the order of the lower appellate Court and dismiss the appeal. The parties will, however, be left to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Bhandari, C.J.,

UNION OF INDIA,—Petitioner

versus

M/s RAM SUKH DASS & Bros.,—Respondents.

Civil Revision No. 281-D of 1956

Code of Civil Procedure (Act V of 1908)—Section 115—  
Constitution of India (1950)—Article 227—Case decided—

1959  
Nov., 18th