

(1963) 12 KL CK 0003
In the High Court Of Kerala
Case No : A.S. No. 244 of 1959

Anthrapper Bank Ltd.

APPELLANT

Vs

United State Packers and Cannerys Ltd and Others

RESPONDENT

Date of Decision : 18-12-1963

Acts Referred:

Companies Act, 1956 — Section 125

Citation : (1964) KLJ 119

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : Mathew Muricken, for the Appellant; K.C. John For 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Mathew, J.—The plaintiff is the appellant. Its suit was to recover the balance amount due under an overdraft agreement executed by the 1st defendant company. The 2nd defendant was the Managing Director of the 1st defendant company. The 3rd defendant executed a promissory-note to the plaintiff as collateral security for the balance amount that may be due under the overdraft agreement. The transaction was also secured by a pledge of certain movables belonging to the 1st defendant. The 4th defendant, the Travancore Forward Bank Ltd., Punalur branch, had obtained a decree charged on the movables pledged, and the 5th defendant, the Official Receiver was appointed receiver of the movables. An amount of Rs. 3,310-3-4 with interest was claimed in the plaint as a charge over the movables pledged, in priority to the 4th defendant's claim. The main contesting defendant was the 4th defendant. Its contention was that it had no notice of the pledge of the movables in favour of the plaintiff, and that there was no valid pledge of the movables to the plaintiff as possession of the pledged articles was not given to the plaintiff Bank, and so the plaintiff was not entitled to get a charge on the movables in priority to it. It was also contended that in order to create a valid charge on the movables belonging to an

incorporated company, the charge must be registered with the Registrar of Joint Stock Companies and that the charge in favour of the plaintiff not having been registered as aforesaid, the plaintiff was not entitled to get any charge over the movables, at any rate in priority to it, as the articles were hypothecated to it by the 1st defendant and that was registered u/s 125 of the Companies Act.

2. The court below came to the conclusion that the 4th defendant was entitled to priority as against the plaintiff on the ground that the pledged articles were not given possession of to the plaintiff, and also for the reason that the charge in favour of the plaintiff was not registered under the Companies Act with the Registrar of Joint Stock Companies. It decreed the plaintiff's suit as against the 1st defendant company giving it only a subsequent charge on the plaintiff movables, as it held that the 4th defendant was entitled to a prior charge. This decree has been challenged on the ground that the court below was wrong in thinking that the charge in favour of the plaintiff required registration under the Companies Act and that the plaintiff's title depended upon actual physical delivery of the movables to it by the 1st defendant.

3. As regards the first question whether the charge in favour of the plaintiff required registration, Ext. P. 8, the agreement between the plaintiff and the 1st defendant, would indicate that the transaction evidenced by it was a pledge, and not a charge simpliciter. Ext. P. 8 was executed on 24-8-1950 by the 1st defendant in favour of the plaintiff Bank. It is clearly stated that the articles mentioned therein and belonging to the 1st defendant, are being pledged to the plaintiff and that the 1st defendant company will thereafter hold the movable as a custodian of the plaintiff. Although there was no actual physical delivery of possession, there was a constructive delivery, as the possession of the 1st defendant thereafter was only that of a mere custodian. So the detention of the articles by the 1st defendant would not affect the validity of the pledge. In order that there may be a valid pledge, there must be delivery of possession of the articles by the pawner to the pawnee. (See Section 172 of the contract Act). But the delivery need not be an actual one. In his Commentaries on the Law of Bailments, Story, J. has at page 267 stated:

As possession is necessary to complete the title by pledge, so, by the common law, the positive loss, or the delivery back, of the possession of the thing with the consent of the pledgee, terminates his title. However, if the thing is delivered back to the owner for a temporary purpose only, and it is agreed to be redelivered by him, the pledgee may recover it against the owner, if he refuses to restore it after the purpose is fulfilled. So, if it is delivered back to the owner in a new character, as for example, as a special bailee, or agent. In such a case, the pledgee will still be entitled to the pledge, not only as against the owner, but also as against third persons; for, under such circumstance, the possession is perfectly consistent with the existence of the original right of the pledgee. But if the pledgee voluntarily, by his own act, places the pledge beyond his own power to restore it, as by agreeing that it may be attached at the suit of a third person,

that will amount to a waiver of his pledge.

That a pledge need not be accompanied by actual physical delivery of possession of the thing pledged is clear from *Reeves v. Capper* (132 E. R. 1057). There, the Captain of a ship pledged his chronometer then in the possession of the makers, to defendants, the owners of the ship, in consideration of their advancing him a certain amount and allowing him the use of the instrument during a voyage on which he was about to depart: after the voyage he placed it at the makers and there pledged it to the plaintiff, for whom the makers, being ignorant of the pledge to defendants, agreed to hold it: the money advanced by defendants not having been repaid, it was held that the property in the instrument was in defendants. In the course of the judgment, it was observed by Tindal C. J., at page 1059:

The terms of the agreement were, that "they would allow him the use of it for the voyage:" words that give him no interest in the chronometer, but only a licence or permission to use it, for a limited time, whilst he continued as their servant, and employed it for the purpose of navigating their ship. During the continuance of the voyage and when the voyage terminated, the possession of Captain Wilson was the possession of Messrs. Capper; just as the possession of plate by a butler is the possession of the master; and the delivery over to the plaintiff was, as between Captain Wilson and the defendants a wrongful act, just as the delivery over of the plate by the butler to a stranger would have been; and could give no more right to the bailee than Captain Wilson had himself. We therefore think the property belonged to the defendants, and that the rule must be made absolute for entering the verdict for the defendants

In *Bailment in the Common Law* by George W. Paton, page 356, it is stated that there may be a valid pledge, even though actual physical possession has not been handed over to the pledgee.

An example of constructive delivery is where the pledger agrees that his holding shall be that of the pledgee, e.g., in *Reeves v. Capper* the master of a vessel pledged his chronometer with the owner of his ship, under a contract by which the master was to be allowed to retain possession for the purpose of a voyage. This was held to be a valid pledge. "In the case of a simple pawn of a personal chattel, if the creditor parts with the possession, he loses his property in the pledge: but we think the delivery of the chronometer (to the master) under the terms of the agreement itself was not a parting with the possession but that the possession of (the master) was still the possession of the pledgee.....". A Bank as pledgee may find it convenient to allow the realisation of shares to be made by the pledgers. The rights created by the original pledge are not destroyed by a delivery to the pledger on the understanding that the pledge is not to be affected.

Considering the terms of Ext. P. 8, I am inclined to think that it created a valid pledge, and that it did not require to be registered u/s 125 of the Companies Act.

4. The second question for consideration is whether the 4th defendant had notice

of the pledge. Though not necessary for the decision of the case, in view of my finding on the first question I would still consider this question in view of the argument at the Bar. It is clear from the evidence in the case that the then agent of the 4th defendant Bank had notice of the pledge of the movables to the plaintiff. D. W. 1, the agent has sworn in categorical terms that at the time when the movables were hypothecated to the 4th defendant Bank by the 1st defendant, he had notice of the pledge in favour of the plaintiff Bank. If the agent of the Bank had notice of the pledge in favour of the plaintiff Bank, that knowledge must be attributed to the 4th defendant, because the notice was received by the agent in the course of his employment as agent. Therefore, it must be held that the plaintiff was entitled to claim priority for an amount not exceeding Rs. 5000/-, as that was the maximum fixed in Ext. P. 8. The claim of the 4th defendant must therefore be postponed to the plaintiff's claim. I would, therefore, set aside the decree of the court below and give the plaintiff a decree as against the 1st defendant and also a first charge for the decree amount on the plaintiff movables. The realisation of the 4th defendant's claim from the movables will be postponed to the satisfaction of the plaintiff claim. In the result the decree of the court below is set aside and the appeal allowed; but, in the circumstances, without any order as to costs.