

(1947) 01 BOM CK 0004
In the Bombay High Court
Case No : I.C. No. 57 of 1945

In Re: East Africa Hardware Company, in Liquidation

Date of Decision : 31-01-1947

Acts Referred:

Companies Act, 1956 — Section 109

Citation : (1949) 51 BOMLR 271

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Judgement

Tendolkar, J.—The third question, as to the necessity for registration, arises in this manner. Section 109 of the Indian Companies Act states,

Every mortgage or charge created after the commencement of this Act by a company and being either...(c) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade; shall, so far as any security on the company's property or undertaking is thereby conferred be void against the liquidator....

2. The question for consideration is, what is the meaning to be attached to Clause (e) of this section ? The clause read with the punctuation as it exists in the statute hardly makes sense. I have not heard of such a thing as a "pledge on a property." One ordinarily talks of "of a pledge of property", but a mortgage or charge is "on" a property. It appears to me that in the punctuation of this clause one must read after the word "pledge" a comma in order that the clause may make sense. Thus read, the clause would be "a mortgage or charge, not being a pledge, on any moveable property of the company, except stock-in-trade..." The result would be that a pledge would not require registration, though a mortgage or a charge on moveable property would require registration, provided the moveable property was not stock-in-trade. The proviso leads to the result that a mortgage or a charge on stock-in-trade would not require any registration. The case I am dealing with is, as I have held, a case of pledge, but, even if I am wrong in holding that in this case possession of the goods had not been handed over to the petitioner it would still be a mortgage or a charge on stock-in-trade.

In either contingency to my mind registration is not necessary. The objections urged by respondent No. 1, therefore, fail.

3. The second issue was therefore found in the affirmative.