

(1916) 11 BOM CK 0026
In the Bombay High Court

Lakhamsey Ladha and Co.

APPELLANT

Vs

Lakshimichand Padamsey

RESPONDENT

Date of Decision : 05-11-1916

Acts Referred:

Contract Act, 1872 — Section 178, 179

Citation : AIR 1917 Bom 152 : (1918) ILR (Bom) 205

Hon'ble Judges : Basil Scott, C.J.;Heaton, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—The plaintiffs are up-country cotton merchants who consign cotton to Bombay for sale. Damji Hirji & Co. were, until the 29th of September 1913, their usual consignees and agents for sale in Bombay.

2. The plaintiffs, as the correspondence shows, frequently called upon Damji Hirji & Co. to remit money to them in large sums the security being the plaintiffs' cotton in their hands.

3. Damji Hirji & Co. used to raise money by pledge of this cotton to the 3rd defendants' firm.

4. On the 29th of September 1913, the 3rd defendants or persons claiming under them held 757 bales of the plaintiffs' cotton against which advances had been made to Damji Hirji & Co.

5. The accounts between the plaintiffs and Damji Hirji & Co. at that time showed a balance of Rs. 50,000 owing to Damji Hirji & Co. but on the other hand Damji Hirji & Co. had to account to the plaintiffs for the 757 bales.

6. The 3rd defendants' advances against these bales amount to Rs. 83,000 or thereabouts.

7. The contest in this suit is for the amount by which the 3rd defendants' advances exceed the sum due in account of the plaintiffs to Damji Hirji & Co. The learned Judge in the trial Court held that the plaintiffs' representatives knew that

the firm of Damji Hirji & Co. were raising money on their goods by pledging them to the defendants who in turn pledged them with the Allahabad Bank and that the case fell clearly within Section 178 of the Indian Contract Act as a valid pledging of goods in the possession of a mercantile agent.

8. The argument for the appellants is this: Section 179 takes the case of a pledgor with an interest in the subject of the pledge out of the operation of Section 178 and limits the authority to pledge to the extent of the interest in the goods. Damji Hirji & Co. had a lien on the cotton consigned to them to the extent of Rs. 50,000 or thereabouts in which the accounts showed the plaintiffs to be indebted to them. Therefore, they had no authority to charge the cotton beyond Rs. 50,000. The plaintiffs' counsel has with this premiss attempted to show that the evidence only shows a recognition by the plaintiffs of Damji Hirji and Company's authority to pledge the cotton to recoup themselves the advances, ex hypothesi Rs. 50,000, already made to the plaintiffs.

9. In my opinion the proposition of law upon which the argument is based cannot be maintained. Section 179 does not limit the scope of Section 178 but saves a pledge to the extent of the pledgor's own interest notwithstanding the presence of invalidating conditions falling under one of the provisions to Section 178. In other words whenever he has an interest the person in possession of the goods or documents has unconditional authority to charge at least that interest.

10. Upon the evidence the learned Judge was right. It justifies the finding that the plaintiffs' representatives knew the manner in which their cotton was being dealt with by Damji Hirji & Co. and made no objection and that consequently they approved of the pledging. The correspondence further justifies the conclusion that the plaintiffs urged Damji Hirji & Co. to pledge their cotton when necessary.

11. In this state of the evidence it is hopeless for the plaintiffs' counsel to contend that the circumstances raised any presumption that the pledgor was acting improperly, even though his account shows that he knew the plaintiffs to be the owners of the cotton. It is unnecessary in this view of the case to consider the evidence as to the alleged interview between Meghji the plaintiff's and Dulabhdas the 3rd defendants' representative.

12. The appeal must be dismissed with costs.