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**(1969) 02 DEL CK 0017**

**In the Delhi High Court**

**Case No :** Regular First Appeal No. 67-D of 1961

M.R. Dhawan

APPELLANT

Vs

Madan Mohan and Others

RESPONDENT

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**Date of Decision :** 13-02-1969

**Acts Referred:**

**Citation :** AIR 1969 Delhi 313 : (1969) ILR Delhi 405

**Hon'ble Judges :** S.K. Kapur, J;P.N. Khanna, J

**Bench :** Division Bench

**Advocate :** J.R. Goel, for the Appellant; D.D. Kapur, for the Respondent

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## **Judgement**

P.N. Khanna, J.—The only question involved in this appeal is whether the appellant, who is the pawner of certain shares in favor of respondent No. 5-Bank, is entitled to the dividends and the right, and bonus shares issued, in respect of the said pledged shares.

2. The facts giving rise to this appeal are as follows: 101 shares of the Punjab National Bank Limited of the value of Rs.100 per share originally stood in the joint names of respondent No. 2 and his brothers respondents Nos. 3 and 4. Respondent No. 2 entered into a partnership with the appellant under the name of New Shares Corporation.

3. This firm, New Shares Corporation, had an overdraft account with the Hindustan Commercial Bank Ltd., respondent No. 5. As a security in the said account, 91 shares out of the said 101 shares of the Punjab National Bank Ltd. were pledged by the said firm with respondent No. 5, who, in a suit for the recovery of money due, obtained a decree for the amount found due to it.

It was however, held by the High Court in the said suit, that only 1/3rd right of respondent No. 2 in those shares had been pledged, as the share of respondents Nos. 3 and 4 could not be pledged by respondent No. 2. Allowing the benefit of Section 17 of the Displaced Persons (Debts Adjustment) Act 71 of 1951. It was held that the Bank was entitled to recover the decretal amount by the sale of

shares to the extent that they are validly hypothecated and not from the defendants personally in case of short fall.

4. The present appellant then filed a suit (Suit No. 179 of 1955) for the declaration that the said shares were the exclusive property of the partnership. New Shares Corporation, and these belonged to him and respondent No. 2, in the ratio of their respective shares in the firm and were available for payment of firm's debts and for adjustment of the amounts due to him from respondent No. 2. The said suit was decreed only as regards 1/3rd share of respondent No. 2 and was dismissed as regards 2/3rd share of respondents Nos. 3 and 4. Respondents Nos. 3 and 4, in the meantime, sold their interest in the said shares in favor of Respondent No. 1.

5. In respect of the said total 101 shares, the Punjab National Bank Ltd., issued 444 shares of Rs.25 each paid up and 190 right shares of Rs.25 each. Besides, certain sums were lying with the Punjab National Bank Ltd. as accumulated dividends.

6. Respondent No. 1, Shri Madan Mohan then filed this suit, out of which the present appeal has arisen, for the partition of his 2/3rd interest in all the aforesaid shares, including the bonus and right shares, aforesaid, as also in the accumulated dividends. Respondent No. 5 was the main contesting party in the suit. According to it, respondents Nos. 3 and 1 had no interest in the original shares, all of them having been pledged in its favor by the New Shares Corporation as rightful owner. The decision in the earlier suit No. 179/55. according to it, was not binding upon it and, at any rate, all the interest of the appellant and respondent No. 2 in the said shares including their interest in the bonus and right shares and in the accumulated dividends was subject to its pledge. Hence, no partition could take place at all.

The following issues were framed: --

1. Whether the defendant No. 5 (now respondent No. 5) is not bound by the decision in suit No. 179 of 1955?

2. If not, is the plaintiff (now respondent No. 1) the owner of 2/3rd shares in dispute?.

3. Whether the defendant No. 1 (now the appellant) is entitled to any Interest in the shares dividends, bonus and right shares?

4. Relief.

7. The learned Sub Judge decided issue No. 1 against the respondent No. 5--Bank. Issue No. 2 was decided in favor of the plaintiff-respondent No. 1. Regarding issue No. 3, the learned Sub Judge held that the whole interest of respondent No. 2 had been pledged in favor of respondent No. 5-Bank and as such, appellant-defendant No. 1, was not entitled to any interest in 1/3rd of the 91 shares originally hypothecated (should be pledged) or any accretion in the

form of right or bonus shares or In the accumulated dividends except to the extent allowed by the High Court in Judgment dated 2-3-1960. The appellant defendant No. 1 has come up in appeal against the said judgment and decret dated the 21st January. 1961 of the learned Sub Judge, 1st Class Delhi.

8. The only question that now arises for consideration is, as to whether that pledge in favor of the respondent No. 5 extended also to the right shares, bonus shares and the accumulated dividends declared, in respect of 1/3rd of 91 shares of the Punjab National Bank Ltd.. which was pledged with respondent No. 5.

9. The learned Sub Judge, while answering the above question has based his judgment on. what he calls as "principle of law in the case of mortgages and has also discussed the rights, as between the buyer and seller in the case of a transfer of shares. The distinction between the pledge, the mortgage and the sale has not been properly appreciated by him. Pledge is defined in S. 172 of the Indian Contract Act which is reproduced as follows:--

"The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawner." The bailee is called the "pawnee"."

Under S. 176 of the Contract Act-

"If the pawner makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawner upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawner reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawner is still liable to pay the balance. If the proceeds of the sale are greater than the amount So due the pawnee shall pay over the surplus to the pawner."

10. It is thus, clear that pledge is a kind of bailment and security. Its primary purpose is to put the goods pledged in the power of the pawnee to reimburse himself for the money advanced, when on becoming due it remains unpaid by selling the goods after serving the pawner with a due notice. The pawnee at no time becomes the owner of the goods pledged. He has only a right to retain the goods until his claim for the money advanced thereon has been satisfied, with a power to sell the goods pledged, after due notice in case of default by the pawner. It is only a special property in the goods pledged, which is acquired by the pawnee, leaving the general property intact with the pawner. In the case of a mortgage, however, an interest in the mortgaged property is transferred in favor of the mortgage subject to the right of redemption of the mortgagor.

The learned counsel for the appellant has referred to a judgment in the case of Sri Raja Kakarlapudi Venkata Sudarsana Sundara Narasayamma Garu (died) and Others Vs. Andhra Bank Ltd., Vijayawada and Others, . It was observed in

the said case:

"The essential distinction, Therefore, between a pledge and a mortgage is that unlike a pledge a mortgage acquires general property in the thing mortgaged subject to the right of redemption of the mortgagor. In other words, the legal estate in the goods mortgaged passes on to the mortgage. But a pledge has only the special property in the goods pledged, namely, the right of retainer of the goods as security, and in case of default he must either bring a suit against the pawner or sell the goods after giving a reasonable notice."

11. It will, thus, be seen that the pawnee acquires a right, after notice, to dispose of the goods pledged. This amounts to his acquiring only a "special property" in the goods pledged. The general property therein remains in the pawner and wholly reverts to him on payment of the debt or performance of the promise. Any accretion in the shape of dividends, bonus or right shares, issued in respect of the pledged shares will, Therefore, be in the absence of any contract to the contrary, the property of the pawnor.

12. In the case of a sale, "the property" in the goods is transferred from the seller to the buyer. Reference may be made to Section 4 of the Sale of Goods Act. "Property", according to Section 2(11) of the Sale of Goods Act, means "general property in goods and not merely a special property." It is, thus, clear that if only special property passes, it may amount to a pledge. It becomes a sale only when the general property in the goods passes. The contention of the learned counsel for the respondents that in the case of a transfer of shares, the transferee becomes entitled to all the dividends declared after the contract of transfer and to the bonus or right shares, if any Therefore, has no relevance; because in the case of a transfer which is a sale, general property is transferred to the buyer which does not happen in the case of a pledge. The general property having, thus, remained in the pawner, he remains entitled to all the dividends that may be declared on the shares and to the bonus and right shares that may be issued in respect of the shares pledged.

13. There being no contract to the contrary in this case, respondent No. 5 has no right or interest in the accumulated dividends declared in respect of 1/3 of the 91 shares of the Punjab National Bank Ltd., pledged in favor of respondent No. 5, nor to the right shares or the bonus shares issued in respect of the same. The result is that the appeal is accepted and the judgment and decree of the learned Sub-Judge is modified so as to exclude in favor of the appellant the right and bonus shares and dividends declared in respect of 1/3rd of 91 shares of the Punjab National Bank Ltd. originally pledged with respondent No. 5. The appellant shall be entitled to costs of this appeal.

S.K. Kapur, J.

14. I agree.

15. Appeal allowed.