
(1995) 07 MP CK 0040
In the Madhya Pradesh High Court
Case No : F.A. No. 8 of 1987

Punjab and Sind Bank

APPELLANT

Vs

Nagrath Industries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 176

Citation : AIR 1996 MP 32 : (1996) 1 MPJR 259 : (1995) 40 MPLJ 1004 : (1995) MPLJ 1004

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

This appeal has been preferred by Punjab and Sind Bank. The dispute lies in a very narrow compass. It is not necessary to go into detailed facts. The suit stands decreed. Interest has been fixed at the rate 171/2%. The judgment-debtor had addressed a letter Ex. P/50 to the Bank on 9th Oct. 1978. It is the impact of this letter which is relevant for the purpose of this appeal. This reads as under:

"As we are not able to clear your dues, we hereby handover to you complete factory premises situated at 13 Industrial Estate, Gwalior including Plant & Machinery & all other items lying there. You are at liberty to lock it, or dispose it, and the amount realised may be credited to our loan account."

Taking note of this, the trial Court concluded that even though the suit is being decreed but the Bank will not be entitled to interest on the amount representing value of the articles mentioned in Ex. P/50. In para 34 of the judgment it was concluded :

"Accordingly, plaintiff-Bank gets a decree of Rs. 2,71,859-90 NP, with future

interest @ 17 1/2% per annum from the date of institution of the suit i.e. 4-3-1980, but out of this decretal amount, the list Ex. P/51 that were handed over by the defendants to the plaintiff-Bank per letter Ex. P/50 on 19-10-1978, shall be reduced with interest @ 17 1/2% per annum on that sum from 19-10-1978. Defendants shall pay the costs of the suit to the plaintiff-Bank."

It is the above conclusion, which is the subject matter of this appeal.

Learned counsel appearing for the Bank has argued that the Bank was not obliged to sell the goods as Ex./P50 was not categorical in terms. The decree was passed in the year 1986. This has not been executed till today.

The only argument as noticed above is that the direction given that the interests will "not be payable on the amount which may be realised after the sale of the articles is not sustainable.

Reliance has been placed on Section 176 of the Contract Act. According to the counsel for the petitioner the bank was not obliged to sell the articles, therefore, it can validly claim the interest.

Section 176 of Contract Act, 1872 reads as under:

"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 pawnor upon the debt or promise, and retain the goods, pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor 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 pawnor is still liable to pay the balance. If the proceeds of the sales are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

The factual position be noticed again. Vide Ex.P/50 on 19th Oct. 1978, the articles mentioned in Ex. P/51 were placed at the disposal of the Bank. These continue to be so at the disposal of the Bank. As such no fault can be found with the conclusion arrived at by the trial Court. As a matter of the Bank could not maintain a suit for recovery of debt and retain pledged property as well. See Lallan Prasad Vs. Rahmat Ali and Another, where in it was observed.

"The second question would then be whether the appellant was entitled to recover the balance of the said loan in view of his denial of the pledge and his failure to offer to redeliver the goods. Under the Common Law a pawn or a pledge is a bailment of personal property as a security for some debt or engagement. A pawner is one who being liable to an engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability. The two -ingredients of a pawn or a pledge are:

(1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and,

(2) a pawnee has only a special property in the pledge but the general property therein remains in the pawnor and wholly reverts to him on discharge of the debt. A pawn, therefore, is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledgee only so far as is necessary to secure the debt. In this sense a pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed. (See *Halliday v. Holygate*, (1868) 3 Ex 299). A contract to pawn a chattel even though money is advanced on the faith of it is not sufficient in itself to pass special property in the chattel to pawnee. Delivery of the chattel pawned is a necessary element in the making of a pawn. But delivery and advance need not be simultaneous and a pledge may be perfected by delivery after the advance is made. Satisfaction of the debt or engagement extinguishes the pawn and the pawnee on such satisfaction is bound to redeliver the property. The pawnor has an absolute right to redeem the property pledged upon tender of the amount advanced but that right would be lost if the pawnee has in the meantime lawfully sold the property pledged. A contract of pawn thus carries with it an implication that the security is available to satisfy the debt and under this implication the pawnee has the power of sale on default in payment where time is fixed for payment and where there is no such stipulated time on demand for payment and no notice of his intention to sell after default. The pawnor however has a right to redeem the property pledged until the sale. If the pawnee sells he must appropriate the proceeds of the sale towards the pawnor's debt, for, the sale proceeds are the pawnor's monies to be applied and the pawnee must pay to the pawnor any surplus after satisfying the debt. The pawnee's right of sale is derived from an implied authority from the pawnor and such a sale is for the benefit of both the parties. He has a right of action for his debt notwithstanding possession by him of the goods pledged. But if the pawnor tenders payment of the debt the pawnee has to return the property pledged! If by his default the pawnee is unable to return the security against payment of the debt, the pawnor has a good defence to the action. This being the position under the common law, it was observed in *Trustees of the Property of Bills and Co. v. Dixon Johnson*, 1925 AC 489, that if a creditor holding security sues for the debt, he is under an obligation on payment of the debt to hand over the security, and that if, having improperly made away with the security he is unable to return it to the debtor he cannot have judgment for the debt."

It was further observed

"There is no difference between the common law of England and the law with regard to pledge as codified in Sections 172 to 176 of the Contract Act. u/s 172 a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 173 entitles a pawnee to retain¹ the goods pledged as security for payment of a debt and u/s 175 he is entitled to receive from the pawnor any extraordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pawnee and provides that in case of default by the pawnor the pawnee has (1) the right to

sue upon the debt had the retain the goods as collateral security and (2) to sell the goods after reasonable notice of the intended sale to the pawner. Once the pawnee by virtue of his right u/s 176 sells the goods the right of the pawner to redeem them is of course extinguished. But as aforesaid the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawner. So long, however, the sale does not take place the pawner is entitled to redeem the goods on payment of the debt. It follows, therefore, that where a pawnee files a suit for recovery of debt, though he is entitled to retain the goods he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt and therefore, if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree. If it were otherwise the result would be that he would recover the debt and also retain the goods pledged and the pawner in such a case would be placed in a position where he incurs a greater liability than he bargained for under the contract of pledge. The pawnee, therefore, can sue on the debt retaining the pledged goods as collateral security. If the debt is paid he has to return the goods with or without the assistance of the Court and appropriate the sale proceeds towards the debt. But if he sues on the debt denying the pledge, and it is found that he was given possession of the goods pledged and had retained the same, the pawner has the right to redeem the goods so pledged by payment of the debt. If the pawnee is not in a position to redeliver the goods he cannot have both the payment of the debt and also the goods. Where the value of the pledged property is less than the debt and in a suit for recovery of debt by the pledgee, the pledgee denies the pledge or is otherwise not in a position to return the pledged goods he has to give credit for the value of the goods and would be entitled then to recover only the balance. That being the position the appellant would not be entitled to decree against the said promissory note and also retain the said goods found to have been delivered to him and, therefore, in his custody."

In some what different circumstances in *Central Bank of India Vs. Grains and Gunny Agencies and Others*, . It was said that a Bank is not entitled to claim the amount which gets damaged while in custody of the Bank, Same view was expressed in *The Dhanalakshmi Bank Ltd. Vs. K.K. Jose alias Jose Mohan and Others*, -:

Thus when the defendants had in 1978 placed the goods at the disposal of the Bank, it should have proceeded to sell the same and realise the proceeds. The Bank could not retain the goods and file a suit for recovery.

The conclusion arrived at by the trial court is correct and it in fact implements the principles laid down by the Supreme Court in the case of *Lallan Prasad Vs. Rahmat Ali and Another*, . This appeal is without merit. It is dismissed with no order as to costs.