

(1958) 04 AHC CK 0027
In the Allahabad High Court
Case No : First Appeal No. 38 of 1953

Sri Harish Chandra and Others

APPELLANT

Vs

Punjab National Bank Ltd.

RESPONDENT

Date of Decision : 30-04-1958

Acts Referred:

Contract Act, 1872 — Section 172
Stamp Act, 1899 — Article 10, 6
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1958 All 864 : (1958) 28 AWR 733

Hon'ble Judges : B.N. Nigam, J;B. Mukerji, J

Bench : Division Bench

Advocate : Jagdish Narain and S.K. Vidhyarthi, for the Appellant; Bijai Shankar, for the Respondent

Final Decision : Allowed

Judgement

B. Mukerji, J.—This is a reference by the Chief Inspector of Stamps to the effect that paper No. B-101 filed in this appeal was insufficiently stamped and that the requisite stamp duty payable along with penalty came to a sum of Rs. 814-11-0.

2. On behalf of the party relying on this document objection was taken to the stamp report on the ground that the document was merely an agreement and the requisite stamp duty on such a document had actually been paid and as such there was no deficiency.

3. We have examined this document and it is clear to us on its examination that the document really is a document of pledge whereby the executant has pledged movable property on the security of which the bank was to allow the executants cash-credit advances to the extent of Rs. 50,000. Under this document the executants, namely, firm M/S. Lucknow Union Hosiery Works, Lucknow put the Bank in effective possession of the property. u/s 172 of the Indian Contract Act "pledge", "pawnee" & "pawner" have been defined as follows :

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

4. Under Article 6(2) of Schedule I-B of the Stamp Act it is provided that in the case of "the pawn or pledge of movable property where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt" the stamp duty was payable in accordance with the Schedule given thereunder. The Chief Inspector of Stamps has relied on this particular article or the Stamp Act for finding the deficiency, that he has, in the Stamp Duty which was paid on this instrument in question.

Reliance was placed by counsel on the United Provinces Finance Department Notification dated 25-3-1942, where, in exercise of the powers conferred by Clause (a) of Section 9 of the Indian Stamp Act, 1899 and in supersession of all the previous notifications which had been issued, the Governor of United Provinces was pleased to reduce to the extent set forth in each case, the duties chargeable in the United Provinces under the said Act in respect of instruments mentioned in that notification. At item No. 43 was mentioned a document which would fall under the following description :

"Unattested instrument evidencing an agreement relating to the hypothecation of moveable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt."

In order to make the aforequoted exemption applicable, it has to be found that the document in question was a hypothecation bond and was an unattested instrument. The instrument certainly in the instant case is unattested but it is not, in our opinion, a hypothecation bond, hypothecating movable property. In a hypothecation the possession over the property is retained by the owner. It is only certain rights in that movable property that are transferred to the person in whose favour the property is hypothecated. We find that in this particular case, the goods themselves have been handed over to the Bank in whose favour the document has been executed by way of security. Therefore, under this document the goods in respect of which the document was executed became pledged within the definition of "pledge" in Section 172 of the Contract Act, for the possession, as we have pointed out, in respect of it was effectively handed over to the Bank.

5. For the reasons given above we are of the opinion that the document in question was chargeable with duty under Article 6(2) of Schedule I-B of the Stamp Act and we accordingly uphold the report of the Chief Inspector of Stamps. The document therefore is impounded and we send the document to the Collector for necessary action in accordance with law.