(1978) 05 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Civil Original Suit No. 18 of 1977

State Bank of India APPELLANT

Vs

Victory Export Import Syndicate and Others RESPONDENT

Date of Decision : 10-05-1978

Acts Referred:
Contract Act, 1872 — Section 148, 172
Stamp Act, 1899 — Article 5, 6(2), 5

Citation : AIR 1978 J&K 76

Hon'ble Judges : Iqbal Kishen Kotwal, J

Bench : Single Bench

Advocate : J.L. Choudhary, for the Appellant; R.N. Kaul, for the Respondent

Judgement

I.K. Kotwal, J.—While the statement of one of the witnesses for the Plaintiff namely Mr. N. Sriram was being recorded, an objection was

raised by the learned Counsel for the Defendants that the deed of hypothecation dated 18-5-1970 was inadmissible in evidence as the same was

not duly stamped. Reliance was placed upon Article 6(2) of the First Schedule to the Stamp Act under which, according to the learned Counsel,

stamp was leviable on such a documents. Article 6(2) reads thus:

(2) 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:

(a) If such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement.

In case the document came within the definition of a pawn or pledge then undoubtedly it was not sufficiently stamped; the stamp affixed to the

document being only of the value of Rs. 11.50. On terms of this clause before fees could be charged according to the schedule provided in this

Article, the document must be a pawn or pledge of movable property 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. This inevitably takes us to the definition of pledge. Pledge has been defined in Section 172

of the Contract Act which reads:

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

'pawnor'. The bailee is called the 'pawnee'.

2. On a plain reading of this section it would transpire that a pledge would be the bailment of goods to serve as a security for payment of a debt or

for performance of any promise. The bailor would be called the pawnor and the bailee the pawnee. What is therefore a pledge must in turn depend

upon the definition of the term bailment. Bailment has been defined is Section 148 of the Contract Act. This section reads thus:

A 'bailment' is the delivery of goods by one person to Anr. for some purpose, upon a contract that they shall, when the purpose is accomplished,

be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the

'bailor'. The person to whom they are delivered is called the 'bailee'.

Explanation: If a person already in possession of the goods of Anr. contracts to hold them as a bailee, he thereby becomes the bailee, and the

owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

3. One of the ingredients of a valid pledge is the delivery of goods by the pawnor to the pawnee. Unless, therefore, a contract or a transaction at

the time of its inception is accompanied by delivery of the goods pledged, it would not come within the definition of a pledge. A deed of an

agreement not falling within the definition of a pawn or pledge would not be covered by Article 6(2) of Sch. I to the Stamp Act and consequently

the stamp payable on such a document would not be governed by the schedule provided therein. The crucial question which therefore, falls for the

determination is whether or not in the instant case delivery of possession of the goods hypothecaed had also passed on to the Bank at the time the

agreement dated 18-5-1970 came (Contd. on Col. 2)

5. Agreement or Memorandum of an agreement.

a. If relating to the sale of a bill of exchange;

b. If relating to the sale of a Govt. Security or share in an incorporated company or other body corporate.

c. If not otherwise provided for to be executed. On this score there is no dispute between the parties, and rightly so, because even on a plain

reading of Clause 6 of the agreement it transpires that the possession of the goods hypothecated was to remain with the debtor itself. That being

so, this deed cannot be held to be a deed of pawn or pledge so as to attract the mischief of Article 6(2) of Sch. I to the Stamp Act. A transaction

of hypothecation and a transaction of pledge do have a common ingredient inasmuch as both of them create a security in the goods hypothecated

or pledged for the repayment of the loan; the ownership in the goods remaining with the person hypothecating or pledging the same. Nevertheless

there is a distinction between these two transactions because unlike a pledge where the possession of the goods pledged must pass on to the

pawnee, no such possession passes on to the creditor in case of hypothecation.

4. The other question which now needs to be answered is what is the requisite stamp duty which is leviable on the document in hand. Mr.

Choudhry learned Counsel for the Plaintiff has invited my attention to Clause (c) of Article 5 of Sch. 1 to the Stamp Act. Article 5 may be also

reproduced with some profit as below.

5. Obviously the document can neither fall under category (a) nor (b) and the only category under which such an agreement could fall is the one

given in Clause (c) which is a residuary clause. The stamp required for such a document would be only Rs. 1.50. The deed in hand has how ever,

been stamped with Rs. 11.50. Mr. Choudhry has explained the variance on the higher side in the payment of stamps. He has drawn my attention to

Clause 6 of the deed under which not only an agreement for hypothecation was created but which also contained a covenant creating attorneyship

in favour of the bank. That a power of attorney needs a stamp of Rs. 10/- is not and cannot be disputed. According to Mr. Choudhry as the

document sought to create two rights in fav-

Twenty-five paisa.

Subject to a maximum of (fifteen

rupees) (fiteeen paisa)) for every

Rs. 10,000/- or part thereof of the

value of the security or share.

(One rupee fifty paisa)

our of the Bank i.e., one pertaining to hypothecation of the property and the other pertaining to creation of attorneyship a total stamp of Rs. 11.50

was chargeable in respect of the document u/s 5 of the Stamp Act. In my opinion the contention raised by the learned Counsel is well founded.

6. I would therefore hold that the document has been duly stamped being neither a pledge nor a pawn but an agreement of hypothecation covered

by Clause (c) of Article 5 of Sch. I to the Stamp Act with a covenant to confer rights of an attorney of the Defendant on the Plaintiff.

7. For the foregoing reasons the objection raised by the learned Counsel for the Defendant is overruled.

