

(1995) 05 AHC CK 0042
In the Allahabad High Court
Case No : Second Appeal No. 2739 of 1981

State Bank of India, Kanpur	Vs	APPELLANT
Deepak Malviya and others		RESPONDENT

Date of Decision : 09-05-1995

Acts Referred:

Contract Act, 1872 — Section 142, 171, 172, 174, 176
Evidence Act, 1872 — Section 115

Citation : AIR 1996 All 165 : (1998) 91 CompCas 569

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : N.B. Singh, for the Appellant; A.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. This is defendant's second appeal. The facts necessary, for the decision of the appeal are as under :

Deepak Malviya a minor aged about 14 years, Alok Malviya a minor aged about 12 years, Km. Reeta a minor aged about 15 years, all sons and daughter respectively of late Sri Bhola Nath Malviya resident of Kanpur through their natural guardian mother Smt. Sheela Devi and Smt. Sheela Devi herself filed Original Suit No. 80 of 1974 against Agent, State Bank of India, Kahoo Kothi Branch at premises Nos. 55/57 in the Court of 1st Civil Judge, Kanpur. In the aforesaid suit the plaintiffs claimed the following main relief:

(a) A decree for redemption of the said pledge to secure the pledged ornaments returned back in favour of the plaintiffs on payment of principal amount and the interest thereto, be passed in favour of the plaintiffs and against the defendant and whereof the custody of the ornaments in suit be secured in favour of the plaintiffs through Court Agency.

The plaint also contains the details and description of the ornaments pledged with the defendant Bank under Gold Loan Account No. 16/13 dated 14-7-1971.

The defendant State Bank contested the suit. In the written statement it was contended that late Bhola Nath Malviya had obtained a loan advance from the Bank. The total amount due from him is about Rs. 6 lacs. The State Bank has already filed a suit No. 85 of 1974 in the Court of Civil Judge, Kanpur for recovery of a sum of Rs. 5,54,972.11 paise and it was also contended in the written statement that since the assets of gold ornaments were the assets of Bhola Nath Malviya, the same are liable for the debts due against him, the Bank has got a banker's lien against the securities held by it in any account whatsoever.

2. It may also be mentioned here that during the pendency of the suit in the present matter before the trial Court, the suit filed by the State Bank of India against the plaintiffs was decreed for an amount of Rs. 5,54,972.11 paise on account of a cash-credit facility taken by late Sri Bhoia Nath Malviya on 6-9-1969 to the extent of Rs. 75,000/- under which ultimately the limit of loan advancement by the Bank in favour of late Sri Bhola Nath Malviya reached a figure of Rs. 3,75,000/-. The said cash-credit account was secured by pledging of stock of raw materials and finished goods and the said cash-credit account was also secured by deposit of the title deeds of premises No. 84/85, Factory Area, Fazalganj, Kanpur. The equitable mortgage of the aforesaid property was created on. 5-7-1969, the particulars of which were given in the plaint. This loan was taken for M/s. Malviya Engineering Works of which Bhola Nath Malviya was the proprietor.

3. On the pleadings of the parties, the trial Court framed issues out of which a reference of issues Nos. 4 and 10 is sufficient for the disposal of the present second appeal.

Issue No. 4 : Can the defendant Bank claim lien on the ornaments in suit for money due to it in other accounts?

Issue No. 10: Whether there are outstanding dues of defendant against Bhola Nath Malviya other than dues in respect whereof ornaments were pledged? If so, its effect?

4. While deciding issue No. 10 the trial Court held that in connection with another account there were outstanding dues of Bank against late Sri Bhola Nath Malviya.

5. While deciding issue No. 4, the trial Court held that in view of S. 171 of Contract Act, the Bank had a lien over the ornaments pledged by the plaintiffs in connection with the decree passed in favour of the defendant in another suit against the plaintiffs in the present suit, rejecting the plaintiffs' contention that since the ornaments were pledged with the Bank for a specific loan, there could not have been any lien of the Bank as the provisions of S. 171 are confined only to bailment and not to pledges, as contemplated by S. 174 of the Contract Act which mandates that in the absence of a contract to the contrary the pawnee will retain the goods pledged only for the debt for which they are pledged.

6. Aggrieved thereby, the plaintiffs filed Civil Appeal No. 573 of 1978 in the Court of District Judge, Kanpur. The District Judge, Kanpur vide judgment dated 21-9-1971 allowed the appeal and held that the provisions of Sec. 171 of the Contract Act were not attracted in the present matter. The plaintiffs were entitled for redeeming their pledged ornaments by payment of amount due for which the ornaments were pledged and interest thereof. Aggrieved by the aforesaid judgment, the State Bank of India has filed the present second appeal.

7. I have heard Sri A. C. Tripathi, learned Advocate holding brief of Sri S. N. Verma for the appellant and Sri S. C. Tripathi for the respondents.

8. The trial Court has dismissed the suit of the plaintiffs mainly on the ground that the ornaments belong to Sri Bhola Nath Malviya and the plaintiffs have not filed succession certificate to prove that they are heirs of Sri Bhola Nath Malviya and also on the ground that the defendant Bank has lien over the ornaments in connection with another account for which decree has already been passed against the plaintiffs and the plaintiffs were not entitled to redeem the ornaments.

9. The first Appellate Court negating the first point of the trial Court held that since it was not disputed by the defendant-Bank that the plaintiffs are the only heirs of the deceased Bhola Nath Malviya, the suit of the plaintiffs could not have been dismissed on the technical ground of successions certificate having not been obtained by the plaintiffs.

10. The Appellate Court after quoting the relevant provision of Sections 171 and 174 of the Contract Act, recorded the following findings:

"It will be observed that where the transaction of the bailment of pawn as distinct from bailment of any other kind, as in the instant case, the relevant provision applicable is that contained in S. 174, and not S. 171. Section 174 is materially different because in such a transaction the general rule is that the pawnee shall not retain the goods pledged for any other debt or promise other than of promise for which they are pledged, in the absence of a contract to that effect. Whereas under S. 171 the bankers are given the right in general to retain unless there is a contract to the contrary, the position is otherwise in relation to S. 174 which governs the transaction in the instant case. The State Bank respondent has neither pleaded nor shown in the course of evidence that herein there was any contract to the effect that they shall be entitled to retain these ornaments for the satisfaction of any other debt or promise. In the absence of any such contract the respondent is not entitled to retain the ornaments for the satisfaction of any other debt or promise. The decision in (1896) ILR 19 Mad 234, cited for the respondent is an authority in relation to S. 171, and not, it is submitted with respect, in relation to S. 174 of the Contract Act."

11. The other issue which the First Appellate Court decided in favour of the plaintiffs was that in view of the specific words "document" which pledged the ornaments the State Bank of India clearly waived its right of lien over the

ornaments. The second conclusion of the First Appellate Court holding that in view of the works "pledge" the State Bank of India waived its right of lien is not sustainable, as it is settled by the judicial decisions that there cannot be any estoppel against the statute. In case the pledge comes within the purview of S. 171 of the Contract Act, the language of the documents cannot be construed as a waiver by the State Bank of India. No authority can make any concession which is contrary to the provisions of the Statute.

12. The only serious controversy which arises in the present matter is as to whether the provisions of S. 171 of the Contract Act can be extended to the goods which have been specifically pledged for a particular loan in a specific gold loan account which was not a running account.

13. Learned counsel for the appellant has strenuously contended that the pledge is also a form of bailment and as such, the provisions of S. 171 of the Act are applicable also to the cases of pledging as contemplated by S. 174 of the Act and the Banker's lien will carry over such pledges also and the Bank can retain pledged goods, if the debtor has not cleared his account in connection with another loan. The learned counsel for the appellant has placed reliance in support of his contention on the following decisions:

1. Syndicate Bank Vs. Vijay Kumar and others, .
2. Branch Manager, Canara Bank v. P. Moovendan, (1992) 2 Bank CLR 638.
3. Punjab National Bank Ltd. Vs. Satyapal Virmani,

14. Before considering the aforesaid decisions, it is necessary to examine the scheme of the Contract Act and the two provisions which are involved for interpretation in the present matter.

15. Chapter-9 of the Indian Contract Act (hereinafter referred as the "Act") deals with the bailment. Section 148 of the Act defines bailment, bailer and bailee. A bailment is the delivery of goods by one person to another person for some purpose upon a contract that they shall, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called bailer. The person to whom they are delivered is called bailee. Section 171 of the Act, which requires consideration in the present matter, is being reproduced below:

"171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers - Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security of a general balance of account any goods bailed to them; but no other persons have a right to retain as a security for such balance goods bailed "to them unless there is an express contract to the effect."

16. Section 171 of the Act refers to the lien of banker's etc. The right of security for general balance on account of any goods bailed to them. In other words if

certain sum is due to the Bank in one account it may retain as security money or other movable that comes into its hands in another account. The aforesaid analysis makes it clear that the Lower Appellate Court was in error in taking a view that the Bank could not have claimed lien over the pledged ornaments of the predecessor-in-interest of the respondent. Section 171 of the Act and the general principles covering the banker's lien specifically authorise the Bank to retain the pledged ornaments claiming lien over them till the Bank's money is not cleared by the respondents for the loan in connection with the other account for which a decree has already been passed in favour of the Bank.

17. Section 171 of the Act a specification of bailment is conceived where the words mentioned are bailment of pledges.

18. Section 172 of the Act defines pledge, pawner, and pawnee. "The bailment of goods as a security for payment of debt or performance of a terms is called pledge. "The bailer in this case is called pawner. The bailee in this case is called pawnee. Thus it is clear that pledge is only a form of bailment and all pledges are bailment. The Banker's lien contemplated by S. 171 of the Act as such is automatically extended to all pledges.

19. Section 174 of the Act, which came up for consideration, is being reproduced below:

"174. Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances-- The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee."

20. Section 174 of the Act contemplates that in the absence of a contract to the contrary the pawnee is under an obligation to return the goods pledged for any debt or compromise for which the goods were pledged. This is a general provisions providing for the relationship of a pawnee and a pawner in respect of a pledged goods. Section 171 of the Act, providing for Banker's lien, is a specific provision, which has an overriding effect on this general provision, as such, the Banker's lien is also extended to the pledged goods. This proposition finds support in Krishna Kishore Kar Vs. United Commercial Bank and Another, wherein the Calcutta High Court has taken a view that proceeds of the fixed deposits duly credited in the cash-credit account of a loanee can be adjusted by the Bank by appropriating the amount lying in a separate account in exercise of a general power of lien under S. 171 of the Act.

21. A contrary view was taken by the Delhi High Court in Vijay Kumar Vs. Jullundur Body Builders and others, The view taken by the Delhi High Court has been reversed by the Hon''ble Supreme Court in the case of Syndicate Bank Vs. Vijay Kumar and others, , referred to above.

22. Hon"ble Supreme Court in the case of Syndicate Bank Vs. Vijay Kumar and others, has quoted a passage with approval from the Chitty on Contracts 26th Edition on Banker's lien as under (para 6 of AIR):

"By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extend to valuables" lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the process may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked."

23. In another case the Madras High Court was confronted with almost similar situation as involved in the present matter and the Madras High Court has held that where the plaintiff deposits certain jewels with a Bank to secure certain debt on repayment of the secured debt, the plaintiff was held not entitled to recover the jewels unless he proved that the Bank had agreed to give up its general lien. Bankers have a general lien on things bailed with them unless there is a contract to the contrary.

1. Kunhan v. Bank of Madras ILR (1896) Mad 234.

2. Official Agency, Madras v. Rama Swamy ILR 43 Mad 747 : (AIR 1920 Mad 664).

24. There is no difference between the common law of England with regard to the pledged as codified under Ss. 172, 176 of the Indian Contract Act. ,

25. Learned counsel for the respondents, Sri S. C. Tripathi has cited some decisions in support of his contention that since the gold ornaments were pledged for specific purpose, the Bank could not have claimed lien over it. A reference is being made to the decision on which the respondents' counsel has placed reliance.

1. K. Jagadeshwar Reddy v. Manager, Andhra Bank, reported in 1989 (1) BC 352 (Andh Pra).

In the said case, the gold ornaments were pledged by the petitioner as a surety of a third person. In the aforesaid case it was held that if the ornaments have been pledged as a surety for some person, S. 171 of the Act will not be attracted.

2. Jaika Automobiles Pvt. Ltd. Nagpur and another Vs. State of Maharashtra and another, .

In the aforesaid case, the Bombay High Court was confronted with a situation where the Bank has claimed lien over two accounts suo motu without giving notice to the pawnee. The High Court in writ petition said that in. such cases the opportunity should be given to the pawnee concerned. The aforesaid decision has no bearing in the present case, as the controversy involved in the aforesaid case

is not the same as involved in the present case. In the facts and circumstances of the present case, the Bank is entitled to claim lien over the pledged ornaments on the basis of which the predecessor-in-interest has taken loan of the said amount while Bank went to adjust the security towards another loan taken by the predecessor-in-interest of the respondent.

3. In *R.K. Agencies Ltd. Vs. Central Bank of India*, , the Calcutta High Court was confronted with the situation where the pledge was made for a specific purpose. In the present case the pledge is not for a specific purpose. The pledge for a general loan.

26. Likewise in *Syndicate Bank Vs. Devendra Karkera*, , it has been held that the principles of general lien cannot be extended to loan taken by the original owner from another branch of the Bank. This decision has also no bearing in the present case as the predecessor-in-interest of the respondent has taken loan from same branch of Bank for which lien is being claimed for adjusting the security towards the loan taken in connection with other account.

27. The other point on which the lower appellate court decided the appeal in favour of the respondents is that the Bank was estopped from claiming lien over the pledged ornaments since the Manager of the Bank itself sent notice to the respondents to redeem the ornaments by payment the amount due and the amount having been paid by the respondents, the Bank is not estopped from claiming any lien over the pledged ornaments.

It is settled proposition of law that there cannot be any promissory estoppel against the statute as held in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, .

28. Thus I am clearly of the view that the Lower Appellate Court, was in error in holding that the appellant Bank cannot claim lien over the gold ornaments pledged by the predecessor-in-interest of the respondent for adjusting it against the loan taken by the predecessor-in-interest of the respondent from the same Bank and same branch and the Appellate Court was also in error in holding that the Bank is estopped from claiming lien over the gold ornaments pledged by the predecessor-in-interest the respondent. However, I uphold the findings of the Lower Appellate Court to the extent it has held that the appellant bank could not have insisted upon the production of succession certificate for redeeming the gold ornaments. To that extent the judgment of the trial Court is not correct and has been rightly set aside by the Lower Appellate Court.

29. Accordingly, I set aside the judgment of the District Judge, Kanpur dated 21-9-81 passed in Civil Appeal No. 573 of, 1978 and restore the judgment and decree passed by the trial Court in Civil Suit No. 60 of 1974.

30. In the circumstances of the present case, the parties will bear their own costs.

31. Appeal allowed.