
(1987) 03 AP CK 0052
In the Andhra Pradesh High Court
Case No : Appeal No. 737 of 1978

State of Andhra Pradesh and Another	APPELLANT
Vs	
Andhra Bank Ltd. and Others	RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Contract Act, 1872 — Section 171, 172
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1988 AP 18

Hon'ble Judges : Syed Shah Mohd. Quadri, J; Jay Achandra Reddy, J

Bench : Division Bench

Advocate : Govt. Pleader for GAD, for the Appellant; E.V. Narasimha Rao and P. Ramakrishna Raju, for the Respondent

Judgement

Jayachandra Reddy, J.—Defendants 1 and 2 viz. the State of Andhra Pradesh represented by the Collector, West Godavari District, Eluru and the Director of Agriculture (Cane Commissioner), Government of Andhra Pradesh in O.S. No. 33 of 973 on the file of the Subordinate Judge, Tanuku are the appellants. The 1st respondent herein viz., the Andhra Bank Limited filed the suit for a declaration that the plaintiff is entitled to certain sums, in the alternative for a money decree against some of the defendants. The 3rd defendant in the suit is the Sivakami Reserve Area Cane Producers and Suppliers and the 4th defendant is the Sivakami Sugars Ltd. a Public Limited Company now at Madurai. 5th defendant is the Managing Director of Sivakami Sugars Ltd., who died and defendants 6 to 19 are his legal representatives.

2. The plaintiff provided certain credit facilities to the 4th defendant, Sivakami Sugars Ltd. and allowed open cash credit to the extent of Rs.5,00,000/- and key cash credit to the extent of Rs.15,00,000/- besides some other facilities totalling to Rs.27,00,000/- and the 5th defendant executed a letter of guarantee on 22-1-1970 in favour of the plaintiff-Bank for the aforesaid credit facilities. The 4th defendant, Sivakami Sugars Ltd., had three godowns. The stock in godown

No. 1 . was the subject-matter of the hypothecation to the plaintiff-Bank under the open cash credit system to an extent of Rs.5,00,000/-and a promissory note for the same was executed by the 4th defendant on 22-1- 1970 in favour of the plaintiff. Similarly the sugar stocks in godown Nos. 2 and 3 were pledged to the plaintiff-Bank to an extent of Rs.15,00,000/- under key cash credit loan. The latter stocks viz. in godown Nos. 2 and 3 were under lock and key of the plaintiff. While so, the Tahsildar, Tanuku acting on the instructions of defendants 1 and 2 attached the stocks of sugar in godown No. 1 hypothecated to the plaintiff-Bank for recovery of a sum of Rs.5,20,682-96 said to be due towards sugarcane purchase tax to the State under the provisions of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (hereinafter referred to as "the Act"). The 4th defendant filed writ petition No. 1558 of 1970 before this court challenging the attachment by the Tahsildar and also filed WPMP No. 6044/1970 for interim orders relating to the stock of 4331 bags of sugar in godown No. 1 hypothecated to the plaintiff pursuant to the directions given by this court, the stocks in godown No. 1 were sold and the amount realised was deposited. 4th defendant filed another writ petition in respect of godown No. 2. It was found out later that the Tahsildar did not attach any stocks in godown Nos. 2 and 3 and that writ petition was dismissed as not necessary. Now coming to the stocks contained in godown No. 1, the plaintiff-Rank came forward with the present suit claiming that as it is hypothecated, the Bank is entitled to preferential first charge and lien to recover the suit amount due to it under the open cash credit loan from the 4th defendant and the defendants 1 and 2 being simple money creditors are entitled to any surplus that may be left over. After due notice u/s. 80 of the CPC the suit was filed. The 5th defendant died pending the suit and defendants 6 to 19 were added as his legal representatives.

3. The 2nd defendant filed written statement which was adopted by the Ist defendant" It is admitted that the stocks in godown No. 1 were attached as alleged in the plaint, but it is contended that the 4th defendant had no right to pledge the sugar and the plaintiff is not entitled to accept the pledge as it is illegal and hence hypothecation cannot be enforced in law. As per GSR No. 1747 dt. 16-11-1967 issued under clause 4 of the Sugar Control Order, the Union Government prohibited sale or disposal or pledge of the sugar except on the directions issued in writing by the Union Government. It is contended by the 2nd defendant that the possession of the sugar has been transferred to the plaintiff contrary to the statutory provisions. It is also averred that the sugar cane stocks lying in godowns 2 and 3 were also attached by the Tahsildar.

4. The 4th defendant in its written statement admitted the various credit facilities extended by the plaintiff-Bank to the Sugar Mills. It contends that the transactions referred to in the plaint having been entered into in contravention of the provisions of clause 4 of the Sugar Control Order and the GSR dt. 20-11-1967, the transactions are void, that a sum of Rs.,63,700-60 is due from the plaintiff and that this defendant and the 5th defendant have been unnecessarily impleaded in the suit. This written statement was adopted by the 5th defendant.

The other defendants remained ex parte.

5. On the basis of these pleadings, the following issues were framed.

"1. Whether the plaintiff is entitled for priority for payment in respect of the sale price of the sugar stocks sold under the orders of the High Court?

2. Whether the hypothecation of sugar stocks by the 4th defendant in favour of the plaintiff is invalid?

3. Whether defendants 4 and 5 are not liable for the suit claim?

4. Whether the 3rd defendant is a necessary party to the suit?"

5. Whether there is no valid notice u/s. 80, C.P.C.?

6. To what relief ?

Additional issue:

Whether the suit transaction constitutes a pledge as alleged by defendants 1 and 2?"

6. The learned Subordinate Judge held that the plaintiff-Bank is entitled for priority in respect of the sale price of the sugar. Before coming to such a conclusion, on Issue No. 1 and Additional issue, the learned Subordinate Judge held that the transaction in question is only hypothecation of sugar and not a pledge and that it is not hit by clause 4 of the Sugar Control Order or GSR issued under the said Clause. On the other issues, the learned Subordinate Judge gave the necessary findings and held that defendants 4 and 5 are not liable for the suit costs. Ultimately, he decreed the suit with costs against defendants 1 and 2 only.

7. In this appeal the learned Advocate General submits that the transaction in question is a pledge and not a hypothecation and therefore it is prohibited under clause 4 of the Sugar Control Order and the GSRs issued thereunder. In the alternative he submitted that irrespective of the fact whether it is hypothecation or pledge, the State had a priority because the amounts due from the 4th defendant was in the form of taxes and that they ought to have been paid by the 4th defendant. He, therefore, submits that the State is entitled to have its revenue realised in preference to the claim of ordinary creditors. The learned Advocate General also submits that even assuming that it is a case of hypothecation, there is no statutory law governing such transaction and therefore the same cannot be given much importance to acknowledge the claim of the plaintiff regarding the priority.

8. The learned counsel for the respondent-plaintiff, on the other hand, submits that there is overwhelming evidence to show that the transaction amounts only to hypothecation and a plain reading of clause 4 as well as the circulars go to show that the transaction by way of hypothecation of sugar is not prohibited. It is also his submission that the question of State getting priority does not arise in the case of secured debts and that it is well settled that only when all the

creditors including the State are of equal degree then only the State can have priority and not otherwise.

9. To appreciate these rival contentions, we shall first examine the nature of the transaction in question. PW 3 is the Manager of the plaintiff-Bank. He deposed that the sugar stocks covered by open cash credit loan were kept in Godown No. 1 and Ex.A.3 is the hypothecation agreement dt. 13-2-1969 and Ex. A. 175 is the certified extract of form No. 8 sent by the 4th defendant to the Registrar of Companies under the Registration Act issued by the Registrar. The hypothecation agreement was modified from time to time extending the limit of the cash credit loan. The evidence of P.W. 3 coupled with contents of Ex.A-3 and A.175 would go to show that Ex.A3 is only a deed of hypothecation and a charge has been created in respect of the stocks for extending the cash credit facility limit. Ex.A.3 is in printed form. The learned Advocate General refers to the contents of Ex. A-3 and submits that by that it is not clear whether it is a pledge or hypothecation. No doubt it is in a printed form. But it is a form used for pledge as well as hypothecation and there is a note at the bottom of the form to the effect that in case of hypothecation i.e. open loan accounts etc., para (1) and in the case of pledge (key loan cash credit accounts etc.) para (2) shall be deleted. Now a combined reading of the clauses and the "note" having regard to the transaction and the day-to-day dealings, clearly indicate "a case of hypothecation and therefore, para (1) in Ex.A3 ought to have been deleted. The contents of para 3 when examined along with Exs.A175 and A24 to A.68 and A.77 to A-170 would make it clear that this transaction amounts only to hypothecation. The evidence of P.W. 3 is to the effect that the keys of godown No. 1 are with the borrower i.e. 4th defendant. As a matter of fact, in the plaint throughout, it has been mentioned that the plaintiff-Bank is a hypothecatee of the sugar hypothecated in respect of which Ex. A3 was executed. The evidence on record clearly establishes that possession of the property has been with the 4th defendant only and that the possession was not delivered to the Bank.

10. At this juncture it is useful to note the difference between the pledge and the hypothecation. It is true the hypothecation as such is not defined in the Contract Act and there is no provision dealing with such a transaction. In the Indian Contract Act by Pollock and Mulla at page 688 the difference between "Hypothecation" and "Pledge" is explained that in hypothecation the possession of the property is retained by the owner and certain rights in that movable property are transferred to the person in whose favour the property is hypothecated. But in a pledge the possession of goods also passes to the pledgees by way of security though the possession may be constructive. The true distinction between 1 pledge and hypothecation is that the constructive possession of the goods in the case of pledge is specifically secured by the terms of the contract and is continued unabated throughout. In *Bank of Maharashtra Ltd. v. Official Liquidator*, AIR 1969 Mys 1280, it is observed :

"In the case of hypothecation or pledges of movable goods, there is no doubt

about the creditor's right to take possession, to retain possession and to sell the goods directly without the intervention of court for the purpose of recovering his dues. The position in the case of regular pledge completed by possession is undoubted and set out in the relevant sections of the Contract Act. Hypothecation is only extended idea of pledge, the creditor permitting the debtor to retain possession either on behalf of or in trust for himself."

11. The next aspect that is to be considered is whether such a transaction viz. a hypothecation can be recognised as valid as to conferring rights though not provided for in the statutes. The rules of Common Law relating to substantive rights have been recognised and adopted and enforced by judicial decisions and treated to be "law in force" in the country within the meaning of Art. 372(1) of the Constitution of India. In Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, their Lordships considered the concept of "law in force" as contained in Art. 372(1) of the Constitution and laid down this principle.

12. It is fairly well settled that there are various forms of mortgage recognised by courts though there may not be statutory recognition. In Tehilram, v. D,Mello, AIR 1916 Bom 77 at page 80 it is hold thus:

"In the statute law of India it would be difficult to find anything making it imperative upon courts to acknowledge any such doctrine. In the 3rd section of the Transfer of Property Act amongst other definition the definition of a chose inaction mentions the hypothecation of movables as though that; were an accepted part of the law of this country, and again, in the Stamp Act Section 2, Cl. 7, the Ue words are to be found. Elsewhere I do not believe that it would be easy to discover in the sufficiently voluminous statute law of this country any warrant for the assertion that the courts of India are bound to recognise a mortgage of movables. Nor after having considered the case-law, both of this country and England which has gone to establish that doctrine, very careful and critically for many years, am I able to discover any authority, in reason or equity, adequate to establish it. 9 however, it is to be taken as a part of the law of India, and in the existing state of the case-law, I suppose it must be, then it is very necessary to examine the essential ingredients of the mortgage of movables and so arrive at a cleat understanding not only of the nature of the legal notion but of all its legal consequences in relation to others"

13. It can, therefore, be seen that hypothecation of movable property is also a recognised form of mortgage. Hence, it has to be recognised although such hypothecation or mortgage of movables are not specifically dealt with in the Contract Act, but these transactions have long been recognised as valid in law and they have to be given effect to. In the absence of specific rules, the recognised principle in the Civil Courts that courts should decide according to justice, equity and good conscience which is underlying recognised principle of common law courts. In Md. Sultan and Others Vs. Firm of Rampratap Kannyalal, a distinction between a pledge and a mortgage is considered and the learned

Judge observed:

"Broadly it can thus be stated that in case of hypothecation a general lien is created, but possession of the property is not transferred, whereas in case of pledge a special interest and not special property is transferred to the pledgee who is impliedly authorised to sell the goods pledged in case of default in accordance with the provisions of the Contract Act. In case of mortgage, however, a general lien is created, but possession of the property is not transferred, whereas in case of a pledge d special interest and not special property is transferred to the pledgee who is impliedly authorised to sell the goods pledged in case of default in accordance with the provisions of the Contract Act. In case of mortgage, however, a general but limited property is transferred to the creditor, but the possession may or may not be transferred to the mortgagee.

14. It may not be necessary to cite many decisions. Suffice, it to say that there is essential distinction between pledge and hypothecation as pointed out above and though such kind of mortgage of movables are not dealt with in the Contract Act and though there are no specific rules applicable to such matters, year as mentioned above, the courts have recognised on the principle of common law and rendered justice according to equity and good conscience and therefore that being the law in force action does lie in the court in respect of a hypothecation.

15. The next question that has to be considered is whether the hypothecation also is prohibited by clause 4 of Sugar Control Order. Clause 4 of the Sugar Control Order 1966 reads thus:-

"4. Power to Restrict Sale etc. of Sugar by Producers : -- The Control Government may direct that no producer shall sell or agree to sell or otherwise dispose of, or deliver, or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced. except under and in accordance with a direction issued in writing by the Central Government.

Provided that this clause shall not affect the pledging of such sugar by any producer in favour of any Scheduled Bank, as defined in clause (c) of 5. 2 of Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted u/s.3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) and no such bank shall sell the sugar pledged to ii under and in accordance with a direction issued in writing by the Central Government (GSR 1747 dt. 6-11-1967)."

16. Exercising power under this clause, the Central Government issued GSR No.1752 dt. 20-11-1967 and the same reads:

"GSR. 1752/Ess. Com/Sugar : - In exercise of the powers conferred by clause 4 of the Sugar (Control) Order, 1966 the Central Government hereby directs that no producer of sugar by vacuum pan process shall sell or agree to sell or

otherwise dispose of or deliver or agree to deliver sugar or remove sugar from the bonded godowns of the factory in which it is produced, except under and in accordance with a direction issued in writing by the Central Government.

2. This order shall come into force with effect from the 23rd Nov., 1967."

17. Relying on these provisions the learned Advocate General submits that the 4th defendant cannot sell, deliver or agree to deliver or remove sugar from the bonded godown or otherwise dispose of the same and consequently the transaction, even if it is to be treated as a hypothecation, amounts to otherwise disposal of the sugar which is prohibited and therefore the bank cannot claim any preference as secured creditor as the transaction itself is illegal and void. He places considerable reliance on an unreported judgment of the Division Bench of this Court in Writ Appeal No. 459/73 and W. P. No. 3038 and 3673 dt. 10-8-1973. It may be noted that at this stage that the Division Bench was dealing with a case of pledge. after referring to- clause 4 of the Sugar Control Order and GSR. No. 1752 with which we are also concerned, the Division Bench held that the transaction was a pledge which was prohibited by the Control Order and therefore the bank as a secured creditor cannot have preference against the Government as the pledge itself is illegal and void. But in the instant case as already held the transaction amounts to only hypothecation, inasmuch as Possession of the sugar was not handed over to the Bank and the same remained with the 4th defendant. In such a situation, we fail to see how the same amounts to "otherwise disposal" of the sugar. There is no doubt whatsoever that the sugar was not sold and also was not delivered nor agreed to be delivered. In the same manner it cannot also be said that it was disposed of otherwise merely because it was hypothecated. Therefore, we are of the view that the hypothecation is not prohibited by clause 4 of the Control Order or GSR. No. 1782 published in the Gazette.

18. Having held that the transaction in question amounts to hypothecation and the same is not prohibited," we have to next consider the submission that the doctrine of priority of Crown debts applies. and consequently the Bank cannot have any preference as a secured creditor. We may at the outset point out that the common "law doctrine about the priority of crown debts has been adopted by our country and enforced by judicial decisions. That being so, it is held that the doctrine amounts to law in force at the relevant time within the meaning of Art. 372(1) of the Constitution of India and therefore continues to be in force. In Director of Rationing and Distribution v. Corporation of Calcutta. AIR 19W SC 1355, their Lordships of the Supreme Court held that the common law is included within the expression of law by force" used in Art. 372(1) of the Constitution. In Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, the principle laid down in Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, has been approved. Their Lordships also referred to the judgment of the Bombay High Court in Secretary of State for India v. Bombay Landing and Shipping Co.

Ltd., (1868-69) 5 Born HCR 23 wherein Westropp" J., held that a judgment debt due to the Crown in Bombay was entitled to the same precedence in execution as a like judgment debt in England. The learned Judge concluded thus :

"In England the right of the Crown to precedence does not arise out of any peculiar quality in the writ of extent. The reasoning of Lord Coke and Chief Baron Parker rests on a broader foundation, namely, the destination of the debt, when recovered, is the State Treasury."

Their Lordships of the Supreme Court no doubt accepted this principle broadly and held that this doctrine of common law which was introduced in this country and followed, amounts to law in force within the meaning of Art. 372(1) of the Constitution and the same would be continued to be in force. It is also further held that having regard to the nature of multifarious transactions that a welfare State often enters on the commercial side, all of them cannot be regarded as an essential and integrated part of the basic governmental functions of the State and if the State seeks to recover debts from its debtors arising out of such commercial activities, it may become necessary to consider whether the doctrine of priority can be extended to such transactions. Thus it can be seen that the doctrine of priority of State debts is not automatically applicable. The question is whether the principle can be applied even against a debt secured by way of hypothecation of the property. In *Bank of India v. John Bowman*, AIR 1955 Born 305 the Bombay High Court had an occasion to consider this point and Chagla C.J., observed that the priority given to the Crown is not on the basis of its debt being a judgment debtor a debt arising out of statute, but the principle is that if the debts are of equal degree and the Crown and the subject are equal, the Crown's right will prevail over that of the subject. We may point out at this stage that in Writ Appeal No. 459 of 1973 and W.P. 3038 of 1973 and hatch cited supra, and the Division Bench having held that in that case the pledge of the sugar was prohibited and on that ground negatived the Bank's claim that it has preference as secured creditor, however observed during the course of the judgment:

"It is not doubted that in cases of unsecured debts, the Government's demand regarding tax would "have preference. The taxes due from the company therefore shall have to be paid first from the sale of sugar in the possession of the Bank and, it is only when the Government demand is satisfied that the Bank may be able to recover its loan from the sugar in its possession."

This observation in a way strikes the same note as we find in *Bank of India Vs. John Bowman and Others*, .

19. We may now refer to a judgment of the Supreme Court in *The Bank of Bihar Vs. The State of Bihar and Others*, in which the facts are somewhat similar to the facts of the case before us. In that case the plaintiff-bank extended "cash credit systems on the constituents Pledging their merchandise which the bank held as security for the advances made. The constituents either provided the bank with godown or the bank kept the pledged goods in godowns of its own and charged

rents to the constituents. The 2nd defendant entered into a cash credit system agreement with the plaintiffs Arrah branch. The advance was made to the 2nd defendant and the Bank held 6239 bags of different varieties of sugar as security. Therefore, the sugar was pledged to the bank. While so, the sugar has been seized and sold in the market pursuant to a seizure order issued by the Rationing Officer on the ground that the Government had to recover arrears of sugar cess. The trial Court held that the order of seizure in respect of the stock was valid but, "the right of the bank as pledgee could not be extinguished. The matter was carried in appeal to the High Court and the High Court took the view that the plaintiff-bank has not been wrongfully deprived of the sugar and in that view of the matter the decree against the 1st defendant, viz., the Government was set aside and instead a decree was granted against the other defendants. In appeal before the Supreme Court their Lordships having noted that the plaintiff-bank held the sugar which was seized from its custody as security for payments of debts or advances made to the 2nd defendant and having considered the meaning of "Pawn" and the rights of the parties to the transaction, observed that the pawnee has special property or special interest in the thing pledged while the general property therein continues to be in the owner. Applying these principles to the facts, ultimately their Lordships held thus : -

"The pawnee has special property and a lien which is not of ordinary nature on the goods and so long as his claim is not satisfied no other creditor of the pawner has any right to take away the goods or its price. After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditors of the pawner. But by a mere act of lawful seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it. As the act of the Government resulted in deprivation of the amount to which the plaintiff was entitled it was bound to reimburse the plaintiff for such amount which the plaintiff in ordinary course would have realized by sale of the goods pledged with it on the pawner making a default in payment of debt."

In the case before us, though it is not a pledge, yet the transaction being a hypothecation; the hypothecatee, viz. the bank, has a lien on the goods which are held by way of security and the bank has a preferential claim as a secured creditor even against the Government's demand of taxes. *Andhra Bank Ltd. v. State of Andhra Pradesh*, (1976) Andh WR (HC) 190 is also a case where *Challapaili Sugars Ltd.* pledged some bags of sugar and took loans from the bank. The Revenue Divisional Officer came to the godown and attached and sealed the same contending that purchase-tax was due from the sugar mills to the Government. The learned Judge considered the claim of the State as to the priority and after referring to the judgments of the Supreme Court in *Builders Supply Corporation Vs. The Union of India (UOI)* Represented by the Commissioner of Income Tax, West Bengal and Others, and in *The Bank of Bihar Vs. The State of Bihar and Others*, and held that "the petitioner has a preferential

claim for payment of the amount due to it and secured against the sugar pledged to it and the State is entitled only to the surplus money after satisfaction of the plaintiffs dues". No authority is placed before us to the contra.

20. The learned Advocate General however relied upon a judgment of a Division Bench of the Madras High Court in *Union of India v. Shentilanathan*, (1977) 2 Mad U 499 wherein it is held that hypothecation is not a pledge and there is no transfer of interest or property in the goods by the hypothecator to the hypothecatee and that in such a case the right of the hypothecatee is only to sue on the debt and proceed in execution against the hypothecated goods. The Division Bench also referred to the judgment of the Supreme Court in *Builders Supply Corporation Vs. The Union of India (UOI)* Represented by the Commissioner of Income Tax, West Bengal and Others, and held that they are not able to accede to the proposition that in the case before them the State cannot claim a right of priority for being paid out from the sale proceeds of the goods in question. One of the articles which was hypothecated to the plaintiff was a camera belonging to the defendant. The other necessary facts on the basis of which the Division Bench arrived at that conclusion must also be noted. The 3rd defendant in the suit hypothecated certain movables including a camera. The 3rd defendant was an assessee and he fell into arrears of Income Tax. A recovery certificate was issued. The goods including the camera which remained the possession of the 3rd defendant were attached. When the arrears were paid the attachment was raised, but they were again attached in respect of the arrears due for the assessment year 1958-59. The Tahsildar issued a sale notice wherein it was proclaimed that the camera would be sold. The plaintiff filed a claim petition before the Collector. The Collector rejected the same. Thereafter the plaintiff filed the suit for declaration that the camera is not liable to be attached for recovery of arrears of Income Tax as he has a prior mortgage over it by way of hypothecation. The Division Bench of the Madras High Court referred to A these facts and also referred to a judgment another Division Bench in *Chinni Venkatachalam Chetti Vs. Athivarapu Venkatrami Reddi*, wherein the produce on the land was hypothecated. The Division Bench in that case expressed the view that such a mortgage would operate as a mortgage of movable property which was valid under the Indian Law, and the moment the crop came into existence, the mortgagee of the movable property got title to the prop". The Division Bench in *Union of India v. Shentilanathan*, (1977 2 Mad LJ 499) (supra) did not differ with the view expressed in *Venkatachalam Chetti's* case (supra) but distinguished the facts in the case before them by observing that under Ex. A. 1 hypothecation deed there is no recital from which it can be inferred that there was transfer of any such interest or title of the hypothecator in the goods in favour of the hypothecatee. The Division Bench also observed thus:

"Excepting for the bare assertion that the plaintiff as hypothecatee could seek for possession of the goods in case of default of the hypothecator, no further right is thought of or claimed in and the recitals in Ex. A. 1. It is therefore clear that there was no transfer of interest in movable property under Ex. A. 1 so as to

sustain the contention of the learned Counsel for the plaintiff that the case under consideration involves a mortgage of movable property."

It can, therefore, be seen that the facts in Union of India's case (1977 2 Mad LJ 499) (supra) are distinguishable. In the instant case the recitals in Ex. A.3 the hypothecation deed go to show that there was a clear transfer of interest in favour of the hypothecatee in the goods hypothecated. Therefore, the judgment of the Division Bench in Union of India's case (supra) is of no assistance to the appellant.

21. We have already held that the concept of hypothecation is recognised in the Civil Courts and it has become law in force. That being so, to say that secured creditor does not get any lien over the property which is hypothecated, will amount to negating his right as a secured creditor.

22. For the above reasons, the contention of the learned counsel that hypothecation also is prohibited by virtue of GSR. No. 1747, dt. 16-11-1967 cannot be accepted. In view of the principles laid down in the above-cited decisions the contention that the doctrine of "priority of Crown debts" is applicable even as against the secured debt, also cannot be accepted.

23. In the result, the appeal is dismissed. The contest is between the Government and a public institution which is also a nationalised bank. Having regard to this and other facts and circumstances, we direct each party to bear its own costs.