

(1918) 03 AHC CK 0020
In the Allahabad High Court

The Bhargava Commercial Bank

APPELLANT

Vs

Kunj Behari Lal

RESPONDENT

Date of Decision : 22-03-1918

Acts Referred:

Citation : (1918) ILR (All) 522

Hon'ble Judges : Tudball, J;Abdul Raoof, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tudball and Abdul Raoof, JJ.—The facts of this case are simple. The appellant defendant pawned to the respondent Bank certain gold and silver ornaments as security for a loan in the year 1912. In January, 1914, the Bank pressed the defendant for payment and stated that they had an offer of Rs. 1,480 for the ornaments and that if the defendant did not pay within a week the ornaments would be sold for the value offered and a suit would be brought for the balance. The defendant in reply asked for full particulars of the offer and also asked for time for payment. In his reply, he stated that the ornaments were worth more than Rs. 2,400 and that he would hold the Bank responsible if they were sold for less than their value. The Bank on the 26th of February, 1914, sent in a statement of account and a list of the ornaments pawned and again gave the defendant fifteen days' time within which to pay, otherwise the Bank would sell. The Bank did not carry out its threat. On the 9th of May, 1914, the defendant again asked for fifteen days' time as he had a chance of paying off the debt. The correspondence continued, and again on the 18th of August, 1914, the Bank wrote to the defendant stating that it had an offer, of Rs. 1,500 for the ornaments and would proceed to sell. On the 25th of August, the defendant asked for further time. On the 12th of September the Bank agreed and then on the 15th of September it again wrote to the defendant saying that unless the money was paid within 15 days the jewelry would be sold without further reference to him. The Bank did not sell on the 30th of September, but it actually

waited till the 5th of October and then carried out the sale. A suit was then brought for the balance and both the courts below have decreed the claim. One point was urged in the court below, and that is that the notice given on the 15th of September, was not a reasonable notice of the sale within the meaning of Section 176 of the Contract Act. It was contended that notice of the actual date, time and place of the intended sale should have been given to the defendant. This plea was repelled by the court below. It has again been raised before us and this is the only point for our decision. It is urged that u/s 177 the pawnor has a right to redeem at any subsequent time before the actual sale of the goods, that unless he is given full information of the date, time and place of the sale, it is impossible for him to redeem, if the property were sold at some other date, time or place. No ruling on the point has been cited. In our opinion Section 170 does not contemplate that the pawnee should give the pawnor information of the actual date, time and place of sale. The words are:- "He may sell, the thing pledged on giving the pawnor reasonable notice of the sale." This, in our opinion, means an intention to sell, and it does not necessarily mean that a sale should be arranged beforehand and that due notice of all the details should be given to the pawnor. For instance it would be open to the pawnee to put up the property to auction sale and to sell it to the highest bidder. It would be impossible for him to give the pawnor information beforehand as to who would be the final purchaser. It is quite clear that all that the law intends is that the pawnee should give the pawnor a reasonable time within which to exercise his right of redemption and proceed to sell if the property be not redeemed. His right to sell is analogous to the seller's right of re-selling granted u/s 107 of the Contract Act, and we take it that the two rights must be exercised in more or less the same method. The seller's right to re-sell u/s 107 may be exercised after giving notice to the buyer of the intention to re-sell after the lapse of a reasonable time, The language of the two sections is slightly different, but their meaning is practically the same. In our opinion in the circumstances of the present case the respondent Bank gave the appellant notice, and a very reasonable notice indeed, of the intended sale. We think the decision of the court below is-correct. We therefore dismiss the appeal with costs.