

BANK OF BIHAR

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v.

STATE OF BIHAR & ORS.

April 1, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

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Contract Act, 1872, ss. 172, 173, 176, 180 and 181—Pledge—Special property of pawnor—Pawnee's rights whether can be extinguished by lawful seizure of pawned goods by Government to satisfy its claims against pawnor.

Certain sugar was pledged with the plaintiff bank (appellant herein) by Defendant No. 2 under a cash credit agreement. Part of the said sugar was seized under the Public Demands Recovery Act in connection with a demand of sugar cess by the Cane Commissioner. The sugar was sold and the sale proceeds were attached towards the payment of cess. No payment was made to the plaintiff bank, which thereupon filed the present suit to enforce its claim. The trial court granted a decree against the State of Bihar for the price of the sugar. The High Court however held that no decree could be granted against the State as the seizure was lawful.

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HELD: The pawnee had special property and a lien which was not of ordinary nature on the goods and so long as his claim was not satisfied no other creditor of the pawnor had 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 creditor of the pawnor. 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 pawnor making a default in the payment of debt. [303E-G]

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The trial court was right in holding that the plaintiff's right as a pawnee could not be extinguished by the seizure of the goods in its possession inasmuch as the pledge of the goods was not meant to replace the liability under the cash credit agreement. It was intended to give the plaintiff a primary right to sell the goods in satisfaction of the liability of the pawnor. The Cane Commissioner who was an unsecured creditor could not have any higher rights than the pawnor and was entitled only to the surplus money after satisfaction of the plaintiff's dues. [303G-304B]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1942 of 1966.

Appeal from the judgment and decree dated April 23, 1963 of the Patna High Court in First Appeal No. 420 of 1955.

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Sarjoo Prasad and *R. C. Prasad*, for the appellant.

U. P. Singh, for respondent No. 8.

A The Judgment of the Court was delivered by

Grover, J.—This is an appeal by certificate from a decree of the Patna High Court in a suit instituted by the appellant against the State of Bihar which was impleaded as defendant No. 1, the other defendants being the Jagdishpur Zamindari Co. Ltd. (defendant No. 2) and some of its directors defendants 3 to 5.

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According to the allegations in the plaint one of the methods of making advances followed by the plaintiff Bank was that the constituents pledged their merchandise on a cash credit system with the Bank and took advances on the pledged goods. The Bank held the goods as security for the advances made and the constituents either provided the Bank with godown or the Bank kept the pledged goods in godowns of its own and charged rents from the constituents. The defendant No. 2 entered into a cash credit system agreement with the plaintiff's Arrah Branch, the arrangement being that the sugar would be pledged under the cash credit system. On December 16, 1946 the advance made to defendant No. 2 stood at Rs. 3,20,486-2-0 and the Bank held 6239 bags of different varieties of sugar as security. These bags were kept in godowns provided by defendant No. 2. The key of the lock of each godown was in the custody of the Bank. It was alleged that in December 1949 under cover of an illegal seizure order issued by defendant No. 1 the Rationing Officer and the District Magistrate, Patna, got the locks of the godown broken open and forcibly and illegally removed 1818 bags of 27D quality of sugar. They total quantity removed weighed about 5,000 maunds. No payment was made to the plaintiff Bank which held the bags of sugar as pledgee under the cash credit agreement. It is unnecessary to refer to other facts stated in the plaint except to mention that according to the plaintiff it was entitled to recover the sugar which had been seized illegally or to recover the price of that sugar as per schedule 2 of the plaint which the plaintiff would have got if the quantity of sugar which had been seized had been sold in the market on the material day. The plaintiff prayed for a decree for the return of 1818 bags of 27D quality sugar and, alternatively for recovery of Rs. 1,81,700-9-3 with interest by way of damages for illegal removal and detention of sugar or price thereof. Alternatively a decree for Rs. 93,910-10-9 was claimed against defendant No. 2 and the other defendants.

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The suit was resisted by defendant No. 1 on the ground that the seizure had been effected pursuant to lawful orders which had been made and that the sale proceeds of about 5000 mds. of sugar were included in the sum of Rs. 1,50,039-10-9 which was deposited in the treasury but which was later on attached under the orders of Certificate Officer, Patna, under the Public Demands

Recovery Act on account of arrears of sugar cess amounting to Rs. 2 lakhs due from the Bhita Sugar Factory with which defendant No. 2 had entered into an arrangement pursuant to which the entire quantity of sugar including 5000 maunds which had been seized had come into possession of defendant No. 2. The other defendant also resisted the suit on various grounds. A number of issues were framed on the pleadings of the parties. We may only mention issue No. 6(a) which will be material for determination of the points which we have been called upon to decide :—

“Was the sugar seized by the government in possession of the Bank as a pledgee at the time of the seizure and have the rights of the Bank as such pledgee been determined by the seizure in question?”

The trial court held that the order of seizure in respect of the stock of sugar was valid. It was further held that the plaintiff's right as a pledgee could not be extinguished by seizure of the sugar in its possession and though the attachment order of the Certificate Officer was legal and binding on defendant No. 2 it was not binding on the Bank (plaintiff) and it could be effective only in respect of that portion of the price which was not necessary for the liquidation of the dues of the plaintiff from defendant No. 2. A decree was passed in favour of the plaintiff against defendant No. 1 only for Rs. 93,910-10-9 with interest at 6% per annum from the date of the suit till realisation. Defendant No. 1 (State of Bihar) filed an appeal to the High Court. The High Court was of the view that in the presence of the finding that the plaintiff had not been wrongfully deprived of the sugar on account of the lawful seizure or its price owing to the certificate proceedings started by the Cane Commissioner the plaintiff was not entitled to any decree against the State. But it was entitled to a decree against defendant No. 2 and the other defendants. Consequently a decree against defendant No. 1 was set aside and instead of decree was granted against the other defendants.

Now it is common ground that the plaintiff (which is the appellant before us) held the sugar which was seized from its custody as security for payment of the debts or advances made to defendant No. 2 in its cash credit account. There were arrears of certain cess due from defendant No. 2. As stated before, the Cane Commissioner took proceedings under the Public Demands Recovery Act and attached the price of the sugar which had been deposited by the appropriate authorities in the Government Treasury instead of being paid to the plaintiff. The Cane Commissioner indisputably did not have any right of priority over the other creditors of defendant No. 2 and, in particular, the secured creditors. Section 172 of the Contract Act defines a pledge to mean the bailment of goods as security for payment of debt or

A performance of a promise. The bailor is called the "pawnor" and the bailee is called the "pawnee". Section 173 of that Act provides that the pawnee may retain the goods pledged not only for the payment of the debt or performance of the promise but also for the interest of the debt etc. Section 176 is in the following terms :

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"If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security ; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale."

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If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."

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Section 180 is to the effect that if a third person wrongfully deprives the bailee of the use of the possession of the goods bailed or does him any injury the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury. According to Section 181 whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and bailee, be dealt with according to their respective interests. Relying on the above two sections the High Court came to the conclusion that a pawnee has merely the possession of the goods coupled with a power to sell them on default by the pawnor but the latter retains the ownership subject to a lien to the extent of the debt enforceable by exercise of the power of sale. In the present case the sugar had been seized and then sold. The sale proceeds would have been available to defendants 2 to 5 subject to the claim of the plaintiff against them but it ceased to have any lien on the pledged property or the sale proceeds against any third party including the State as soon as it was legally deprived of the possession of the pledged goods.

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According to the Statement in Halsbury's Laws of England "pawn" has been described as a security where by contract a deposit of goods is made a security for a debt and the right to the property vests in the pledgee so far as is necessary to secure the debt ; in this sense it is intermediate between a simple lien and a

mortgage which wholly passed the property in the thing conveyed⁽¹⁾. "The pawnee has a special property or special interest in the thing pledged, while the general property therein continues in the owner. That special property or interest exists so that the pawnee can compel payment of the debt or can sell the goods when the right to do so arises. This special property or interest is to be distinguished from the mere right of detention which the holder of a lien possesses, in that it is transferable in the sense that a pawnee may assign or pledge his special property or interest in the goods".⁽²⁾ "Where judgment has been obtained against the pawnor of goods and execution has issued thereon, the sheriff cannot seize the goods pawned unless he satisfied the claim of the pawnee". (based mainly on *Rogers v. Kenney*⁽³⁾). "On the bankruptcy of the pawnor the pawnee is a secured creditor in the bankruptcy with respect to things pledged before the date of the receiving order and without notice of a prior available act of bankruptcy."⁽⁴⁾ It has not been shown how the law in India is in any way different from the English law relating to the rights of the pawnee vis-a-vis other unsecured creditors of the pawnor.

In our judgment the High Court is in error in considering that the rights of the pawnee who had parted with money in favour of the pawnor on the security of the goods can be defeated by the goods being lawfully seized by the Government and the money being made available to other creditors of the pawnor without the claim of the pawnee being fully satisfied. 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 pawnor 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 pawnor. 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 pawnor making a default in payment of debt.

The approach of the trial court was unexceptionable. The plaintiff's right as a pawnee could not be extinguished by the seizure of the goods in its possession inasmuch as the pledge of the

(1) 3rd Edn. Vol. 29 page 211.

(2) Halsbury's Laws of England 3rd Ed. Vol. 29 p. 218-219.

(3) [1846] 9 Q. B. 592.

(4) Halsbury's Laws of England 3rd Ed. Vol. 29 p. 222.

A goods was not meant to replace the liability under the cash credit agreement. It was intended to give the plaintiff a primary right to sell the goods in satisfaction of the liability of the pawnor. The Cane Commissioner who was an unsecured creditor could not have any higher rights than the pawnor and was entitled only to the surplus money after satisfaction of the plaintiff's dues.

B Defendants 3 to 5 did not file any appeal against the judgment of the High Court. The decree passed by the High Court against them would, therefore, stand. In the view that we have taken the appeal is allowed, the judgment and decree of the High Court dismissing the suit against the State of Bihar is hereby set aside and a decree is granted against the State of Bihar in the same terms as was granted by the trial court. The appellant will be entitled to costs throughout.

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G.C.

Appeal allowed.