

THE INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Gosain, J.

SIMLA BANKING AND INDUSTRIAL CO., LTD.,
SIMLA (IN LIQUIDATION),—Appellant.

versus

M/s. PRITAMS,—Respondents.

Letters Patent Appeal No. 98 of 1956.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 17—Scope of—Goods hypothecated to bank remaining in possession of the debtor who could not transfer them without the consent of the bank—Rights of the parties—Whether regulated by section 17—Power and hypothecation—Difference between.

1959
March, 23rd

Held, that the provisions of section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, apply when the creditor has been "placed in possession" of the property which is hypothecated to him, and according to the Explanation, the creditor is to be deemed to be in possession of the pledged property in any case in which the pledged property, although not delivered to him, was delivered to a person authorised by him or was being held by the debtor on behalf of the creditor and the ownership or possession thereof could not have been transferred to a third party without the express consent or permission of the creditor.

Held, that there are two kinds of pledges, viz., the "pignus" (pawn) in which the possession of the thing is actually delivered to the person for whose benefit the pledge

(1969)

is made, and "hypotheca" (hypothecation) in which the possession of the thing pledged remains with the debtor, the obligation resting in mere contract without delivery. In one case possession is actually delivered to the creditor or pawnee, in the other it remains with the debtor. Hypothecation has been defined as a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold in order to be paid his claims out of the proceeds. It is an act of pledging a thing as security for a debt or demand without parting with the possession. It follows as a consequence that although the property remains in the possession of the debtor, it cannot be transferred to a third party without the express consent or permission of the creditor.

Appeal under Clause 10 of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice D. Falshaw, dated the 9th day of March, 1956, passed in Case No. 11 in Civil Original No. 42 of 1954, ordering that a payment order be passed in favour of the Simla Banking and Industrial Co., against M/s. Pritams for any sum which may be recovered from the sale of the stock of cloth which the debtor succeeded in bringing from Lahore to Delhi and further ordering that if this stock has already been disposed of by the debtor, it will be necessary for him to render accounts regarding it and to pay the bank whatever sum he has realized.

D. N. AWASTHY, for Appellant.

K. S. THAPAR and SURJIT KAUR, for Respondent.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises a question upon the interpretation of section 17 of the Displaced Persons (Debts Adjustment) Act, 1951.

On the 1st March, 1947, Mr. B. L. Raikhi proprietor of Messrs Pritams, Anarkali, Lahore, executed a promote in a sum of Rs. 20,000 in favour of the Simla Banking and Industrial Company

Limited, Lahore. Simultaneously with this he executed a letter by virtue of which he pledged his entire stock-in-trade with the Bank.

Simla Banking
and Industrial
Co., Ltd., Simla
(in Liquidation)

v.

M/s Pritams

Bhandari, C. J.,

Shortly after the partition of the country Mr. Raikhi migrated to India. On the 12th July, 1948, he appeared in the Branch of the Bank at Delhi and stated that he had been able to retrieve a portion of the stock-in-trade from Lahore and that he was prepared to hypothecate the same with the Bank in lieu of a sum of Rs. 20,000 which was still due from him. The Bank accepted the offer and he accordingly executed various documents, among others being a pronote in a sum of Rs. 20,000, a letter of continuity hypothecating the goods which had been retrieved by him from Lahore and a balance confirmation slip admitting the balance due from him as Rs. 20,074-14-0. He also addressed a communication to the Bank in which he stated that he was about to shift the goods hypothecated by him from Ludhiana to New Delhi.

The respondent did not repay any of the amounts which were due from him either on account of the principal or on account of interest.

As the Bank had in the meantime gone into liquidation, it put in a list of debtors under section 45D of the Banking Companies Act, 1949, and mentioned the name of Mr. B. L. Raikhi as debtor to the extent of Rs. 20,443-15-3 on account of principal and interest up to the 1st day of July, 1953. The learned Single Judge, who was called upon to consider this list, came to the conclusion that the amounts payable to the Bank were regulated by the provisions of section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, and that according to this provision of law the Bank

Simla Banking and Industrial Co., Ltd., Simla (in Liquidation) v. M/s Pritams
 Bhandari, C. J.

was not entitled to any decree except to the extent of the value of the goods which had been brought by him from Pakistan to India and which had been actually hypothecated by him to the Bank. The Bank is dissatisfied with this order and has come to this Court in appeal.

Section 17 of the Displaced Persons (Debts Adjustment) Act is in the following terms :—

“17. (1) Where in respect of a debt incurred by a displaced debtor and secured by the pledge of movable property belonging to him, the creditor *had been placed in possession of such property* at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely :—

- (a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale ;
- (b)
- (c)
- (d)

Explanation I.—For the purposes of this section, the creditor shall be deemed to be in possession of the pledged property in any case in which the pledged property, although not delivered to him was delivered to a person authorised by him or was being held by the debtor on behalf

of the creditor, and the ownership or possession thereof could not have been transferred to a third party without the express consent or permission of the creditor.

Simla Banking
and Industrial
Co., Ltd., Simla
(in Liquidation)
v.
M/s Pritams

Bhandari, C. J.

.....”

Mr. Awasthy, who appears for the Bank, contends that the creditor was never placed in possession of the property which was hypothecated to him and consequently that neither the provisions of clause (a) nor the provisions of clause (b) of section 17 of the Act of 1951 can be said to apply to the present case.

This contention appears to me to be wholly devoid of force. The provisions of this section apply when the creditor has been “placed in possession” of the property which is hypothecated to him, and according to the Explanation, the creditor is to be deemed to be in possession of the pledged property in any case in which the pledged property, although not delivered to him, was delivered to a person authorised by him or was being held by the debtor on behalf of the creditor and the ownership or possession thereof could not have been transferred to a third party without the express consent or permission of the creditor. It may be that the goods were never delivered to the Bank itself or to a person authorised by the Bank, but it is abundantly clear from the evidence on record that the property which was hypothecated by the respondent to the Bank at Lahore remained in the possession of the debtor himself. It is equally clear that this property was being held by the debtor on behalf of the creditor and the ownership or possession thereof could not have been transferred to a third party without the express

Simla Banking
and Industrial
Co., Ltd., Simla
(in Liquidation)

v.

M/s Pritams

Bhandari, C. J.

consent or permission of the creditor. This conclusion flows from the meaning which is assigned to the expression "hypothecation" by legal compilers and commentators. The civil law recognised two kinds of pledges viz., the "pignus" (pawn) in which the possession of the thing was actually delivered to the person for whose benefit the pledge was made, and "hypotheca" (hypothecation) in which the possession of the thing pledged remained with the debtor, the obligation resting in mere contract without delivery. In one case possession was actually delivered to the creditor or pawnee, in the other it remained with the debtor. Hypothecation has been defined as a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold in order to be paid his claims out of the proceeds. It is an act of pledging a thing as security for a debt or demand without parting with the possession. It follows as a consequence that although the property remains in the possession of the debtor, it cannot be transferred to a third party without the express consent or permission of the creditor.

I entertain no doubt in my mind that the respondent in the present case had hypothecated the property to the Bank and consequently that the Bank must be deemed to have been placed in the possession of the property hypothecated to it. I would accordingly hold that the decision of this case must be regulated by the provisions of section 17. The order of the learned Single Judge must be upheld and the appeal dismissed with costs. Ordered accordingly.

Gosain, J.

GOSAIN, J.—I agree.

B.R.T.