



BAILMENT AND PLEDGE (INDIAN CONTRACT ACT, 1872)

Smriti Kashyap, smiritikashyap1182095@gmail.com

Abstract :

¹Bailment & Pledge are examples of specific contracts. Indian Contract Act 1872 is not a comprehensive Act, dealing with all types of specific contracts. There are various other Acts which deal with specific contracts e.g., ²The Railways Act 1890, Carriers Act 1865 etc. The word bailment is derived from French word 'bailer' means "to deliver"

In law we use the term bailment in its technical sense which means change in possession of goods from one person to another. Pledge, on the other hand is bailment of goods whereby the goods are transferred from one person to another as security for payment about debt or performance about a promise. Pledge is different from bailment.

ISSN 2454-308X



MEANING OF BAILMENT

Section 148 of the Indian Contract Act states: A bailment is the delivery of goods by one person to another for some purpose, upon a contract they shall, when the purpose is completed, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". For example, you deliver some gold to a jeweler B to make bangles for your sister. In this case you are bailor & B is bailee & by delivering gold to B, a relationship of bailment is created between you & the jeweler.

KINDS OF BAIEMENT

³Bailment may be classified on two bases, i.e., reward & benefit.

On the Basis of Reward

Bailment can be classified as gratuitous & non-gratuitous bailment on the basis of whether the parties are getting or not getting some value out of the contract of bailment. When there is no consideration involved in the contract of bailment it is called a gratuitous bailment. For example, when you lend your cycle to your friend so he can ride or when you borrow his books to read, it is a case of gratuitous bailment because no exchange of money or any other consideration is involved. Neither you nor your friend would be entitled to any remuneration here.

On the Basis of Benefit

On the basis of the benefits accruing to the parties, the contract of bailment may be divided into the following types:

- i) **Bailment for the exclusive benefit of the bailor:** This is the case where a contract of bailment is executed only for the benefit of the bailor, & bailee does not derive any benefit from it. For example, if you are going out of station & leave your valuable goods with your neighbour for safety, it is you as bailor, who alone is being benefited by this contract.
- ii) **Bailment for the exclusive benefit of the bailee:** This is the case where the contract of bailment is executed only for the benefit of the bailee & the bailor does not derive any benefit from the contract. For example, if you lend your books to a friend, without charge, so he can study for his exams, it is your friend as the bailee, who alone is going to be benefited by this contract.
- iii) **Bailment for the mutual benefit of bailor & bailee:** In this case both the bailor & the bailee derive some benefit from the contract of bailment. For example, if you give your shirt to be stitched by the tailor, both of you are going to be benefited by this contract, while you get a stitched shirt, the tailor gets the stitching charges.

Essentials of ⁴Valid Bailment

¹ Indian Contract Act 1872

² The Railways Act 1890

³ Sec.151, Indian Contract Act, 1872.



If you analyze the definition of bailment you will find for creating a relationship of bailment the following features must be present:

- i) Agreement
- ii) Delivery of goods
- iii) Purpose
- iv) Return of the specific goods.

i) Agreement: For creating a bailment the first essential requirement is the existence of an agreement between the bailor & the bailee. As you have read just now bailor is the person who bails the goods & bailee is the person to whom the goods are bailed. The agreement between the bailor & bailee, may be either express or implied.

ii) Delivery of goods: For bailment, it is necessary the goods should be delivered to the bailee. It is the essence of the contract of bailment. It follows bailment can be of movable goods only. It is further necessary the possession of the goods should be voluntarily transferred & is in accordance with the contract. For example, A, a thief enters a house & by showing the revolver, orders the owner of the house to surrender all ornaments in the house to him. The owner of the house surrenders the ornaments. In this case although, the possession of goods has been transferred but it does not create bailment because the delivery of goods is not voluntary.

iii) Purpose: In a bailment, the goods are delivered for some purpose. The purpose for which the goods are delivered is usually in the contemplation of both the bailor & the bailee.

iv) Return of the goods: It is important the goods which form the subject matter of the bailment should be returned to the bailor or disposed of according to the directions of bailor, after the accomplishment of purpose or after the expiry of period of bailment.

Where goods are transferred by the owner to another, in consideration of price, it is a sale. Similarly, where the goods are not to be delivered back but their price is paid, it is not a bailment. Again, where money is deposited by a customer with a bank in a current, savings or fixed deposit account, and, therefore, there is no obligation to return the identical money but an equivalent of it, it is no bailment. But what is thus created is a relationship of creditor and debtor. But if valuables or even coins or notes in a bank is deposited for safe custody there is a contract of bailment, for these are to be returned as they are & not their monetary value.

Pledge

A ⁵pledge is defined by the (sec.172) as “A bailment of goods as security for the payment of a debt or performance of a promise.” The bailor is called the “pawnor” or “pledgor” & the bailee is called “Pawnee” or the “pledgee”. Thus if A being in need of money, raises money from a money-lender on the security of his watch & chain, the transaction is one of pledge. Notice before a pledge can be valid, the bailor must be in “judicial possession” of the goods i.e. in possession of the goods under the legal light or title. Thus a servant cannot make a valid pledge of his master’s goods, though he may have “possession”, i.e. the physical custody of them.

Pawn or Pledge is a special kind of bailment where a movable thing is bailed as security for the repayment of a debt or for the performance of a promise. For example, if you borrow rupees one hundred from B & keep your cycle with him as security for repayment, it is a contract of pledge. The person taking the loan is called the pledger or pawnor & the person with whom goods are pledged is called the pawnee. Ownership of the pledged goods does not pass to the pledgee. The general property remains with the pledger but a "special property" in it passes to the pledgee. The special property is a right to the possession of the articles along with the power of sale on default. Delivery of the

⁴Sec.151, Indian Contract Act, 1872.

⁵ Sec.172, Indian Contract Act, 1872.



goods pawned is a necessary element in the making of a pawn. The property pledged should be delivered to the pawnee.

Thus, where the producer of a film borrowed a sum of money from a financier distributor & agreed to deliver the final prints of the film when ready, the agreement was held not to amount to a pledge, there being no actual transfer of possession. Delivery of possession may be actual or constructive. Delivery of the key of the go-down where the goods are stored is an example of constructive delivery. Where the goods are in the possession of a third person, who, on the directions of the pledger, consents to hold them on the pledgee's behalf, this is enough delivery.

Important Case Laws :

1. ⁶Bank of Rajasthan v. Hajarimal Milap C. Surana :

The respondents (R) (Hajarimal Milap C. Surana) were indebted to appellants (A) (Bank of Rajasthan) & had deposited precious stones as security. For recovery of the debt, a suit had been filed in court by A. Pending suit, parties came to an agreement, for the enforcement of which another suit was filed by A.

HELD:

Debts Recovery Tribunal: favoured R

Appellate Tribunal (favoured R)

SUPREME COURT (favoured A)

S.176 applicable; A was entitled to recovery of debt with interest.

2. ⁷Jay Bharat Credit v. Commissioner of Sales-Tax & Anr:

The appellants (A) had a business of hire-purchase. They engaged in purchasing of vehicles & then giving them on hire with hirer paying an initial amount & then paying rest, which includes price of vehicle & hire charges, in installments After payment of last installment hirer is given an option to transfer ownership of vehicle in his/her name on payment of a nominal charge.

The respondent sales tax authorities (R) maintained amount paid in installments was a part of sale price & as such came under ambit of taxation under provisions of Bengal Finance (Sales Tax) Act, 1941 as extended to Union territory of Delhi.

HELD:

High Court: favoured R

Supreme Court (favoured R)

3. ⁸The Official Assignee of Madras v. Mercantile Bank Of India Ltd:

The Official Assignee of Madras has been assigned with property of insolvents CK Nayaran & sons. The insolvents had a big business of groundnuts. They were purchased from up-country & transported through railways to the madras port. A godown in the port was leased to the insolvents, but signboard had respondents' name(R). R financed business by advancing money against a consignment of goods. Insolvents used to take loans against consignments & R used to give them regularly; the railway companies knew about this arrangement, but were never specifically informed. The company was declared insolvent. After some consignment reached port but port authorities was not willing to release them until their debts were paid off. The goods were then sold off by port auth. & proceeds were kept.

HELD:

Civil Court: [Plaintiff (official assignee) WON; Defendant (port trust) LOST]

High Court: [Appellant (port trust) WON; Respondent (official assignee) LOST]

PRIVY COUNCIL (Wright J.) [Respondent (port trust) WON; Appellant (official assignee) LOST]

4. ⁹Karnataka Pawn Brokers Assn. & Ors. Etc. (KP) v. State of Karnataka & Ors. etc:

⁶ <https://indiancaselaws.wordpress.com/>

⁷ <https://indiancaselaws.wordpress.com/>

⁸ <https://indiancaselaws.wordpress.com/>



The Sales Tax Authorities of Karnataka & Tamil Nadu deemed sale of unredeemed articles at instance of pawnbrokers by an auction & levied taxes on pawnbrokers contending auctioneer cannot be treated as seller of goods for purpose of levying sales tax.

HELD:

Karnataka High Court (Favoured State)

Madras High Court (favoured State)

SUPREME COURT (K.Vankataswami, S.P.Bharucha)

LAW POINTS: Pawn brokers are required to get a license & maintain account books registers & records. In case of failure to repay, pawnbroker may redeem amount by selling off goods pledged to him in public through a registered auctioneer.

References :

1. Indian Contract Act 1872
2. The Railways Act 1890
3. Sec.151, Indian Contract Act, 1872.
4. Sec.151, Indian Contract Act, 1872.
5. Sec.172, Indian Contract Act, 1872.
6. <https://indiancaselaws.wordpress.com/>
7. <https://indiancaselaws.wordpress.com/>
8. <https://indiancaselaws.wordpress.com/>
9. <https://indiancaselaws.wordpress.com/2012/01/21/karnataka-pawn-brokers-association-and-ors-v-state-of-karnataka-and-ors/>

⁹<https://indiancaselaws.wordpress.com/2012/01/21/karnataka-pawn-brokers-association-and-ors-v-state-of-karnataka-and-ors/>