

CONTRACT OF BAILMENT

1. Introduction

Dear students, welcome to the lecture series on Business Regulatory Frame Work. Today I will discuss the contract of bailment and pledge. As you know in my previous lectures I have discussed the contract of indemnity and contract of guarantee. They were the special kind of contract. Similarly the contract of bailment and contract of pledge are also special kind of the contracts. The rules regarding the Indian contract are applicable on these contracts also. Though the general principles of law does not deal with these types of contracts in detail but some of the principles are applicable on these contracts.

2. Bailment

Let us define what bailment is. Bailment arises from delivery of the goods. In the contract of bailment there are two parties, one is known as the bailer and another is known as the bailee. The bailer is a person who delivers the goods and the bailee is a person to whom the goods are delivered. So in the contract of bailment the parties are two and there is a one contract but remember in the contract of guarantee I mentioned that there are three parties and there are three contracts. Now in the contract of bailment the bailer delivers the goods to the bailee for particular purpose or for particular time. In the contract of bailment it arises by delivery of the goods and the purpose of delivering the goods is there but the possession of the goods which goes to the bailee is a temporarily possession. So if we analyse the contract of bailment we find that it is generating because of the contract. There is a contract between the bailer and the bailee and the goods are delivered by the bailer to the bailee and the goods are delivered to the bailee for particular purpose or for particular time and the possession of the goods go from bailer to the bailee and the possession temporarily goes. Now these are the some of the specific features in the contract of bailment. So in the contract of bailment when temporarily possession of the goods is going from bailer to the bailee or for a particular time goods are going from the bailer to the bailee and after the purpose

is over or the time is over goods come back to the bailer. Meaning thereby the ownership in the contract of the bailment is always with the bailer. The bailer remains the owner of the goods but the possession of the goods goes not the ownership. Ownership is always with the bailer. Let us take an example when we go to see a movie then we park our vehicle at the parking place. Now, when we are parking our vehicle at the parking place, the possession from us is going to the contractor of the parking place. But we remain the owner. Let us take another example, when we deliver the cloths to the drycleaner for the dry-cleaning, we remain the owner but the possession from us goes to the drycleaner. It is for a particular purpose that the goods are to be or the cloths are to be dry-cleaned. When we are parking our vehicle at a parking place and when we go to see the movie the particular time period is there like after three hours when the movie will be over we will get back the delivery of the goods. So when we parking our vehicle there the goods goes to the bailee for a particular time. When we are delivering the goods or the clothes for the dry-cleaning specific purpose is that they are to be dry-cleaned. Let us take one more example if we are giving our scooter to get it repaired at any auto workshop then the purpose is that it should be brought in the normal condition, it should be repaired. The movement the purpose is over we get back the goods. So in the contract of bailment the ownership is always with the bailer and the possession goes to the bailee for a particular time or for a particular purpose. Now look at the definition which is given in the '**Section 148**' of the '**Indian Contract Act, 1872**' - A bailment is the delivery of goods by one person to another for some specific purpose upon a contract that they shall when the purpose is accomplished we return or otherwise dispose off according to the directions of the person delivering them. Now if we analyse the definition we find that in the contract of the bailment delivery is given for a particular purpose or for a particular period and the purpose of the time is over goods will be returned back to the bailer or they will be disposed off according to the instruction of the bailer.

3. Contract of Bailment : Essentials

Now I discuss what are the essentials of the contract of bailment? And the first and the foremost essential is that there should be delivery of the goods. Meaning thereby the bailer should deliver the goods to the bailee. If there is no delivery, the bailment will not arise. Let us take an example if you are going out of your house and all the luggage and articles are lying in the house. You are asking the servant to look after the articles or belongings. Is it a bailment? It is not a bailment because you have not delivered the belongings or the articles to the servant. So in the contract of bailment there has to be delivery by a bailer to the bailee. Goods should go in the possession of the bailee. The delivery can be of two types actual and constructive. Actual delivery is a delivery in which the possession is actually going from bailer to the bailee and the constructive delivery means the delivery when there is no change of physical possession but some act on the part of the bailer has the effect of putting the goods into the possession of the bailee. Another essential of the contract of the bailment is the delivery should be on the basis of some contract. This says in the contract of bailment there should be a contract between the bailer and the bailee. The third essential is that there should be some purpose of the bailment as I mentioned in my previous discussion with you that when we are going to get the cloths dry-cleaned or when a gold is given to the goldsmith to be converted in to the ornaments or when you are giving a piece of cloth so that a tailor stitch it into a shirt it is the known as some purpose. So the purpose is converting the cloth into the shirt, the purpose is gold is to be converted into the ornaments, the purpose is the scooter is to be repaired, the purpose is clothes are to be dry-cleaned and the purpose of parking the vehicle at the parking place is that it should be taken care of by the parking place contractor. So in the contract of bailment there is some purpose in the contract and then it should be on some condition to return. These are the essentials of contract of bailment.

4. Classification of Bailment

Now we move on to discuss classification of bailment. Bailment can be classified broadly under the two headings for the benefit of the bailor and the bailee and on the basis of the charges. The first basis is for the benefit of the bailor or the bailee when the goods are lent to somebody without any charge that is known as the gratuitous bailment. Gratuitous bailment is a bailment in which when one person gives the delivery of the goods to another person then he doesn't take a charge of that delivery. For example 'A' has given his scooter to the 'B' for two days and 'A' is not charging anything for that. It is known as the gratuitous bailment because there is no charge in it but another type of classification is non-gratuitous bailment. In the non-gratuitous bailment bailor is charging from the bailee. For example 'A' has given his taxi to the 'B' for two days at the rate of hundred rupees per day. Now, in this 'A' is charging hundred rupees per day this is known as the non-gratuitous bailment. Another type of bailment is, for the mutual benefit of the bailor and the bailee. In this case both the parties get benefited; 'A' delivers the goods to the 'B' so that 'B' who is a transporter transports the goods at the "A's" place, in this case 'A' is giving certain transportation charges to the 'B' so that goods can be transported at his place. In this case 'B' is getting the remuneration or the reward or the charges and 'A' is also getting benefited and 'B' is also getting benefited, so it is for the mutual benefit of both. So this was the classification on the contract of bailment.

5. Duties of Bailor

Now we move on to discuss what are the duties of the bailor? It is the prime duty of the bailor to disclose the fault in the goods which is bailing with the bailee. If he does not disclose the default or if he does not mention the weaknesses or any defect with the goods which he is going to bail with the bailee then he will compensate for the loss caused to the bailee. For example 'A' has delivered his scooter to the 'B' but the breaks of the scooter are not functioning properly and 'B' wants to use the scooter and suppose when 'B' is using the scooter because the breaks of the scooter are weak and he meets an accident, in that case 'A' will compensate the

bailee that is the 'B'. So it is the duty of the bailer to disclose the defect in the goods, since 'A' here at the time of giving the goods or the scooter to the 'B' has not mentioned that the breaks for the scooter are weak. It was his duty to mention it. Let us take another example, 'A' has got a horse and the horse is very naughty, 'B' comes to the 'A' and say that he wants "A's" horse for a ride. 'A' gives the horse to the 'B' for ride but does not mention that horse is very naughty and the movement 'B' tried to take ride on the horse, the 'B' fall down from the horse because horse was naughty, he didn't allow to give the ride to the 'B' and 'B' got his legs fractured or 'B' got hurt. In this case it was duty of the 'A' to mention that horse is naughty. Since he has not mentioned that horse is naughty, he will be responsible to compensate the loss or the damages to the 'B' and it will be the right of the 'B' also. So rights of the one party are the duties of another party. But let us go to discuss another duty of the bailer. It is the duty of the bailer to bear the extra ordinary expenses. When bailer has bailed the goods with the bailee and bailee incur certain extra ordinary expenses to look after the goods then it is the duty of the bailer to bear the extra ordinary expenses. We are emphasising on the word extra ordinary expenses not the ordinary expenses. For example 'A' gave his cow to the 'B'. 'B' is feeding the cow and incurring daily expenses. These are the ordinary expenses and 'A' will not bear these ordinary expenses but one day cow fall sick. 'B' has to take the cow to the veterinary doctor. Now veterinary doctor charge his fee, this is an extra ordinary expenses. So 'A' will bear the extra ordinary expenses that are the veterinary doctor fee will be included in an extra ordinary expenses heading. It is the duty of the bailer in this case 'A' is a bailer to bear the extra ordinary expenses. Another duty of the bailer is to indemnify the bailee. When, we have discussed the contract of indemnity again for your convenience and just to remind you that in the contract of indemnity we mentioned that it is the prime duty of the indemnifier to compensate the indemnity holder in case he suffers from some loss. If we go by this definition then in the contract of bailment also it is applicable. It is applicable in the sense that because of the act of the bailer if the bailee suffers from some loss then it is a duty of the bailer to indemnify the bailee. Let us take an example 'A' has stolen some goods and has bailed those goods with the 'B'. 'B' is a now bailee and suppose when the search warrant were issued in the name of

'A', the goods were found at the place of the 'B' and 'B' was caught. In this case 'A' will compensate the 'B' because it is the duty of the bailer to compensate the 'B' because 'B' is incurring a loss. He may defend the case later on or he will come out with one or the other pretext but as per the example says bailee got damaged. His reputation got dent. Therefore it has to be indemnified by the bailer. Another duty is to receive back the goods. When we say receive back the goods meaning thereby when the purpose is over, when the time period is over it is a duty of the bailer to get back the goods. If we take the example that when we go to see a movie and when the movie is over after three hours, it is our duty to get back our vehicle which we have parked at the parking place. Suppose we are not able to get the goods for two days or three days in that case the contractor of the parking place is charging some extra ordinary expenses from us then we had to pay for that. So when the purpose is over like when we go to a tailor to get the cloth converted into or to be stitched into a shirt then it is our duty to go to the tailor again and get back the goods. These are the points which are to be discussed when we are discussing the duties of the bailer.

6. Duties of Bailee (Part - 1)

Now we move on to discuss the duties of the bailee. The prime duty of the bailee is to take care of the goods bailed. Now bailer when he has delivered the goods to the bailee it is the duty of the bailee to look after the goods. To take care of the goods as a prudent man, as a rational man he should look after those goods as if he is looking after his own goods. He should not differentiate between that this is the goods of the bailer and he cannot adopt the attitude of negligence towards that goods. Here the law say's as a prudent man, now prudent man is a very wide term and the definition keep on changing according to the circumstances. But the prudent man means under the ordinary circumstances the prudent man is that the way a person looks after his own goods in the similar fashion, in the similar way he should look after the goods of the bailer but, In spite of taking care of the goods as a prudent man if the loss occurs in the goods of the bailer then the bailee is not responsible but he has to prove it, the bailee has to prove it that he took care of the goods as a prudent man, as a rational man and in spite of that if there is a

losses the bailee will not be answerable for that loss but if there is an act of God even then the bailee will not be responsible but the duty of the bailee is that he should try to minimise the loss either because of the act of the God or under some unwanted circumstances. Let us take an example; I have given my Car to Mr. 'B'. It is the duty of the 'B' to look after the car as if he looks after his own car or if I have given the gold ornament to the 'B' then it is the prime duty of the 'B' to look after the gold ornament as if he looks after his own gold ornament. So therefore in the contract of bailment if negligence has occurred at the part of the bailee, he will be responsible for that negligence. Another duty of the bailee is not to make any unauthorised use of the goods which has been bailed to him. Now when we say unauthorised use, it means when the bailor is delivering the goods to the bailee he might have mentioned that a bailee can use the goods in a particular fashion or in a particular way that is known as authorised way of using the goods. The instruction which were given by the bailor to use the goods and the methods and modes have been described by the bailor to the bailee to use to the goods that is authorised use of the goods and if the bailee cross that limits or the bailee violates the instructions of the bailor then it will be known as the unauthorised use of the goods. The bailee duty is not to make the unauthorised use of the goods. Let us take an example Ram has given a horse to the Shyam to have a ride on it in an exhibition. But Shyam after getting the horse from the Ram has put the horse in the horse race. The horse was given by the Ram to the Shyam for a ride in an exhibition whereas he is using the horse for the horse race this is an unauthorised use by the Shyam. Another point in the duty of the bailee is that he should not mix up the goods of the bailor with his own goods. Some time it happens that bailor have delivered the goods to the bailee and bailee should not mix up those goods with his own goods. But if he mix those goods with his own goods and goods can be separated and he has mix those goods of the bailor with his own goods with the consent of the bailor then the separation charges will be mutually in proportionate way will be borne by both the parties. Let us take an example Mohan has given the hundred bags of the rice of a particular mark to the Sohan. Sohan later on mix up his hundred bags of the rice of a particular mark with the Mohan's bag of the rice but with the consent of the Mohan. Now, they are to be separated because hundred bags of the rice of the Mohan are of different quality

and the hundred bags of the Sohan are of a different quality or different marks then they are to be separated later on. The expenses will be borne in a proportionate manner. Let us take this case in a detail, if bailer has given the goods to the bailee and the bailee mixes the goods with his own goods and goods can be separated but he has mixed up the goods with his own goods without the consent of the bailer. Then the bailee will bear all the expenses of the separation. Let us take the same example, if the Mohan has given the hundred bags of the rice to the Sohan of a particular brand and Sohan mixes those hundred bags of the rice with his own hundred bags of the rice without the consent of the Mohan but later on those hundred bags are to be separated then here in this case since he has mix up the goods without the consent of the Mohan, the Sohan will bear the total expenditure of the separation. But in the last some time the bailee is mixing the goods of the bailer without the consent of the bailer and the goods cannot be separated. It is not possible to separate the goods. In that case total loss will be borne by the bailee if he had mixed up the goods of the bailer without his consent and goods cannot be separated. Let us take an example 10 kg of the flour of the Mohan was mixed up by the Sohan with his 10 kg of the flour now in that case it cannot be separated. The expenses will be borne by the bailee. There are some more duties of the bailee that I will discuss in my next lecture but I would like to mention the duties are- duty to return the goods, duty to return in the increase in the goods and duty not to set up adverse title. These duties I will discuss in my next lecture. **Thank You**