

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 3729 OF 2015

(On appeal against the judgment dated 27.10.2015 passed by the High Court of Sindh, Karachi in Ist Appeal No. 79/2015)

M/s World Trans Logistics etc ... Petitioners

VERSUS

Silk Bank Limited and others ... Respondents

For the Petitioners: Syed Waqar Hussain Naqvi, ASC

For the Respondents: N.R.

Date of Hearing: 29.01.2016

JUDGMENT

FAISAL ARAB, J.- In the year 2009, the petitioner No. 1 obtained finance facility from the respondent No. 1 Bank. The finance was secured by mortgage of immovable properties as well as by pledge of goods. Subsequently, the petitioner No. 1 committed default in the repayment of its financial obligations. This resulted in respondent Bank's filing recovery suit bearing No. 263/2010 in the Banking Court No. IV, Karachi for a sum of Rs.47,575,218.75/- under the Financial Institutions (Recovery of Finances) Ordinance, 2001. The petitioner No. 1 filed application for grant of leave to defend the suit, which was dismissed. After considering the breakup statements, suit was decreed in a sum of Rs.42,242,625/- along with cost of funds to be determined by the executing court under the provisions of Section 3(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The petitioner No. 1 then filed appeal in the High Court. Before the High Court the only ground that was urged was

that as the goods were pledged with the respondent No. 1 Bank and the same have been misappropriated by its officials, therefore, the petitioner No. 1 is not liable to make payment. It was claimed that the value of the pledged goods at the relevant time was Rs.46,495,500/-. The petitioner No. 1 has also filed a separate Banking Suit bearing No. B-54/2010 which is pending decision in the High Court. It was prayed that until the petitioner No. 1's suit is decided, the recovery proceedings may be stayed. However, the Division Bench of the High Court dismissed the appeal vide impugned order dated 27.10.2015, hence this petition.

2. Before this Court the quantum of the decretal amount has not been called in question. The only ground that has been urged is that as the pledged goods went missing under the control of respondent No.1 in its capacity as pledgee, therefore, the responsibility to account for them entirely falls on respondent No.1. In this regard, learned counsel for the petitioners relied upon the cases of Lallan Prasad Vs. Rahmat Ali and another (AIR 1967 Supreme Court 1322), M/s Ali Traders Rice Dealer Gujranwala through Sole Proprietor and another Vs. National Bank of Pakistan (2015 CLD 1), Askari Bank Limited Vs. Waleed Junaid Industries and others (2012 CLD 1681), Sardar Muhammad Vs. Muhammad Israr etc (1995 SCMR 1356), A.M. Burq and another Vs. Central Exchange Bank Ltd and others (PLD 1966 (W.P) Lahore 1) and Apollo Textile Mills Ltd and others Vs. Soneri Bank Ltd (2012 CLD 337).

3. We have examined the 'letter of pledge' that was executed by the petitioner No. 1 on 31.7.2009 in favour of the

respondent No. 1 Bank. From paragraph 3 of this letter of pledge, the petitioner No. 1 committed itself that it shall maintain a register with regard to the pledged goods wherein all particulars of the goods and the quantities consumed therefrom from time to time shall be recorded. It was also committed that on weekly basis, the petitioner No. 1 shall furnish statement showing all entries made in the register from time to time. In paragraph 4 of this document, the petitioner No. 1 further committed that it will hold the respondent No. 1 Bank harmless and indemnified against all loss, injury, damage or deterioration that may be caused to the pledged goods as a consequence of fire, storm, tempest, earthquake, rains, floods, riots, civil commotion, theft, misappropriation or embezzlement. From these terms of the contract, it is to be seen whether only the constructive possession of the pledged goods was delivered to the respondent No. 1 Bank or the actual possession was with the petitioner No. 1.

4. Under the Contract Act, a pledge is ordinarily construed to mean delivery of an article to the pledgee by the pledgor as security for a debt or for carrying out some engagement that has been committed by the pledgor with the pledgee. An article owned by the pledgor is physically delivered to be kept by the pledgee as security until the commitment of the pledgor with the pledgee is honoured. However, in mercantile practice another form of pledge has also developed. Under this form, the actual delivery of goods is not entrusted to the pledgee as only constructive possession of the pledged goods is handed over. In this manner, the pledgor is allowed to utilize the pledged goods in his ordinary course of business. Examples of such form of pledge are pledge of raw materials and

stocks-in-trade of an industrial or commercial enterprise which need to be consumed on regular basis in the ordinary course of business. On account of such use continuous change takes place in the inventory. The inventory is to be replenished by the pledgor. Hence entire current inventory stands covered under the contract of pledge on which the pledgee can exercise his right to takeover in the event of breach of the contract by the pledgee. This form of pledge attaches certain conditions on the pledgor. Some of which, as an example, are enumerated below:-

- (i) maintain a register to record the particulars of the pledged goods and their time to time utilization and communicate to the pledgee changes in the level of inventory on weekly or fortnightly or monthly basis;
- (ii) The value of the inventory of the pledged goods is to be maintained to a level which meets the value of the security provided under the contract of pledge.
- (iii) hold the pledgee harmless against any loss, damage or deterioration caused to the pledged goods for any conceivable reason; and,
- (iv) obtain insurance cover against any loss, damage or deterioration that may be caused to the pledged goods;

5. Thus in the above discussed form of pledge, the pledgor wears two hats, one that of a pledgor and the other that of a person authorized by the pledgee to hold the pledged goods in trust for the pledgee with the freedom to deal with them in the ordinary course of business. On account of enjoying such freedom, the pledgor is obligated to ensure that while dealing with the pledged goods, the security provided for the debt is not diluted or destroyed to the disadvantage of the pledgee. Furthermore, as the actual possession

of the goods under pledge is entrusted to the pledgor, the standard of care in relation to pledged goods, as envisaged under Section 151 & 152 of the Contract Act, purely falls on the pledgor. If freedom to utilize the pledged goods is not made available to the pledgor engaged in some industrial or commercial enterprise and physical possession is retained by the pledgee then this would immobilize the pledgor from utilizing such goods in ordinary course of his business. The whole purpose of obtaining the finance under this type of pledge against raw materials or stocks-in-trade would thus stand frustrated.

6. From the above discussion it is evident that a valid pledge can be created not only by actual delivery of articles but also by handing over constructive possession only. The pledgee retains a mere right to take possession of the pledged goods in case the pledgor commits default in discharge of his obligation. The character of pledge is not lost merely because actual physical possession of the pledged goods was not delivered to the pledgee. This is exactly what has been done in the transaction that is subject matter of the present proceedings. From paragraph 3 and 4 of the letter of pledge, it can be seen that the petitioner No.1 was permitted by respondent No. 1 Bank to deal with the pledged goods. As the petitioner No. 1 was at liberty to deal with the pledged goods in his ordinary course of business, it was required under paragraph 3 of the letter of pledge that the petitioner No. 1 shall maintain a register for recording changes in the inventory of pledged goods that occur on account of petitioner No. 1's consumption of the goods from time to time. Furthermore, paragraph 4 of the letter of pledge also provides that in case any loss or damage or deterioration in the

value of goods is caused that shall be borne by the petitioner No. 1 without any responsibility whatsoever on the respondent No. 1 Bank. So it is apparent that only constructive possession was delivered to the respondent No. 1 Bank and actual possession of the pledged goods was with petitioner No.1. Hence it was for the petitioner No.1 to take care of the goods as a man of ordinary prudence would take of his own goods and in case any loss, damage or deterioration is caused to the pledged goods, the respondent No. 1 Bank cannot be held accountable. In the present case as the respondent No.1 Bank in terms of paragraphs of 3 of the letter of pledge dated 31.7.2009 was only having constructive possession of the pledged goods therefore it is not liable to account for the alleged theft or misappropriation of the pledged goods. In view of the different nature of pledge, the case law cited by learned counsel of the petitioners has no application to the present case.

7. For what has been discussed above, we find no legal infirmity in the impugned judgment. This petition is, therefore, dismissed and leave is refused.

JUDGE

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Islamabad, the
29th of January, 2016
Approved For Reporting
Khurram