

## **Sunder Lal vs Ram Sarup And Anr. on 5 April, 1950**

**Equivalent citations: AIR1952ALL205, AIR 1952 ALLAHABAD 205**

### **JUDGMENT**

Sapru, J.

1. This is a defendant a application in revision. The opposite party, Ram Sarup, who was the plaintiff in the suit sued the defendant for recovery of Rs. 800 as damages caused to his wooden shop which the applicant had taken on rent from the plaintiff. The Court below held him liable to make good the loss on the ground that there is a special contract regarding liability for losses in para. 3 of the agreement. Admittedly the loss which has taken the shape of the destruction of the wooden shop which the defendant was using as his betel shop was not due to any negligence on the part of the defendant. According to the learned Judge, the defendant who is a betel seller and had hired the shop on rent for selling betels took all the care which can reasonably be demanded from a person in dealing with his own property. The loss sustained by the wooden shop was due to a communal riot which occurred in Meerut and for which the defendant, in no way, is responsible. Shops and houses were set on fire by goondas on account of communal frenzy and one of the shops burnt was that which the defendant was occupying. On the findings of the learned Judge, it is perfectly clear that the defendant was not directly or indirectly responsible for the loss sustained by the shop. The short point, therefore, in this case is whether the defendant applicant is under any special contractual obligation, apart from his liability under Section 151, Contract Act, to make good the loss occasioned to the shop. The general rule of law regarding the liability of a bailee is laid down in Section 151, Contract Act, which I reproduce below :

"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."

The above section makes it clear that the standard of diligence required of a bailee is that of the average prudent man in respect of his own goods of the same bulk and value in similar circumstances. What the law requires is that the bailee should take the same care which he, as a reasonable and prudent man, would take of his own goods of the same bulk, quality and volume. The point, however, in this case is whether there is any special contract which makes the bailee liable for the loss not occasioned by his negligence but by events over which he had no control and for which he can in no way be held responsible.

2. In this case the terms on which the shop was rented were reduced to writing and the plaintiff's case rests upon the interpretation of para. 3 of the agreement which is marked Ex. A1 and runs as follows :

"That the first party (Sunder Lal) shall be responsible for the protection of the shop and the furniture detailed at the foot of the plaint and he shall return the same in the same condition."

And para. 5 runs as follows :

"That as and when the first party shall vacate the shop, he could do so on one month's notice and he will have to make good the loss, if any, to the goods of the plaintiff.  
....."

Does this para impose any higher burden than that which is required of a bailee under Sections 151 and 162, Contract Act ? On this part of the case, I may be permitted to quote the following passage from page on Contract at p. 4742 :

"In the absence of a specific agreement as to the risk of loss or injury, the destruction of a chattel bailed without the fault of the bailee, discharges him from liability to re-deliver the same.

Whether an express provision for the return of the chattel in as good condition as when it was received is discharged by the subsequent destruction of such chattel without the fault of the bailee or purchaser, is a question upon which there is a conflict of authority. In some jurisdictions a specific agreement to return the thing bailed in as good condition as when it was received, is held to render the bailee absolutely liable for the return of such thing; and its loss or destruction without his negligence does not discharge him from such obligation. Under a contract for the bailment of a stallion by which the bailee agrees to return it in as good condition as when received or to pay therefore, the bailee is not excused from his promise to return such animal by the death of such animal without his fault. In other jurisdictions such, language is not regarded as imposing upon the bailee the risk of loss or injury to the chattel without regard to his own fault, and he is not liable for the destruction of the chattel or injury thereto without his fault."

3. It will be clear that the question is not free from some difficulty. I am, however, inclined to the view that the language of the agreement should not be regarded as casting upon the bailee the liability for loss of or injury to the goods entrusted to him without any reference to his own fault. I would, therefore, hold that he is not liable under the terms of the contract for the destruction of the shop as this destruction was not due to any negligence on his part. He was as much the victim of circumstances as the bailor. Nothing that he could do could have prevented the mischief from happening and it strikes me that when the agreement was entered into, neither he nor the bailor could have foreseen or contemplated a situation such as has arisen in this case, namely, the destruction of the wooden shop by a communal mob.

4. For the reasons given above, I allow this application in revision, reverse the judgment of the learned Small Cause Court Judge and dismiss the plaintiff's suit. In the special circumstances of the

case, I direct the parties to bear their own costs.