Hindustan Dorr Oliver Ltd. vs A.K. Menon And Ors. on 16 August, 1993

Equivalent citations: [1994]80COMPCAS384(BOM)

Author: S.N. Variava

Bench: S.N. Variava

ORDER

S.N. Variava, J.

1. By this petition, the petitioners pray for a declaration that they are the owners of 10 lakh units of the Unit Trust of India (hereinafter for sake of brevity referred to as "the UTI").

The facts briefly stated are as follows :

> In respect of certain business transactions of the petitioners with one Varinder Agro Chemicals Ltd., the petitioners drew three bills of exchange for valuable consideration. These were to cover the value of the goods sold by the petitioners to the said Varinder Agro Chemicals Ltd. By reason of certain negotiations a credit period had been given to the said Varinder Agro Chemicals Ltd. to make payment of the price of the goods. Because of this arrangement, the bills of exchange were drawn with 90 days' period of maturity. Varinder Agro Chemicals Ltd. accepted the bills of exchange. These bills of exchange were discounted with the second respondent. For the purposes of enabling the second respondent to discount these bills of exchange, 10 lakh units of the Unit Trust of India were pledged by the petitioners with the second respondent. At the time of the pledge, the 10 lakh units along with blank transfer forms were handed over to the second respondent. The petitioners have averred that the second respondent participated in the transaction only as financier and that they were not engaged in any manner as share, stock or security broker. There is no denial of this position by the second respondent.

2. By their affidavit dated July 7, 1993, the second respondent admits that these 10 lakh units were pledged with them as security for payment of the amounts expended by the second respondent on discounting the three bills of exchange. It may, for the sake of convenience, be mentioned that the aggregate of the three bills of exchange is Rs. 1,38,99,556.90. All the said three bills of exchange fell due for payment on June 21, 1992. The second respondent got notified on July 2, 1992.

3. It would appear that out of these 10 lakh units, four lakh units are at present in the possession of the third respondent. The third respondent claims that the second respondent have sold these four lakh units to them. The second respondent claims as under :

> "On or about the 11th day of June, 1992, the company borrowed for a period of 90 days, an amount of Rs. 1,80,00,000 carrying interest at the rate of 25 per cent, per annum from Eskayef Ltd., the third respondent company above named. By way of security for the repayment of Rs. 1,80,00,000 borrowed as aforesaid from the third respondent, the company gave the following securities :
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> (i) Units worth Rs, 10.62 lakhs (which securities form part of Miscellaneous Petition No. 70 of 1992) ; and,
>
> (ii) Four lakh units being the subject-matter of this petition, Accordingly, the company handed over, inter alia, to the third respondent the said four lakh units. The third respondents were fully aware of the fact that the said units were only given by the company by way of collateral security and that the same had been pledged by the petitioners with the company. Likewise, the petitioners were also aware of the fact that the company had parted with the said four lakh units in favour of the third respondent in the aforesaid circumstances."

4. The main question which would have arisen for determination would have been whether or not the four lakh units had been sold to the third respondent or whether it was merely a sub-pledge as indirectly alleged by the second respondent. This would be a question of fact to be determined, if necessary, on evidence. However, on behalf of the petitioners, it has been contended that even if there was a sale, the third respondent would still get no right, title or interest, equitable or legal, in these four lakh units. This is on the footing that the third respondent could only get such title as the second respondent had. It is contended that admittedly the second respondent were mere pledgees. It is contended that as such pledgees they could transfer no better title to the third respondent. This raises a legal question as to whether a person who has purchased shares with blank transfer forms, from a person who had no right or authority to sell the shares, derives any right which would enable him to defeat the claim of the real owner. This question has been argued by the parties on the assumption, for the sake of argument, that there is a sale in favour of the third respondent. The question of fact as to whether or not there is a sale is for the present left open to be determined only if the court comes to the conclusion that such a sale would create in favour of the bona fide purchaser, i.e., the third respondent, a right, title or interest which he can enforce even against the true owner.

5. The petitioners and the second respondent are agreed that the 10 lakh units had only been pledged with the second respondent. On behalf of the petitioners it is submitted that all that the third respondent can get is a right as a sub-pledgee. It is submitted that in cases of pledge the only right of a pawnee is to retain the goods pledged or sell the goods pledged after giving reasonable notice of such sale. It is submitted that before a pawnee can exercise these rights it must first be shown that the pawnor had made default in payment of the debt and a notice of sale must be given.

It is submitted that in the absence of a notice, the purported sale is void in law and no rights can pass to a purchaser. It is further submitted that the petitioners can always redeem the goods on repayment even in the hands of a third party.

6. It is further submitted that in any event respondent No. 3 can get no better title than what respondent No. 2 had. It is submitted that respondent No. 2 only held the 10 lakh units as a pawnee. It is submitted that respondent No. 2 were not holding the units as agents of the petitioners or as brokers for sale on behalf of the petitioners. It is submitted that under these circumstances, the question of respondent No. 2 dealing with the securities as mercantile agents or as brokers in stocks and shares cannot and does not arise. It is submitted that even if respondent No. 2 has so dealt with the units or sold them, the purchaser, i.e., respondent No. 3 got no better title.

7. On the other hand, on behalf of the third respondent it has been submitted : (1) that by effecting blank transfer forms and delivering them to the second respondent, the petitioners are now estopped from denying and/or defeating the rights of a bona fide purchaser for value without notice. In other words his submission is that by their conduct the petitioners are precluded from denying the second respondent authority to sell. It is submitted that the only right of the petitioners, if any, would now be to proceed against the second respondent either in damages or for conversion ; (2) that the giving of blank transfer forms along with the share certificates amounts to a creation of a mortgage and by so giving a blank transfer form a right or power is given to fill in the name of the transferee and get the name of the transferee entered in the records of the company. It is submitted that this being a mortgage of movables, the principles analogous to Section 69(3) of the Transfer of Property Act would apply and any sale by the second respondent would pass a good title in favour of the third respondent; and (3) reliance is placed upon the proviso to Section 27 of the Sale of Goods Act and it is submitted that the second respondent are "mercantile agents" and "share and stock brokers". It is submitted that as such share and stock brokers the second respondent were in possession of blank transfer forms along with the units. It is submitted that the third respondents have dealt with the second respondent bona fide and in good faith and without having any knowledge that the second respondents did not have any right to transfer the units. It is submitted that even on this basis, the third respondent get a title, legal and equitable, in these units and are entitled to get their name entered in the register with the Unit Trust of India.

8. In support of their respective cases numerous authorities have been cited. Before these authorities are considered, it would be preferable to set out certain relevant provisions of law.

9. Under sections 2(7) and 2(9) of the Sale of Goods Act the terms "goods" and "mercantile agent" have been defined as follows :

> "2. (7) 'goods' means every kind of movable property other than actionable claims and money ; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

> 2. (9) 'mercantile agent' means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods."

10. Section 82 of the Companies Act also provides that'the shares or other interest of a member in the company is movable property.

Section 27 of the Sale of Goods Act provides as follows :

> "Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell :
>
> Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same ; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell."

11. Under Section 172 of the Indian Contract Act, a pledge is defined as a bailment of goods as security for payment of a debt or performance of a promise, the bailor being called the "pawnor" and the bailee being called the "pawnee".

12. Under Section 176 of the Indian Contract Act, if a pawnor makes default in payment of the debt, or performance, at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods as collateral security, or he may sell the thing pledged on giving the pawnor a reasonable notice of the sale. If the proceeds of such sale are less than the amount due, the pawnor is still liable to pay the balance and if the proceeds of sale are greater than the amount due, the pawnee shall make over the surplus to the pawnor.

13. Under Section 177 of the Indian Contract Act, the pawnor can redeem, even at a subsequent time, before the actual sale. But this must be on payment, in addition, of any expenses which may have been arisen by reason of his default,

14. Under Section 178 of the Indian Contract Act where a mercantile agent is, with the consent of the owner, in possession of the goods or documents of title to the goods, any pledge made by him, when acting in the ordinary course of a mercantile agent shall be valid as if he were expressly authorised by the owner of the goods to make the payment, provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.

15. Section 179 of the Indian Contract Act provides that where a person pledges goods in which he has only a limited interest, the pledge is valid only to the extent of that interest.

16. Thus, on a plain reading of the provisions set out above, it is clear that so far as the law in India is concerned, shares are movable property. In India shares are goods within the meaning of the Sale of Goods Act. The provisions of the Sale of Goods Act and the Indian Contract Act would apply to a transaction of sale of shares also. Even in respect of transactions of sale of shares the doctrine of nemo dat quid non habet applies, subject to the exceptions laid down in Section 27 of the Sale of Goods Act. Also the provisions regarding pledge of goods under the Indian Contract Act would apply even to a pledge of shares. Under Section 176 of the Indian Contract Act the only right of a pawnee is to retain the goods or to sell them after giving to the pawnor notice. The right to sell arises only if there is default in payment or performance. Any sale, in cases where there is no default or. without notice would be void. Under Section 179 of the Indian Contract Act, the pawnee may create a sub-pledge. But in such cases the only right of the sub-pawnee would be to step into the shoes of the pawnee. Now, let us see whether the authorities cited across the Bar lay down anything different.

17. On behalf of the petitioners, reliance was placed upon the authority of the Supreme Court in the case of Jaswantrai Manilal Akhaney v. State of Bombay . In this case, certain securities were pledged with a bank towards repayment of an overdraft, the stipulation being that the securities could only be disposed of provided there was an adverse balance against the pledger. The Supreme Court held that the right of the pledgee bank would only arise on the happening of a certain event, namely, there being an adverse balance and that so long as this contingency did not arise, the bank had no right to deal with the securities.

18. On behalf of the petitioners, reliance was also placed upon the authority in the case of Belgaum Pioneer Urban Co-operative Credit Bank Ltd. v. Sripadangalavaru Swamiji, AIR 1962 Mys. 48. In this case, it was held that the pledgee has got only a right to retain possession of the goods pledged till the money borrowed is repaid. It is held that the pledgee is not a transferee of the goods pledged and that the moment tbat money is repaid, the pawncr is entitled to the return of the goods pledged. In this case, it is held that it is immaterial in whose hands the goods pledged are on the date when the money borrowed is fully discharged. It is held that throughout the entire period of the pledge, the pawnor continues to be the owner of the goods pledged and the juridical possession also continues to be with him. It is held that the pawnee merely retains the physical possession of the goods or in other words, he is merely in custody of the goods. In this case, it is held that even though there may be sub-pledge, once the amounts are repaid the sub-pawnee loses all rights in the property pledged because the title of the sub-pawnee is a precarious title which is dependent on the title of the pawnee.

19. On behalf of the petitioners, reliance was also placed upon the authority in the case of Official Assignee, Bombay v. Madholal Sindhu, AIR 1947 Bom 217. In this case, it is held by a Division Bench of our court that Section 176 of the Indian Contract Act is a mandatory provision. It is held that the provisions of Section 176 are not subject to a contract to the contrary. It is held that any term in a contract giving an unqualified power of sale to a pledgee would be inconsistent with the provisions of Section 176. In this case, it is held that, even though a pledger fails to redeem, the

pledgee cannot sell the goods without notice to the pledgor. It is held that a sale without notice is not a mere irregularity but is void. It is further held that the purchaser, in a sale without notice, would only get the right and interest of the pawnee in the goods. It is held that a pawnor can, without suing the pawnee for damages for conversion, maintain an action for redemption against the purchaser. In this case, the Division Bench, inter alia, also observed that a sale of shares with blank transfer forms is, in India, a sale of goods. This authority would be binding on this court.

20. In support of the same proposition, i.e., that there cannot be any sale without a notice and that any such sale is void, reliance was also placed upon the authorities in cases of T. S. Kotagi v. Tahsildar, Gadag, , Prabhat Bank Ltd. v. Babu Ram, , Hulas Kunwar v. Allahabad Bank Ltd., , Bharat Bank Ltd. v. Sheoji Prasad, and Latchiah v. Laxmiah, . There can be no dispute with this proposition of law. In this case, it is an admitted position that the second respondent had not given any notice to the petitioners, prior to the alleged sale in favour of the third respondent. Thus, on this ground itself, the sale, even if there be a sale, in favour of the third respondent would be void and all that the third respondent could get in their favour is the right which the second respondent had, i.e., the rights as a pawnee in respect of the four lakh units. In my view, the authorities cited on behalf of the third respondent, as set out hereafter, do not detract from this position.

21. On behalf of the petitioners, reliance is also placed upon the Division Bench judgment in the case of Abdul Vahed Abdul Karim v. Hasanali Alibhai Ghasia . This is a case where the facts are almost identical to the present case. In this case, the plaintiff had pledged certain shares as security for repayment of amounts borrowed from the first defendant therein. The share certificates were given to the first defendant along with the blank transfer forms. It would appear that the first defendant gave the shares to his bankers (who were defendant No. 3 in that case). The trial court held that the first defendant was a share broker. The trial court held that since the first defendant was a share broker, and as he was in possession of the blank transfer forms with the share certificates, defendant No. 3 was entitled to think that defendant No. 1 had a right to sell the shares. The trial court held that the plaintiff was estopped from asserting his ownership against the bona fide purchaser for value. Thus, the trial court had accepted the very arguments now advanced on behalf of the third respondent. The Division Bench reversed the judgment of the trial court. The question before the Division Bench and which has been answered by the Division Bench was as follows (at page 339) :

> " How far the act of the registered owner of shares, who hands over the share certificates with transfer forms signed by him in blank to another person, estops him from asserting his title against a third party who has bought the shares from that person ..."

The Division Bench held as follows (at page 339) :

> "The question may be put in this form. Does a registered owner of shares, by handing over the share certificates and blank transfers signed by him to another person, make a representation to the world that such person is entitled to deal with the shares, so that any honest purchaser from that person obtains a good title to the shares. In my opinion, until the decisions in France v. Clark [1884] 26 Ch 257 and Fox v. Martin

[1895] 64 L] Ch 473 are directly overruled, the answer to that question must be in the negative.

In this case, if defendant No. 3 could have said that he had purchased the two shares from defendant No. 1, acting as a broker on behalf of his client, he would have been protected by the provisions of Section 108 of the Indian Contract Act which is the section far more applicable to the case than Section 115 of the Indian Evidence Act.

But he bought them from defendant No. 1 who to his knowledge, was not the owner. It is true that defendant No. 1 was entitled to fill up the transfers in his own name and get himself registered with the company as the holder, and if he had done that and then transferred the shares to an honest purchaser, the plaintiff would have no right to recover the shares from such purchaser. The right which defendant No. 1 had, as between himself and the plaintiff could not in my opinion, be transferred to defendant No. 3, so as to bind the plaintiff, nor do I think that defendant No. 3 was justified in presuming that defendant No. 1, who was not the registered owner, had a good title to deal with the shares.

The fact that he made no attempt to get the dividends from defendant No. 1 certainly tends to throw suspicion on his bona fides, even though his explanation about his not getting himself registered as owner with the company be accepted. If he had lodged the certificates with the company for transfer, the holder would have received notice and would have at once objected to a transfer without his consent. A pledgee of shares, although he may get them transferred to his name, as against his pledgor, would not be entitled to sell them without notice.

In my opinion, therefore, there is no estoppel with regard to the Tata Hydro share and one Crescent Mill share, nor is defendant No. 3 protected by Section 108 of the Indian Contract Act, so that a decree should be passed against him for the return of the share certificates with properly executed transfers and in default for payment of their value."

22. This authority is also binding on this court. Thus, it is clear that merely because a registered owner of shares hands over the share certificates and blank transfers signed by him to another person, he does not make a representation to the world that such person is entitled to deal with the shares, so that any honest purchaser from that person obtains a good title to the shares. As can be seen from the observations of the Division Bench, the only protection which a third person, even a bona fide purchaser for value without notice, can have would be if the owner is precluded by his conduct from denying the authority to sell or if the case falls within the proviso to Section 27 of the Sale of Goods Act (old Section 108 of the Indian Contract Act).

23. On behalf of the petitioners, reliance was also placed upon the authority in the case of Amritlal v. Bhagwandas, AIR 1939 Bom 435. In this case, certain goods had been entrusted on "jangad" basis to a broker. The question was whether a sale by the broker would confer on a bona fide purchaser for

value a good title. The court held that goods may be delivered by the owner with an intention of sale. However, if goods are delivered on a jangad basis, meaning only to be shown for approval to the customers, then even if the mercantile agent effects a sale, no property or title would pass. This is on the footing that a mercantile agent who receives on jangad acquires no property and, therefore, can pass no property. In this case, it was held that as the goods were not delivered to the broker or agents with authority to sell, even Section 27 would not protect the transaction. This authority is very relevant and pertinent. The facts are similar to the present case, in the sense that goods have been handed over to a broker/mercantile agent for purposes other than a sale, i.e., without any authority to sell. In both the cases the purchaser is a bona fide purchaser for value without notice. In both cases the purchase is from a party who carries on business as a broker in that trade. The ratio of this case is fully applicable to present case. This authority is also binding on this court.

24. As against this, on behalf of the third respondent it has been contended that by effecting a blank transfer form and by delivering them along with the shares, the owner of the shares has authorised the transferee or any person deriving title from the transferee to fill in the blanks and to get himself registered as the owner in the records of the company. The argument is that by reason of his conduct, the owner is precluded from denying the sellers authority to sell. In effect, what is claimed is the protection of Section 27 of the Sale of Goods Act.

25. In support of this reliance is placed upon the authority of this court in the case of Fazal D. Allana v. Mangaldas M. Pakvasa, AIR 1922 Bom 303. In this case, the plaintiffs had delivered the share certificates along with blank transfer forms to a broker for sale of the shares. The broker sold the shares to the defendants who was a bona fide purchaser for value without notice. The broker without paying the plaintiffs absconded. The question before the court was whether the plaintiff could follow the shares into the hands of the defendant. Whilst considering this question, on page 308, Justice Kanga notes as follows :

> "Except where a shareholder is estopped from denying the title of some particular transferee the general rule of English law is that a purchaser of shares acquires no better title than his vendor himself has and that shares in this respect are like other goods and chattels."

26. Thus, the principles that shares are like other goods and that the purchaser gets no better title than what the seller had is recognised even by this judgment. However, on the facts, the court held that the brokers of the stock exchanges were del credere agents of their constituents and that the plaintiff's dealing with the broker was as a principal with an agent. The court noted that the shares had been handed over with blank transfer forms for purposes of a sale. On these facts the court held that the plaintiff had put forward the broker as his agent in the market to make representations to innocent third parties to the effect that the broker was authorised to transfer the plaintiff's title in the shares and to receive the purchase price. The court held that because of this, the plaintiff could not be heard to say, if innocent third parties acted upon the representations of the broker, that the broker had obtained the shares by cheating him. The court held that even if the broker had cheated the plaintiff, on the plaintiff's handing over transfer forms and the share certificates to the broker, the plaintiff's title both legal and equitable passed to the broker, who could validly transmit that title

to the defendants. The court held that the title having passed to a bona fide purchaser for value without notice, the latter was entitled to retain the shares and to get it registered in his name in the books of the company. To be noticed that on facts, the court found that in this case the shares had been given to the broker for sale. It is only by reason of this fact that the court could conclude that the plaintiff's title, legal and equitable, passed to the broker. The case, therefore, fell squarely within the latter part of Section 27 and the proviso to Section 27 of the Indian Sale of Goods Act also applied. This is a completely different situation and the ratio of this case cannot apply to the present case. In the present case it cannot be denied that the shares were only pledged. They were not handed over to the second respondent with authority to sell. It is settled law that the property in the goods pledged always remains with the pledger. Further, this authority was considered by the Division Bench in Abdul Karim's case, AIR 1926 Bom 338, mentioned above. The Division Bench after considering this authority, held that an owner can follow the shares into the hands even of a bona fide purchaser for value. Thus, even if the authority was laying down the wide proposition as canvassed on behalf of the third respondent, the authority of the Division Bench would prevail over this authority.

27. On behalf of the respondents reliance was also placed upon the case of Maneckji Pestonji Bharucha v. Wadilal Sarabhai and Co., AIR 1926 PC 38. In this case, the first plaintiff therein, who was a broker, had sold certain shares through the second plaintiff who was a sub-broker. In respect of this sale a cheque had been received from the first defendant therein. The first defendant on the basis of the blank transfer and the shares raised monies from the second defendant therein. The second defendant, in turn handed over the shares and the blank transfers to the third defendant therein. The cheque given to the plaintiffs bounced. The question was whether the plaintiffs could follow the shares into the hands of the third defendant. The Privy Council held as follows (at page 40) :

> "But, further, there seems to their Lordships a good deal of confusion arising from the prominence given to the fact that the full property in shares in a company is only in the registered holder. That is quite true. It is true that what Bharucha had was not the perfected right of property, which he would have had if he had been the registered holder of the shares which he was selling. The company is entitled to deal with the shareholder who is on the register, and only a person who is on the register is in the full sense of the word owner of the share. But, the title to get on the register consists in the possession of a certificate together with a transfer signed by the registered holder. This is what Bharucha had. He had the certificates and blank transfers, signed by the registered holders. It would be an upset of all stock exchange transactions if it were suggested that a broker who sold shares by general description did not implement his bargain by supplying the buyer with the certificates and blank transfers, signed by the registered holders of the shares described. Bharucha sold what he had got. He could sell no more. He sold what in England would have been choses-in-action, and he delivered choses-in-action. But in India, by the terms of the Contract Act, these choses-in-action are goods. By the definition of goods as every kind of movable property it is clear that, not only registered shares, but also this class of choses-in-action, are goods. Hence equitable considerations not applicable to

goods do not apply to shares in India.

> So soon, therefore, as Arajania, acting for Bharucha, handed Gora the certificates and transfers, and Gora accepted them and gave the cheque, the goods became ascertained goods, the sale was complete and the property passed. From that time onward Bharucha and Arajania could only sue Gora on the cheque, or for the price of the shares unpaid in respect that the cheque had not been honoured. They had no longer any jus in re of the certificates, and transfers. They had no statutory lien, for they had parted with possession, and, consequently as they had no contract with defendants Nos. 2 and 3, they could not sue them for delivery of the shares, whether the defendants had got good title as against Gora or had not."

28. In my view, this case also does not assist the third respondent. In this case also, admittedly, the share certificates and blank transfers were handed over as and by way of sale. A cheque was also received. It is on the ground that there was a completed sale that the Privy Council held that the plaintiffs could only sue on the cheque.

29. On behalf of the respondents reliance was placed on the authority of the Supreme Court in the case of Howrah Trading Co. Ltd. v. CIT . In this case, the appellants therein had received certain sums as dividends. The shares in respect of which the dividends were received were property of the appellants, but in the books of the company they still stood in the name of the original owner. The appellants had blank transfer forms along with the share certificates with them. It was the case of the appellants that the dividend income for various years should be grossed up and credit for tax deducted at source should be given to them. It is in this context that the Supreme Court observed as follows (at page 286) :

> "The position of a shareholder who gets dividend when his name stands in the register of members of the company causes no difficulty whatever. But transfers of shares are common, and they take place either by a fully executed document such as was contemplated by regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as 'blank transfers'. In such blank transfers the name of the transferor is entered, and the transfer deed signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of the previous holder of the share. The company recognises no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to whom only the dividend declared by the company is legally payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of 'a blank transfer' and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee."

30. In my view, this case is also of no assistance to the third respondent. In this case, there was no dispute between the person whose name stood on the register of the company and the purchaser.

The appellants therein were admittedly the purchasers. It is also pertinent to note that the Supreme Court ultimately held that the appellants were not entitled to claim benefit of the tax deducted at source.

31. On behalf of the respondents, reliance was also placed upon the case of Kanhaiyalal Jhanwar v. Pandit Shirali and Co. . In this case, the plaintiffs were seeking to enforce their rights over certain shares as pawnees. The contesting defendant in that suit was claiming a prior charge over the shares. The question of the rights of a true owner of shares as against a bona fide purchaser for value from a person without authority to sell did not arise for consideration. Whilst deciding the question of priorities, between a pawnee and the prior charge holder, the question as to whether or not there was a pledge came up for consideration. Whilst considering this question, it has been observed that it is well-settled that a person to whom share scrips and transfers in blank have been handed over has the authority of the transferor to fill in the blanks. It is held that a transfer of title is not necessary to create a pledge and that a simple delivery of possession was enough to create a pledge. On the facts, the court also held that the prior charge on the shares was not affected by the subsequent pledge. The court held that the charge prevailed over the pledge. This in spite of the share certificates along with blank transfer forms being with the pawnee. Thus, the above-mentioned general observations as to the rights of a person holding shares with blank transfer forms does not take the case of the third respondent any further. These general observations can have no application to the point under consideration. The question is not whether the third person has a right to get his name entered in the records of the company or to fill in any blanks. The question before the court today is whether an owner of the shares can follow the shares into the hands even of a bona fide purchaser for value without notice.

32. On behalf of the third respondent reliance was also placed upon the authority in the case of Pranlal Jayanand Thakar v. Vasudev Ramachandra Shelat [1973] 43 Comp Cas 203 (Guj). In this case, a lady executed a registered deed of gift in favour the respondent therein and handed over the share certificates to him. On the death of the lady her heirs claimed the shares. The question before the court was whether by means of the registered deed of gift an equitable right in the shares was created in favour of the respondent or whether the shares formed part of the estate of the deceased lady. Before considering this question, the court noted as follows (at page 207) :

> "Before we consider these rival contentions, we must point out that there is a clear-cut distinction between English law regarding the nature of shares and the Indian law on the subject. According to English law, as has been pointed out by all the standard taxt books on the subject and as also recognised by the leading cases on the point, a share in a company is considered a chose in action, which according to the terminology used by the Transfer of Property Act, can be described as an actionable claim. Unlike that position in England, under Section 28 of the Indian Companies Act, 1913, and the provisions of the Indian Companies Act, 1956, the shares or interest in a company are movable property, transferable in the manner provided by the articles of the company. Under the old Indian Contract Act sections which were in existence prior to the enactment of the Indian Sale of Goods Act, shares were goods and under Section 2(7) of the Indian Sale of Goods Act, 1930,

> stocks and shares are included in the definition of goods. Thus, by virtue of the Indian Sale of Goods Act, Section 2(7), though stocks and shares may not be goods, they are included in the enlarged definition of the word "goods" ; and the sale of shares and stocks would be governed by the provisions of the Indian Sale of Goods Act, 1930, by virtue of this inclusive definition in the Indian Sale of Goods Act. We may also mention at this stage that the Transfer of Property Act, 1882, does not contain any definition of movable property. Section 3 defines immovable property negatively by mentioning that immovable property does not include standing timber, growing crops or grass. However, by the General Clauses Act, 1897, 'immovable property' has been defined in Section 3(26) as meaning land, benefits to arise out of land and things attached to the earth, and under Section 3(36) 'movable property' shall mean property of every description, except immovable property. It is true that the meanings which the words have been given by the definition in the Transfer of Property Act for the purposes of that particular Act should be applied unless there is repugnancy in the subject or context. Chapter VIII, which contains sections 130 to 137 (both inclusive) of the Transfer of Property Act deals with transfers of actionable claims. In Section 137 of the Transfer of Property Act, it has been mentioned that nothing in the foregoing sections of that chapter, i.e., sections 130 to 136, applies to stocks, shares or debentures. It was contended in this connection on behalf of Pranlal Thakar that according to the Transfer of Property Act, Section 137, shares and stock are actionable claims but the provisions relating to transfer of actionable claims as stated in sections 130 to 136 are not to apply to this particular species of actionable claims. We are unable to accept this contention because it is clear from the provisions of the Companies Act as also from the provisions of the General Clauses Act that so far as shares in a limited company governed by the Indian Companies Act are concerned, they are movable property for the purposes of the Companies Act and they are also goods for the purposes of the Sale of Goods Act."

33. Whilst considering the question of the legal effect of a transfer executed by the transferor and delivered to the transferee but not yet registered by the company, the court considered numerous authorities and held that between the transferor and the transferee, if the transferor hands over to the transferee a duly executed transfer and share certificates, the transaction is complete and the transferee has legal and equitable title to the shares. The court held that once a duly executed deed of transfer and the relevant share certificates are handed over, the transferor divests himself of all rights as the owner of the shares and the transferee, at least in the eye of equity, becomes the owner of those shares. The court also held that it would be an upset of all stock exchange transactions if it was suggested that a broker who sold shares by general description did not implement his bargain by supplying the buyer with certificates and blank transfers signed by the registered holders of the shares. These observations have been strongly relied upon. In my view, this case is also of no assistance to the third respondent. It does not deal with the question under consideration. The observations made above are in the context of blank transfer forms and shares being handed over with intention to sell and/or create a right in favour of the transferee, by the owner or a person authorised to do so. The question of the claim of the owner against a purchaser from a person without any title did not arise and was not considered.

34. On behalf of the third respondent reliance was also placed upon the authority in Bengal Silk Mitts Co. Ltd., In re [1942] 12 Comp Cas 206 (Cal); AIR 1942 Cal 461. In this case, the question was whether an instrument of transfer filled up after the death of the transferor was valid or not. In this connection, it has been held that in cases of transfer of shares with blank transfer forms, the transferee has a right to fill in the necessary particulars including his own name as transferee and the date of the transfer. It was held that this could be done even after the death of the original transferor. In this case, it is held that such documents passed from hand to hand and that the right principle to adopt would be to hold that where the transfers are duly signed by the registered holders the prior holder confers upon the bona fide holder for value of the certificates for the time being, an authority to fill in the name of the transferee and that the owner is estopped from denying such authority. Here again there was no denial that the owner had executed the blank transfer forms with intention to sell and that the original owner had in fact sold the shares. This case also does not deal with the question under consideration.

35. To be noted that in all these above mentioned cases share transfer forms had been signed and delivered for the purposes of sale. Those are completely different situations from the present where admittedly the shares and the transfer forms were delivered only as and by way of pledge. Also the principles enunciated in the above-mentioned cases, would apply on the basis of estoppel. The estoppel being that the owner having executed blank transfer forms for the purpose of a sale and having left them with third parties, misled innocent third parties. Such cases of estoppel cannot arise where the shares have only been pledged.

36. The third respondent also placed reliance upon the authority in the case of Smt. Sumitra Debi Jalan v. Satya Narayan Prahladha, AIR 1065 Cal 355. In this case, the plaintiff had left her shares and blank transfer forms in the office of her father. One of the employees decamped with the shares and the blank transfer forms and sold the same in the market. The plaintiff filed a suit against all the purchasers of the shares. In this case, on the facts, the court held that after the plaintiff left the shares with the blank transfer forms with her father, they subsequently came into the possession of the employee under the authority of the father. On evidence, it was found that title to the shares passed from hand to hand freely by delivery with blank transfer forms signed by the registered holders. On evidence, it was established that the purchasers could not have found out if there were any defects in the title to the shares. On this evidence, the court concluded that even though shares are goods, that did not preclude them from being negotiable according to custom and practice of the stock exchange. In this case, the court noted that generally no person can pass a better title to another than he himself possesses. The court noted that Section 27 of the Sale of Goods Act was an exception to this rule. The court then observed that the principle of bona fide purchaser for value without notice acquiring a good title although the person conveying the same had no title had further been extended and recognised on the ground of mercantile convenience. The court was, however, careful to clarify that the question as to whether the bona fide purchaser for value without notice acquired a good title or not and/or whether the owner was estopped or not were questions which would have to be decided on the facts of each case. In this case, the court held that the owner had a duty to the transferee and the public at large, not to leave or allow the shares to remain with blank transfer deeds duly executed and thereby enabling third parties to deal with them. The court held that there was a breach of duty in so leaving blank transfer forms and the share certificates. The

court held that this amounted to negligence which was the proximate cause of the shares being sold to innocent third parties. The court held that the principles of law on which Section 27 to Section 30 of the Sale of Goods Act were founded, were that where one of two innocent parties must suffer from the fraud of a third person, the loss should be borne by him who has enabled the third party to commit the fraud. The court held that in this case the breach of duty was to the public at large by leaving the property with apparent indicia of title. The court held that it would be regrettable if these principles were to be departed from and/ or a contrary principle established because, according to the court, that would knock the very bottom out of the principles upon which the ground of mercantile convenience is based and thereby endanger the security of commercial transactions and destroy the confidence upon which the usual course of trade rests. Thus, it was on the facts of this case that the court held that there was an estoppel, the estoppel being the negligence on the part of the plaintiffs. It is on the grounds of negligence on the part of the plaintiffs, that ultimately the court held that the person who was more innocent should succeed. This is clear from the following observation in para 65 (at page 363) :

> "In the light of the above discussion, I am clearly of the opinion that the plaintiff was negligent in not exercising her rights diligently in respect of her alleged title to the shares in question and, therefore, estopped from asserting any title in respect thereof."

37. In my view, in the present case, no estoppel by negligence can possibly arise. This authority, therefore, does not assist the third respondent. Even presuming that the above mentioned authority supported the third respondent, even then this authority is contrary to the Division Bench authority of our court in Abdul Karim's ease, AIR 1926 Bom 338. The Division Bench authority of our court being binding on this court must prevail. Also with great respect to the learned judge, I am unable to appreciate the anxiety expressed about the security of commercial transactions and about confidence in commercial transactions being destroyed. As the learned judge himself has rightly noted the law always was and still remains that no person can pass a better title than he himself has. Without meaning any disrespect to the learned judge, to me it appears that the learned judge seems to have been unduly agitated by the fact that shares with blank transfer forms may pass from hand to hand and that the purchasers would have no way of knowing whether the person from whom they were purchasing had any title or not. But, with great respect to the learned judge, one fact seems to have been lost sight of, i.e., that in cases of most movables, which are regularly sold and purchased in shops or even on roadsides, e.g., pens, books, watches, etc. (the list could run on endlessly), there would be no way that the purchaser could find out whether the person from whom he was purchasing had a title or not. In all these cases also, the goods would be sold by mere payment and delivery. In all such cases the possession of the goods would be the only indicia of ownership. If that were to be the guiding principle then in most cases of sale of movables Section 27 would automatically apply and the owner would be precluded from recovering his goods. Thus, to take a very simple example, if a person leaves his watch for repairs, with a dealer who sells watches of that make and the watch dealer sells off the watch, the purchaser could never have any way of finding out if there was a defect in title. Also the dealer has all the indicia of ownership, he being in possession. Could it be said that the owner was negligent or that the owner owed a duty to the public at large not to leave the watch with a dealer for repairs. Could it be said that the owner was precluded from

following the watch in the hands of third parties. The answer, to both these questions must be in the negative. The position in respect of shares is no different. The observations of various courts, including the Supreme Court, are all in the context of shares and blank transfer forms being executed and handed over with intention or authority to sell. In such cases, the latter part of Section 27 or the proviso to Section 27 would directly apply. In my view, with great respect to the learned judge, the strict duty sought to be cast on owners of shares in this case, if applied to all cases, would seriously hamper the raising of finances by a party. It is well known that monies are raised by pledging shares. Whilst it is not necessary that blank transfer forms be deposited for purposes of creating a pledge, most financial institutions insist on the share certificates with blank transfer forms being deposited. If the ratio of this judgment is to be applied to bailments and pledges then, in my opinion, it would be regrettable, it would knock the bottom out of the principles of trust and confidence in commercial transactions whereunder the shares and blank transfers are deposited for raising finances.

38. The second submission on behalf of the third respondent is that delivering blank transfer forms along with the share certificates amounts to creation of a mortgage of movables. It is submitted that it being a mortgage of movables, the pledgee has a right to get his name entered in the records of the company and/or to sell the shares. It is contended that in such cases, the bona fide purchaser for value would also get good title to the shares. In support of this contention, reliance was placed upon the authority in the case of Arjun Prasad v. Central Bank of India, , wherein on the facts it is held that the transaction in question in that suit was not a pledge but a mortgage of movables. Based on the observations in this case it was submitted that the court must hold that the act of deposit of shares along with blank transfer forms necessarily amounts to creation of a mortgage. It is submitted that as mortgagees, the second respondent, had a right to sell. It is submitted that the third respondent, have thus got a good title, legal and equitable, which they can enforce even against the true owners, i.e., the petitioners. I am unable to accept this submission. Undoubtedly there can be a mortgage of movables. However, whether there is a pledge or a mortgage is a question of fact. In this case, between the parties to the transaction, it is an admitted position that the plaintiffs had only pledged the shares in favour of the second respondent. Even if this question was to be decided on evidence, it is only the petitioners and second respondent who could lead any evidence on this point. Both of them admit that there was only a pledge. The third respondent does not claim to have any knowledge of the original transaction between the petitioners and the second respondent. In fact, the third respondent claim ignorance as they claim to be a bona fide purchaser for value without notice. Both the petitioners and second respondent, confirming that there was only a pledge of the ten lakh units, it is not open to the third respondent to claim that there was a morgage. The documents relied upon also support this. In view of this admitted position is cannot be said that there was a mortgage of the shares in favour of second respondent. Even otherwise the facts in this case do not lead to a conclusion that a mortgage was created. In my view, merely because shares along with blank transfer forms are handed over, that does not mean that automatically the transaction must always be one of mortgage of movables.

39. The third submission on behalf of the third respondent is on the basis of the proviso to Section 27 of the Indian Sale of Goods Act. In this behalf, it is urged that the second respondents are shares and stock brokers. It has been urged that it is not at all necessary that the petitioners should have

dealt with them as such shares and stock brokers. It is urged that it is sufficient that the second respondent being a mercantile agent was in possession of the blank transfer forms along with the share certificates and has dealt with the shares. It is urged that this being the normal business of the second respondent and it being admitted that the shares along with the blank transfer forms were in the possession of the second respondent with the consent of the petitioners, a sale made by the second respondent in the ordinary course of their business is valid as if expressly authorised by the petitioners. It is urged that this is because the third respondent paid for and obtained the units in good faith and without any notice that the second respondent had no authority to sell. It is urged that there was nothing to indicate to. the third respondent that the second respondent did not have authority to sell. In this behalf, it has also been urged that the normal method of transfer of shares is by execution by blank transfer forms and by handing them over to the broker. It is urged that these blank transfer forms along with the share certificates may change hands a number of times and ultimately the person who wants to get his name registered in the books of the company would lodge the same with the company. It is urged that in such circumstances, so far as the transactions in shares are concerned, it would be impossible for innocent third parties to find out whether or not the brokers were in possession of the blank transfer forms along with the shares with authority to sell or not. It is urged that in such cases, if a contrary view is taken, the entire share trade would be affected.

40. In support of this, reliance is placed upon the case of Rama Rao v. Dasarathy Rao, AIR 1955 Mys 43, wherein it is held that the delivery of share certificates with the transfers executed in blank, passes not the property in the shares but a title, legal and equitable, which enables the holder to vest himself with the shares without the risk of his right being defeated by the registered owner or any other person deriving title from the registered owner. In this case the facts were that the broker had obtained the shares conditionally, i.e., on the condition that they would be sold within one week or returned. The broker sold the shares but failed to pay the real owner. On the facts, it was found that the owners had delivered to the broker the shares with the blank transfers. On the facts, it was held that the mercantile agent had delivered the documents of title and also the transfer deed signed by the registered owner and that there was nothing in the papers which indicated any reason for suspicion and that so far as the buyer could make out the title was in order. On the facts, it was held that the buyer being satisfied with the correctness of the transaction, paid the money and took the shares. It was held that the buyer was a bona fide purchaser of the shares for value without notice of any fraud or of anything defective in the transaction and that he had acted in good faith. Thus, this case squarely fell within the ambit of the proviso to Section 27 of the Sale of Goods Act. This is so because the shares had been left with the mercantile agent/broker for the purposes of sale.

41. The question, however, is whether in the present case, the proviso to Section 27 of the Sale of Goods Act applies. It must be seen that before the proviso can apply, it must be shown that the goods have been left with a "mercantile agent" as such, i.e., as an agent for the purposes of sale. Thus, to take simple example, if a person leaves his sofa set for repairs in a furniture dealer's store and the furniture dealer sells off the sofa, the owner of the sofa can follow the same into the hands of the third party. The sofa had never been left for the purposes of sale. It had not been entrusted to an agent for sale. Another example would be where a furnished house is let to an auctioneer and he sells off the furniture. In such cases the proviso could never apply. The same principle would apply

when goods are pledged. This even though the goods may be pledged in favour of a party who is otherwise a mercantile agent. This is so because, for the proviso to apply, the possession must be possession of a mercantile agent as such. From the definition of mercantile agent under Section 2(9) of the Sale of Goods Act, it is clear that before a person can be said to be a mercantile agent, in respect of the concerned goods, it must be shown that he had as such agent authority to sell or to consign the goods for sale. The proviso to Section 27 of the Sale of Goods Act would only apply in cases where goods (in this case units) have been left with the intention of sale. If goods are left with authority to sell, then it would not matter whether they were left conditionally. Thus, the broker must be in possession with an authority to sell. In such cases, even if the conditions are not fulfilled or the authority is exceeded, the proviso to Section 27 of the Sale of Goods Act would come into play and the bona fide purchaser for value would get a good title. To hold otherwise would be to create a new law which the Legislature in its wisdom has thought fit not to enact. To hold otherwise, even in respect of transactions in shares, would be set at naught the provisions relating to bailments and pledges as set out in the Indian Contract Act. If in such cases, the Legislature wanted a bona fide purchaser for value to be protected then in the provisions pertaining to bailment and pledge, such a condition would have been laid down. Knowing full well that there would be bailment and pledges of shares the Legislature has purposely chosen not to make any exception. The Division Bench in Abdul Karim's case, AIR 1926 Bom 338, cited above has also noted this. In the absence of such provision, even in respect of shares/units, it would have to be held that the provisions of sections 172 to 179 of the Indian Contract Act apply. Even where shares/units are pledged with a person, who incidentally may also be a broker, the sale by him without notice of sale would be void. The purchaser would not be protected by the proviso to Section 27 of the Sale of Goods Act. The purchaser would only step into the shoes of the pledgee.

42. Under these circumstances, it is not possible to accept the third respondent's contention that they have got a good title to the shares. The third respondent having taken from the second respondent, who are only pledgees, can get only such right as the second respondent had. The third respondent cannot get any higher right. The petitioners are entitled to redeem even in the hands of the third respondent.

43. It has been submitted on behalf of the third respondent, based on the observations of the Privy Council in Maneckji Bharucha's case, AIR 1926 PC 38, and of the Calcutta High Court in Sumitra Debi's case, , that transactions in shares take place on the basis of blank transfer forms and that such a view would affect the entire trade and would be a negation of established practice. It is submitted that there is no way in which a bona fide purchaser for value could find out whether the broker had authority to sell or had no authority to sell. This has been dealt with in para 34 above. As set out above the observations relied upon, can only apply in the context of shares having been left for sale or actually having been sold. Persons buying shares are in a much better position to ascertain the authority to sell than in cases of many other movables. This is so because the name and address of the owner of shares is available on the share certificates. Of course in practice nobody contacts the owner to ascertain whether or not he had authorised sale. But that does not change the legal position. In cases of many movables, e.g., pens, books, bags, furniture, etc., the list could run on endlessly, most of which would be sold in the open market or even on roads, there would be no way that a purchaser could find out if the seller has authority to sell. In such cases also the sale, in a

majority of cases, would be by a mercantile agent or broker. In most cases of such sales there would be transfer by mere delivery and payment. In all such cases the only indicia of ownership would be possession. There cannot be any doubt that, in such cases, this would be the legal effect. If that be so, then, in my view, there is no reason why in respect of shares there should be any difference. Further, in my view, if such principles are applied to all cases where shares are left with blank transfer forms including pledges, i.e., a strict duty is cast on owners of shares, it would seriously hamper the raising of finances by a party. It is well known that monies are raised by pledging shares. Whilst it is not necessary that blank transfer forms be deposited for purposes of creating a pledge, most financial institutions insist on the share certificates with blank transfer forms being deposited. If this ratio is to be applied to bailments and pledges then, in my opinion, it would be regrettable, it would knock the bottom out of the principles of trust and confidence in commercial transactions whereunder the shares and blank transfers are deposited for raising finances. In my view the above submission is much ado about nothing.

44. In the view that I have taken the petitioners will be entitled to the entire ten lakhs units. However, before final orders are passed one further aspect needs to be decided. Undoubtedly, the petitioner is entitled to redeem. However, they have had the use of the money till date. The question, therefore, is till what date they are bound to pay interest. On behalf of the petitioners it is submitted that the petitioners were always willing to repay. It is submitted that the second respondents were not in a position to return the units. It is submitted, relying on the authority of the Supreme Court in the case of Lallan Prasad v. Rahmat Ali, , that the obligation to repay assumes that the pawnee is in a position to return the goods. It is submitted that if the pawnee is not in a position to return the goods then there is no obligation to repay. It is submitted that the contract was a composite one and until the second respondent could return all the units there was no obligation to repay.

45. It is submitted that, by letters dated July 7, 1992, and August 6, 1992, the petitioners had offered to repay. It is submitted that the second respondent were not in a position to return all the units as they had parted with four lakh units. It is submitted that it is only by this order that the second respondent will be in a position to deliver all the units. It is submitted that the petitioners are, therefore, not bound to pay interest from July 7, 1992, onwards. It was also submitted that in the event of the court coming to the conclusion that interest is payable, then it cannot be at a rate higher than the contractual rate which is 15 per cent. On the other hand Mr. Joshi for the custodian points out that the Supreme Court in Lallan Prasad's case, , itself, has laid down that if less pledged goods are available then the pawnee will have to give credit for the value of the goods not available and the pawnor can redeem the balance. Mr. Joshi also points out that the amounts were due on June 21, 1992. He points out that on that date the second respondent were not notified. He points out that payment has not been tendered on that date. He submits that even thereafter no attempt has been made to redeem what was available. He points out that this petition is only filed on December 15, 1992. He submits that the petitioners have not even offered to deposit the monies in court. He submits that the petitioners having enjoyed and used the monies must pay interest at the contractual rate till the period of the loan and at commercial rates after the period of the loan, i.e., after June 21, 1992. In my view, Mr. Joshi is right. The petitioners must pay interest.

46. I am informed that six lakh units are still lying with the Central Bureau of Investigation. The petitioner to give notice to the Central Bureau of Investigation. Appropriate orders, including orders in respect of the four lakh units in possession of the third respondent, and about payment of interest and at what rate will be passed on the next occasion after hearing the Central Bureau of Investigation. It may only be mentioned that the court has already indicated that interest is payable and the rate at which it is payable. On that basis parties are asked to work out the figures.

47. In the view that I have taken there will be no need to decide the question whether or not there is a sale of the four lakh units in favour of the third respondent. In the view that I have taken the third respondent will only step into the shoes of the second respondent so far as the four lakh units are concerned. The petitioners are, therefore, entitled to redeem the four lakh units even in the hands of the third respondent. In the view that I have taken the remedy of the third respondent for any loss, if any, will be against the second respondent. I am not concerned with that in this petition. In court today the modality by which petitioners will redeem all the units has been worked out. It will be incorporated in the final order.

48. Petition adjourned to Wednesday August 18, 1993, for final orders.