

PUNJAB AND HARYANA HIGH COURT

Bharat Bank Ltd

Vs

Bodh Raj

(Falshaw, C.J. Kapur, J.)

04.11.1955

JUDGMENT

Kapur, J.

1. This is a defendant's appeal against a judgment and decree of Mr. Mohindar Singh, Subordinate Judge 1st Class, Delhi, dated 18-6-1950 decree-ing the plaintiff's suit for the recovery of RS. 9,000/- with costs.

2. The plaintiff had a cash credit account with the Bharat Bank, Limited, at Rawalpindi prior to the year 1947. He had pledged as security 988 shares of the Rawalpindi Electric Supply Company Limited. On 11-8-1947 the Bank gave notice to the plaintiff demanding payment of the debt due from the plaintiff by 18-8-1947 and if the amount was not paid, the shares would be sold without any reference to the debtor and at his risk and responsibility. This is Ex. P-1 at p. 43 of the paper book, but it is not clear when it reached the plaintiff. No reply was sent to this letter of demand. On 20-8-1948 the shares were sold at Rs. 10/- per share which is evidenced by the document Ex D-1 at p. 66 of the paper book. The plaintiff on 31-1-1949 gave a lawyer's notice to the defendant Bank claiming Rs. 9,000/- on account of the surplus which would have accrued had the shares been sold by the middle of September 1947 when the price was Rs. 19/12/- per share and the Bank replied on 8-2-1949 saying that they were not bound to sell the shares in September 1947 and could sell them at any time after the expiration of the period mentioned in the notice sent by them in August 1947. The Bank also claimed Rs. 2,172/12/6 after giving credit for the sale proceeds of the shares and called upon the plaintiff to pay that amount.

3. On 9-3-1949 the plaintiff filed a suit for the recovery of Rs. 9,000/- being the surplus after deducting the amount due from the plaintiff to the defendant in the cash credit account calculated at the value of the shares pledged at Rs. 10/12/-. He also alleged that the Bank was bound to sell and must be deemed to have sold the shares on or about 18-8-1947, and if due to the want of diligence on the part of the defendant Bank to sell the shares on 18-8-1947, there was any fall in the price of the shares, the liability was of the Bank. The material pleas of the defendant Bank

were that the Bank could not function after August 1947 due to disturbances, that the Bank could not bring its records to India due to restrictions imposed by the Pakistan Government and that before the shares could be sold the Bank had to get the sanction of the Custodian of Evacuee Property.

The Bank also pleaded that it was not bound to sell on 18-8-1947 or within a reasonable time thereafter and that after giving credit for the price of the shares which amounted to Bs. 9,880/- at the rate of Rs. 10/- per share a sum of Bs. 2,322/12/6- was due from the plaintiff for which a separate suit could be brought.

The Court stated the following issues-

1. Whether the defendant was entitled to sell the shares on the day and at the rate which he has actually sold them?
2. What was the price of the shares on 18-8-1947 or thereabout?
3. Whether the plaintiff is entitled to recover the difference in the price? If, so, how much?

4. Relief. and held that as a pawnee the Bank should have sold the shares within a reasonable time of 18-8-1947 and they were not entitled to sell in August 1948 even though they gave a subsequent notice in the newspapers calling upon the plaintiff to pay within fifteen days in default of which the pledged shares would be sold. It was also held that the price in August 1947 was Rs. 19/8/- per share which was also the price in September 1947 and therefore the shares should have been sold at that price and therefore the plaintiff was entitled to recover the surplus after paying off his debt to the Bank.

4. The defendant Bank has come up in appeal to this Court and has submitted that there was no obligation on the defendant to sell either in August 1947 or within a reasonable time thereafter. The right of a pawnee in case of default of payment by the pawnor is given in Section 178, Contract Act which provides that on a default being made the pawnee may bring a suit for the recovery of his debt and retain the goods as collateral security; or he may sell the goods pledged, on giving the pawnor reasonable notice of the sale and if the sale proceeds are less than the amount due the pawnor is still liable to pay the balance.

5. In '*Kesarimal v. Suryanarayanamurthi*¹', the power of sale conferred on the pawnee was held to be for his benefit to be exercised according to his discretion and all that was required of the pawnee was to give reasonable notice of the intended sale, -- '*Prag Narain v. Mul Chand*²', and -- '*Abdul Hakim Muhammad Sadik v. Joho Jaut-zen*³' were distinguished on the ground that they were cases under Section 107, Contract Act which corresponds to Section 54, Sale of Goods Act which relates to the power of sale conferred on a vendor of goods.

6. In '*Cooverji Umersey v. Mawji Vaghji*⁴', it was held that a pawnee has the power of sale expressly conferred upon him for his benefit according to his discretion and all that is required of him to perfect his right to sell the pledged goods is to give notice of the sale and it is open to him to effect the sale at any time or at any date thereafter and all that is necessary is that the notice

should be reasonable.

7. The same view has been taken by the Nagpur High Court in -- '*Surajmal v. Pulchand*'⁵, where it was held that a pawnee who has given a reasonable notice of sale under Section 176, Contract Act can sell at any time and is not bound to sell within a reasonable time after the expiry of the period mentioned in the notice.

8. Counsel also relied on a Calcutta case -- '*Co-operative Hindustan Bank Ltd. v. Surendra-nath De*'⁶, but all that was held in that case was that Section 176, Contract Act requires a reasonable notice of the sale.

9. Counsel for the respondent submitted that the sale should take place within a reasonable time of the notice, but the cases he relied upon were cases of resale of goods for non-payment of the purchase money which were governed, as I have said, by Section 107, Contract Act which has now been replaced by Section 54, Sale of Goods Act. That section specifically provides for resale within a reasonable time of the notice and cases under that section are not, in my opinion, relevant to the point in issue, and therefore, '19 All 535 (B)', which was a case under Section 107 and related to the seller's right of resale is not applicable to the facts of the present case, nor is -- '*Mercantile Bank of India, Ltd., Delhi v. P. S. Sheigle & Co.*', 1930 Lah 576 (AIB V 17) (G), where the point for decision was whether the goods were pledged as collateral security and the Bank had the power of sale under Section 176. There no question was raised as to the question of reasonable time after the notice had been given.

10. In my opinion, therefore, the sale cannot be assailed on the ground that it did not take place within a reasonable time after the notice of 11-8-1947.

11. The price on the date of the sale was according to the evidence led between Rs. 11/4/-and Rs. 11/8- per share which is proved by the statement of Mr. William Benson who was examined on interrogatories at p. 8 of the paper book and the other documents which have been put on the file and are C. W. 1/1, C. W. 2/1, p. 2 and p. 3. But even if the price were to be taken at Bs. 11/4/- the sale should have been for Rs. 11,477/-which is less than the amount which was due on the date of the sale.

12. I would, therefore, allow this appeal, set aside the decree of the trial Court and dismiss the plaintiff's suit with costs throughout.

Palshaw, J.

13. I agree.

Cases Referred.

11928 Mad 1022 (AIR V 15) (A)
219 All 535 (B)
3 1924 Lah 319 (AIR v 11) (C)
41937 Bom 26 (AIR V 24) (D)
51951 Nag 264 (AIB V 38) (E)
61932 Cal 524 (AIB V 19) (F)