

**CASE COMMENT: LASALGAON MERCHANT CO-OPERATIVE  
BANK LTD. V/S M/S PRABHUDAS HITHIBHAI**- Anavi Jain<sup>1</sup>**ABSTRACT**

Primarily, contract of bailment is when under a contract one person delivers good to other person for certain purpose, and the purpose for which such goods were delivered is accomplished, the goods are either returned or disposed off corresponding the directions given by the person who delivers them. Therefore, bailment is all about changing possession and redelivery of the goods bailed to the real owner. Contract of bailment are considered as *sui generis* and there it can be said that a bailment can exist even without a contract. Earlier the legality of bailment without a contract was questionable but now with the coming of case named “Lasalgaon Merchant Co-operative bank ltd v. M/s Prabhudas Hithibhai” this grey area has been covered. Bailment without a contract is a new age concept that includes bailment established by the voluntary and non-voluntary taking possession of another's property. The bailment was thought to arise only upon contact at the time, and it was based mostly on the parties' mutual consent. On the other hand, this non-contractual bailment arises from the simple possession of goods that are the property of another without their consent. This case comment covers the background of the case, issues, findings, analysis and finally the conclusion drawn.

**Keywords:** - *bailment, contract of bailment, non- contractual bailment, act of God, income tax, government officers, section 148 & section 15 Indian contract Act.*

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AIR 1966 Bom 134.

{NAIK, J.}

Case decided on – 16<sup>th</sup> March, 1965

Appellant- Lasalgaon Merchant Co-operative bank ltd.

Respondents- M/s Prabhudas Hithibhai.

### FACTS OF THE CASE →

- In the present case plaintiff was a bank named Lasalgaon merchant co-operative bank and defendants (1 & 2) were members of a partnership firm. Defendants had approached the plaintiff bank to make them some advances for which the defendants agricultural produce was provided as security (pledge), namely groundnuts, tobacco and jaggery. Bank was given constructive possession of the goods on 20<sup>th</sup> November, 1952.

The condition of advancing money was it would be provided up to 60% of the value of the goods pledged. The credit was set at a maximum of Rs. 5,000. The agreement was renewed on November 16, 1953, and it was set to last until September 30, 1954.

- Defendants owed a total of around Rs. 2,332 in income-tax debts in December 1953.
- In their godown, defendants also had kept specified packages of tobacco. Plaintiff was given the possession of the property(godown) by handing over the keys. Plaintiff had 97 packages of tobacco in his possession at the time.
- The defendants (1 & 2) owed plaintiff Rs. 3,181 on 23<sup>th</sup> August, 1954.
- The Income-tax Officer, Nasik, issued a certificate, and delivered it to the Nasik Collector on December 16, 1952. On December 11, 1953, he sent over a letter to the Collector requesting that the latter make recoveries by attaching and selling the tobacco stock or attaching and selling the open plot belonging to defendants Nos. 1 and 2. The Circle Officer went to the plaintiff's godown on August 23, 1954, valued the tobacco packages kept there under a Panchnama, and attempted to attach them. He placed the goods(tobacco) in the same godown, locked it, and gave the key over to the village's police Patil.
- There were significant rains on 29/30 September 1954, and the ceiling of the godown where the items were stored, flooded heavily, causing the tobacco to be ruined. The Collector dispatched a telegraph to the Mamlatdar on October 1, 1954, requesting that

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the commodities be returned to the plaintiff. But the plaintiff refused to take the delivery and instead asked for the damages he suffered on account of loss.

- Plaintiff filed a case in trial court as well as district court but was only granted Rs. 857 as damages which arose out of sale proceeds. It also issued a decree against defendants Nos. 1 and 2 for an amount of Rs. 3,455-1-0, with future interest of Rs. 3,181 at 6% per annum. This led to the second appeal.

### LEGAL ISSUES PRESENT IN THIS CASE →

1. Could the government officers take the defence of unforeseen accident/ act of God where they stated that the rains were unexpected and there was leakage in warehouse? Was reasonable care exercised as a bailee is responsible to do?
2. Was the conduct of the officers wrongful and tortious and were they responsible and liable on those grounds? Could they take the defence of vicarious liability?
3. Could the circle officer be held liable? Did he act on his own at that time or proceeding to affect the attachment?
4. Could it be considered that the government authorities were acting as bailee even though there was no as such written contract between the plaintiff and government?

### LEGAL CONCEPT INVOLVED →

When under a contract one person delivers good to other person for certain purpose, and the purpose for which such goods were delivered is accomplished, the goods are either returned or disposed off corresponding the directions given by the person who delivers them. This is known as bailment mentioned *u/s 148 of The Indian Contract Act, 1872*<sup>2</sup>. With the changing circumstances in the society, law evolved and led to emergence of non-contractual bailments. According to this concept, though there in no contract between the parties but obligations of a bailee are imposed on him/her. This aspect hasn't been covered in the definition of bailment yet. *Section 151 of The Indian Contract Act, 1872*<sup>3</sup> mentions the care to be taken by bailee. He is bound to take care of the goods as an ordinary prudent man would take care of his

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<sup>2</sup> The Indian Contract Act, 1872, S 148, NO. 9, Acts of Parliament, 1872 (India).

<sup>3</sup> The Indian Contract Act, 1872, S 151, NO. 9, Acts of Parliament, 1872 (India).

goods. Bailee is bound to perform all the duties similar to a bailee would have performed if there was a contract.

Non contractual bailments have been given recognitions in English law. With time, the Supreme Court and other High Courts recognised the significance of bailment, which existed independently of the parties' contract. This case has significance importance when it comes to non-contractual bailments.

### **JUDGEMENT →**

Plaintiff's second appeal was allowed with cost throughout. All defendants are found liable in the plaintiff's lawsuit. In their individual capacities, defendants Nos. 5, 7, and 9 are not accountable. The Court stated that the current case does not qualify as an act of God because the damage was not caused by any force or reason beyond the respondent's control. Furthermore, by gaining possession of the goods, the government authorities play the role of the bailee. The respondent must show that they took reasonable care as bailee and that the damage was caused by an Act of God, the Court stated. Unable to prove their claim, the Government was declared liable by the Court for failing to perform the duties of bailee. By affirming the Government's obligations as a qua bailee", the ruling implies the validity of bailment even without a contract; although, the Government has not possessed the commodities under a contract.

### **LEGAL ANALYSIS →**

The second appeal was filed only because he was allowed only with damages arising in normal course. The trial and district court both agreed on the same terms and also declared that circle offer (defendant no. 9) was given protection u/s 6 of the Bombay Revenue Jurisdiction Act which means he was acting bona fide and therefore not liable to be sued for damages. On the issue of negligence, the District Court determined that the damage was caused by unavoidable conditions, such as unforeseeable and severe rains. But was it actually unavoidable? On second appeal it was clarified.

Assuming for a while that the enormous loss was primarily due to heavy rains, this did not rule out the possibility that police was negligent in their handling of tobacco goods. In my

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opinion, the resulting tremendous rain did not qualify as an Act of God. It is well established presumption that bailee was negligent in taking reasonable care while exercising his duties as a bailee. Unless the contrary is proved he will be held liable. *Section 152 of The Indian Contract Act, 1872*<sup>4</sup> states that had the bailee taken care as mentioned in *section 151 of ICA, 1872*<sup>5</sup>, he cannot be held liable in absence of a special contract. Here the government officers couldn't prove the contrary that they took reasonable care. It was the responsibility of the government officers to treat the products with the same care that any responsible manager would treat his own. The government was placed in the position of bailees, and it was up to them to show that they had taken all reasonable precautions to protect them and that the damage was caused by circumstances beyond their control. Therefore, it is also understandable that if the possession of the items has been transferred ownership hasn't, and it has also been transferred for a particular amount of time, then bailment may be possible even without a contract.

As previously noted, the Collector delegated the authority to make recovery to the Mamlatdar, who then delegated those powers to the Circle Officer. The Circle Officer was acting under the authority of a general order. The authorities he was exercising were statutory rights granted to the Collector. But it was also evident that he acted beyond the scope of the powers he was granted and delegated by the statute. The law does not allow for the attachment and seizure of goods in the ownership of a third party to collect arrears. Without any authority and, in fact, even beyond power, the Circle Officer proceeded to assess and reclaim the tax. Therefore, this was quite evident and clear that circle officer was acting beyond his scope proceeding to affect the attachment.

Talking about wrongful and tortious conduct of government officers, the reference from a well-known case *State of Rajasthan v. Mst. Vidhyawati*<sup>6</sup> and reference from provisions of Article 300 of the Indian Constitution were taken and it could also be concluded that The State, like any other employer, can be held vicariously accountable for tortious conduct committed by government subordinates or agents when they are not acting in the exercise of sovereign powers. At the same time the provisions of *Art. 265 of the Indian Constitution*, which states that no tax shall be levied or collected unless authorised by legislation, and the provisions of *Art. 31(1)*, which states that no individual shall be deprived of his property

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<sup>4</sup> The Indian Contract Act, 1872, S 152, NO. 9, Acts of Parliament, 1872 (India).

<sup>5</sup> *supra* note 2.

<sup>6</sup> AIR 1962 933.

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unless authorised by law is also be taken into reference. But in the present case circle officer acted without and beyond authority which would not give him any protection thus making him liable.

### CONCLUSION →

This case brought the concept of non- contractual bailments into the Indian law courts. Plaintiff and government had no written contract between them but government had temporary possession from the moment they attached the goods. They cannot take defence of statutory authority or unforeseeable circumstance. They were supposed to take reasonable care as a bailee is supposed to take of the goods. Giving contentions like, the door of godown was open which led to damage of goods wasn't a relevant answer corresponding to their duties.

The validity of quasi-bailment contract is still unascertained. A comparative analysis of relevant precedents, on the other hand, might be a clear directive for comprehending the idea of noncontractual bailment. When a person wilfully takes ownership of something, even if there is no prior commitment to possess it, he is bound to perform all the duties of a bailee under the terms of the law. This case had proved to be useful in *State of Gujrat v. Memon Mahomed*<sup>7</sup> where Apex court while delivering judgement agreed with the view and observation of case *The Lasalgaon Merchants Co-operative Bank Versus M/s. Prabhudas Hithibhai*<sup>8</sup>.

Law is dynamic, never static. As a result, if a need for a specific provision to handle non-contractual bailment develops, the demand should be met to avoid ambiguity.

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<sup>7</sup> AIR 1967 1885.

<sup>8</sup> AIR 1966 Bom 134.

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