



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

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Case Comment: Lasalgaon Merchants Bank vs Prabhudas Hathi Bhai

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Received 20 January 2023; *Accepted* 08 February 2023; *Published* 11 February 2023

INTRODUCTION

The case law is based on Section 148 of the Indian Contract Act 1872. Section 148 explains Bailment, Bailor, and Bailee. A “bailment” is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called, the “bailee”.¹ It means that Bailment is a contract between the Bailor and Bailee in which goods or the Possession of goods are transferred from one party to another for a specific purpose and returned once the work has been done or destroyed as guided by the Bailor. In these Bailor acts as Promisor and the Bailor as Promisee to whom the goods are delivered. In a Contract of Bailment, the ownership of the good is not transferred and only the possession of goods is transferred.

¹ Indian Contract Act 1872, s 148

ESSENTIAL FEATURES OF BAILMENT

Delivery of Possession: The Contract of Bailment is formed and is different from other contracts as there is a change in the possession of the goods as the definition explains that the goods are delivered from one person to another for a purpose. The Bailor Continues to be the owner of the goods as only the possession of the goods has changed. Mere Custody of goods in someone's hand as a servant does not make them Bailee. Delivery to bailee how made - "The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf."²

There are two types of Delivery of Possession:

- **Actual Delivery:** It means there is a physical transfer of goods from Bailor to Bailee. Example delivery of Smartphones for repair works. In this situation, there is an actual transfer of Possession by the bailor (the owner of the Phone) to the bailee (the repairmen).
- **Constructive Delivery:** Section 149³ mentions that delivery of goods to the bailee can be done through anything as long as the goods are in the possession of the bailee. Accordingly Constructive Delivery means a situation where the goods come in possession of the bailee even if they have not changed their actual place.

Delivery based on Contract: Delivery of goods should be made for a Purpose after a contract has been made. Without Contract, the transfer of Possession does not mean there is bailment. Though English law recognizes ailment without Contract it was not until 1966 that Indian Courts also recognized that a Contract of bailment can be both implied and expressed contract. In both scenarios, the bailee has the same responsibilities and duties.

Delivery of Goods for a Purpose: In the contract of Bailment the goods are delivered for a specific purpose and it is subject to the purpose that after the purpose is finished the goods will

² Indian Contract 1872, s 149

³ *Ibid*

return to the bailor or be disposed of. If the goods are not being returned to their original owner then they will not be considered as the contract of bailment.

Return of the Goods: The goods need to be returned to the Bailor in the condition given or changes made with the direction or permission of the bailor. The goods need to be the same which means that the bailee cannot give different goods in return.

Section 151⁴ deals with the Care to be taken by the bailee - 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 goods of the same bulk, quality, and value as the goods bailed. It means even if there is no actual contract and only implied contract and goods have come in possession of others then they need to take reasonable care of the goods as possible under the circumstance as they would take care of their goods in that possible situation. If they are not taking that uniform care of the goods then the bailee will be held liable for the loss and damages to the goods.

Illustration:

- X has bailed certain goods to Z and if the goods are lost due to the irresponsibility of Z then Z will be held liable for damages and loss to X.
- B deposited his goods in K's Godown and on the same day, there was unprecedented flooding in the area which leads all the goods stored in the godown to get destroyed. It was not the bailee's fault.

The case discusses what will happen if a damaged product is delivered and what are the roles and duties of the bailee towards the bailor. When a contract will constitute a contract of bailment and what is reasonable care of the goods delivered to the bailee or goods which have come in possession of the bailee without changing their position.

⁴ Indian Contract Act 1872, s 151

BACKGROUND OF THE CASE

The plaintiff is the Lasalgao Merchant Bank and Defendant number 1 and 2 are a partner in a firm that has agreed with the bank that the Plaintiff-bank would make advances to them in return they have provided the security or have pledged the agricultural goods like tobacco, jaggery, etc. for advances the credit upper limit was fixed for Rs 5000. The agreement took place in 1952 and was renewed in 1953 and was to remain in force till 1954. The firm for which the defendant was a partner had a due of Rs 2332 for Income tax and they were also due to the bank of Rs 3181. The defendants handed over the key to the warehouse where the tobacco was kept to Plaintiff. They have transferred the possession of the goods to the plaintiff's bank. The Income-tax officer has sent the collector notice regarding income tax due by the firm and in return, the Income-tax ordered the seizure of the goods or the land for the clearance of Income-tax dues. The godown was sized and locked by the officers and the key was handed over to the Circle officer. On 29 or 30 September 1954, there were heavy rains and the roof of the godown leaked heavily, as a result, the goods tobacco stored in the godown was damaged. Plaintiff refused to take back the goods as they were damaged heavily and the same was conveyed.

ISSUES

- Is there an obligation on the bailee without any contract (non-contractual bailment)?
- Who is responsible for the loss and damages sustained by the plaintiff?
- Is the rain an act of god and the government is not responsible for damages?
- Were the officers negligent in their duties?

JUDGEMENT

The Judgement in the above case is given by Nayak J in the Bombay High Court. The court concluded that if the possession of goods has been transferred to someone else then there is an automatic obligation to care for the goods even if there is no prior contract between the parties. In this case, the government officials or the government Automatically become the bailee as the goods are seized and there was no contract between the government and the Plaintiff. The government is the bailee so the general duties of a bailee apply to it. According to section 151, a

bailee needs to take proper care of the goods delivered to him or he has come in possession of the goods as generally, he would take off his goods under similar circumstances. The court established that even if there is no contract even then there is an obligation to care for goods through this the court held that the government is responsible for the damaged goods and it was the duty of the government officials to prove that they have taken as much care as possible. The Court also rejected the plea that the Rain was an act of God as the government stood in the position of bailee reasonable care was needed and held that the government was liable for the damages and loss. The court also held that the Officers were negligent of their duties for the product as it was an obligation on them to maintain the goods properly in a reasonable manner.

ANALYSIS

The Judgement passed in *Lasalgaon Merchants Bank v Prabhudas Hathi Bhai*⁵ has provided a new way to look for obligations in a Contract of Bailment and it changed how the implied contract of bailment and constructive delivery where the goods stay in the same place but their possession or the bailee (the holder) changes from one to another. It also provided that it is the bailee's responsibility to show proof of reasonable care taken by him for the goods. The judgment has become a Precedent and is often used in the legal frameworks as it views that even if there was no contract between the parties, the party in possession of the good has a legal obligation to take reasonable care of the goods in the best of his capacity. Though the contract is an essential part of the bailment it does not give up on obligations formed through situations and it means that the bailee has to follow its duties. The Supreme Court of India accepted the view formed in this case in the Bombay High Court in the *State of Gujrat v Memon Mohamed Haji Hasan*⁶ the court held that bailment can arise without a contract as a finder of goods has also been held as bailee in certain circumstances and government can still be held liable as bailee.

⁵ *Lasalgaon Merchants Bank v Prabhudas Hathi Bhai* AIR (1966) Bom 134

⁶ *State of Gujrat v Memon Mohamed Haji Hasan* AIR (1967) SC 1885

CONCLUSION

The Contract of Bailment is a contract of delivery of goods from one party to another for a certain purpose and after the purpose has been completed returned to the owner or destroyed as described by the owner. The case *Lasalgaon Merchants Bank Coop Bank Ltd v Prabbhidas Hathibai*⁷ shows us that even if there is no contract between the government and the Individual the government was still held liable as after sizing the goods from the godown they were the one who had possession of the good (tobacco) so they directly become the bailee and has the same obligation as any bailee would have in reasonable circumstance.

The case is a landmark Judgement in the contract of bailment as it changed the narrative held by the court previously that there are no automatic obligations on the party who comes in the possession of the goods but the case changed the narrative as it pointed out that there is the same obligation on the bailee as well as the person who comes in the possession of the goods through an automatic contract of bailment.

⁷ *Lasalgaon Merchants Bank* (n 5)