THE LIABILITY OF BAILEE IN CONTRACT OF BAILMENT:
AN APPRAISAL OF JUDICIAL ATTITUDE IN INDIA IN 21ST CENTURY

RITIKA GOYAL*

Section 148 of Indian Contracts Act, 1872 defines Bailment as:

> *"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'."*

1.1 Care to be taken by Bailee

Section 151 states that "In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed." and Section 152 states that "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151."

The duty of care in the case of bailee is uniform, whether it is gratuitous, or for hire, or for gain[1], it is the duty to take care as a prudent man whether he is a Government official attaching goods and keeping them in custody[2] or a gratuitous bailee[3]. The bailee is bound to take reasonable care of the goods depending on the circumstances of the particular case.

In *Taj Mahal Hotel* v. *United India Insurance Company Ltd*.[4], a person had parked his car at the porch of the hotel and went inside the restaurant for having dinner; later on he was informed about the theft of his car. It was contended that what was provided was only a facility to park the car and not to hold it in safe custody; that it would be unfair to expect the Hotel to take the risks and responsibilities for safety and security of the vehicle merely because it has offered to park the same to avoid inconvenience to the car owners. National Consumer Disputes Redressal Commission held that "The Hotel staff was in the knowledge that the car was being stolen as there is a specific averment that the Hotel guard tried to stop the boy who sped away with the car. Possession and control of the car had been passed on by the Complainant to the Hotel, which constituted bailment; the duty of due care implicit in the bailment, was violated by the Hotel and the ensuing liability could not be diminished by the disclaimer of liability on the parking tag. Any disclaimer printed on a parking tag will not be considered against the bailee and the Courts have held that such a sign cannot relieve the Service Provider of his normal duties. The Hotel may not be liable for the loss of any expensive goods that was left in the vehicle but historically the common law held a hotel liable for the loss of the guest's property if the property and the guest were within the premises of the Hotel. The concept of *Infra Hospitium*, a Latin term meaning "within the Hotel" has been discussed in various judgments wherein the liability of Hotel/Innkeepers/restaurant owners was laid down."

In *Everest Wools Pvt. Ltd.* v. *U.P. Financial Corporation*[5], Supreme Court ruled that "When a corporation takes over possession of the plant and machinery in exercise of its statutory power, it has obligation as that of a 'bailee'. An extra care on the part of the authorities of the Financial Corporation was expected because if the plant and machinery are kept in order and in a working condition they would fetch one price but if the machinery are stolen or allowed to rust, the same would not."

While discussing the liability of bailee in *Acme Fluro Polymers Ltd.* v. *Central Warehousing Corporation Ltd.*[6], the NCDRC observed that Central Warehousing Corporation had failed to exercise due care in regard to the storage of the other consignment of heavy steel coils, firstly by storing the same adjoining to the consignment of the complainant and then in not taking proper care to ensure

---

*Student, B.A.LLB, National University of Study and Research in Law, Ranchi
[1] Secretary of State v. Ramdhan Das Dwarka Daw Firm, AIR 1934 Cal 151.
[2] Lasalgaon Merchants Co-op Bank Ltd. v. Prabhudas, AIR 1966 Bom 134.
[3] Munnalal Pansari v. Ganga Prasad, AIR 1955 VP 30.
[4] I (2018) CPJ 546 (NC), ¶25.
[5] (2008) 1 SCC 643 ¶16.
[6] II (2011) CPJ 216 (NC) ¶13.

that it should not fall on the adjacent consignment. It cannot be held that the damage to the machinery is an act of God. There was fast flow of water into the premises causing soil erosion into open space where the cargo of heavy weight was stored. The stoppers used to stabilizing the stackings were also being washed away. It was CWC's duty to take appropriate precautions and care so that such event does not occur. No such steps were taken. Even in heavy rains, prudent person would take appropriate steps to prevent damage to his properties. CWC being bailee was required to be a prudent person and take all necessary care in the storage of the consignment which as a bailee is expected to take in accordance with the provisions of Section 151 of the Contract Act. The above section provides that bailee is bound to take as much care of goods bailed to him as a man of ordinary prudence would under similar circumstances.

The degree of care is the same for all types of bailment. It is well established that bailee is bound to take reasonable care of the goods depending on the circumstances of the particular case, irrespective of whether the bailment is gratuitous or for reward. Mere indication by the bailee about a difficult situation arising out of labour disorder or otherwise is not sufficient to repudiate bailee's liability. The standard of care or diligence required of a bailee under this section is that of an average prudent man but the measure of care from a bailee would depend upon the facts of each case viz., upon the type and quality of goods. It is equally settled that bailee can insure upto the value of the goods bailed to him and he can recover the full value, but in that case he will have to account to the owner of the goods and will be a trustee for the owner, retaining so much as covers his own interest and trustee for the balance.[7]

In *Airports Authority of India* v*. Orbit Peripheral Pvt. Ltd*[8], the judge ruled that "the case before us in fact, is squarely covered by a previous decision of this Commission in *International Airports Authority of India* v. *Solidaire India Ltd*.[9], In the above referred case, the complainant imported some electrical goods, which were kept in the custody of IAAI at Madras. At the time of delivery, the packages were found tampered and on opening them, certain goods were found missing. The State Commission having ruled in favour of the complainant, the matter was agitated by IAAI by way of an appeal before this Commission. Relying upon the provisions contained in Section 30 of the International Airports Authority of India Act and Section 151 and Section 152 of Indian Contract Act, the appeal was dismissed by this Commission holding that the opposite party being a bailee was bound to take as much as care of the goods as a man of ordinary prudence to take care of its own goods and the burden of proof lies on the bailee to show that such care was duly exercised by it."

1.2 Liability of Bailee in case of acts inconsistent with conditions of the contract or while making unauthorised use of goods bailed

Section 153 states that "A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment." and section 154 says that "If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them."

When a contract between parties was void under s. 23(driving a lorry at night), the court held that the running of a heavy lorry at night constituted a criminal offence and the whole contract was void. In any event it was held that in the circumstances of the case, the contract was voidable at the option of the bailor.[10] The bailee is not entitled to use the bailed goods for his own personal us in any manner without the bailor's consent, express or implied.

In *Vidya Prakash Sethi* v. *Punjab National Bank*[11], the appellant entrusted, a box wrapped in cloth and impressed with seals to the respondent bank's branch at Rawalpindi, for safe custody. After returning the box, he found that the wrapping and the seals were not visible and the box was otherwise very light. Ultimately, when open delivery was given, he found most of the ornaments missing. The judges were of the opinion "The bank held the physical custody of the box and having interfered with the original wrappings and seals put by the appellant without having given him opportunity of inspecting the box and its condition, acted in circumstances which raise suspicion that someone interfered with

[7] Ibid.
[8] IV (2015) CPJ 9 (NC) ¶10.
[9] I (1999) CPJ 25 (NC).
[10] C.P. Automobile Engineering Co. Ltd. v. Ramachandran Vishwananthan, AIR 1926 Nag 259.
[11] (1976) ILR 1 Delhi 605 ¶28.

the contents of the box during the bailment and for that reason the original wrappers and the seals were so damaged that the same had to be discarded or placed under a new wrapper by the bank authorities which wrapper had to be clamped under new seals of the bank."

1.3 Liability of bailee when goods are mixed with bailor's goods

Conjoint reading of Sections 155, 156 and 157 of Indian Contract Act states that bailee is liable to share interest in proportion to respective share with bailor if he mixes his goods with that of bailor with bailor's consent. If he mixes the goods without bailor's consent and the goods can be separated then is bound to be bear the expense of separation or division, and any damage arising from the mixture, and if they are impossible to separate then the bailor is entitled to be compensated by the bailee for the loss of the goods. A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage. A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.[12]

1.4 Bailee's responsibility when goods are not returned duly

Section 160 states that "It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished and section 161 states that "If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time."

In *The Managing Director, Kerala State Film Development Corporation* v. *Chandrakumari*[13], appellant filed suit claiming damages to the tune of 50 lakhs for the alleged loss sustained on account of the delay in returning the film negatives bailed. The Kerala High Court held that the plaintiff had obviously not taken any steps to take delivery of the film negatives (even if available) and exhibit the same in a bid to generate whatever income is possible. Such a step would have gone in mitigation of the damages claimed which is essential to determine the loss if any on account of the destruction or deterioration of the goods.

The bailee is liable if he is unable to return the goods because he has already given them to third party[14] or has lost the goods because of his negligence. However, he will be excused from his inability to return if the goods are lost or destroyed without his default.[15]

In *Indian Potash Limited* v. *Union of India*[16], the applicant's material became unfit for sale after there were heavy showers. The railways did not provide any tarpaulin to safe guard the cargo. The applicant company with its own arrangement had covered the cargo with tarpaulin and took all safety measures for its protection. The applicant company received consignment on the same day but could not remove due to its own difficulty. It was held that "The liability as a bailee arises only for the loss that had happened before delivery is effected. If the goods were removed from the place in part and the rest was allowed in the goods shed, the legal implication was that the consignor/consignee had the authority to keep the goods in the railway premises, but the risk in such goods had already been transferred to itself. As such railways ceased to become responsible as bailee in view of the provisions of section 160 of the Contract Act 1872."

In *M.P. State Food and Civil Supplies Corp*. v*. Union of India*[17], the unloaded consignment was lying on the platform, due to heavy winds, the bales caught fire and resulted in damage of 170 Jute bales. It was held that the "Railway Administration is responsible only upto non-delivery of any consignment. The Railways had delivered the consignment, when the same had reached the required destination station and thereafter, it was the consignee's responsibility to lift their goods from the Railway premises. The contract was to carry the goods upto the destination and ensure delivery. Thereafter, it

[12] Indian Contract Act 1872, Section 156, Illustration.
[13] ILR 2016 (4) Kerala 15 ¶11.
[14] Alexander v. Railway Executive, [1951] 2 KB 882.
[15] Taylor v. Caldwell, (1863) 3 B&S 826.
[16] MANU/RL/0377/2017, ¶18.
[17] MANU/NULL/0007/2017, ¶10.

was the responsibility of the bailor to move the consignment from the Railway premises. Admittedly, this was not done upto and some of the goods caught fire. The Respondent Railway took proper care to call the fire brigade and officers and staff available at the station participated in all out efforts to extinguish the fire. It means despite delivery of goods, Respondent took proper care and was not negligent as alleged by the applicant."

In the *Board of Trustees* v. *India Trident Maritime (Pvt.) Ltd*.[18], Calcutta High Court held that "It is settled law that the liability of a carrier is not unlimited. In the case of carriage of goods by ship, the duty of the carrier and of the steamer agent comes to an end once the goods are off-loaded from the ship at the destination port. The obligation of the steamer/carrier or its agent is limited to carrying the cargo in question to the port of discharge, unload the cargo, endorse the bill of lading and issue delivery order in favour of the consignee or his agent. Once this is done, the carrier or its agent stands discharged of his obligations. If the delivery of the cargo is not taken by the consignee or his agent thereafter, the rent/demurrage in respect of the cargo must be to the account of the consignee. Prior to endorsement of such bill of lading or issuance of delivery order, the position in law is that there would be a contract of bailment between the steamer agent (bailor) and the port trust (bailee) giving rise to the liability of the steamer agent for the port charges. However, such liability ceases as soon as the bill of lading is endorsed or the delivery order is issued."

CONCLUSION: The cases above discussed shows that in the *Contract of Bailment*, the bailee is under a duty to take reasonable care of goods, not to make the contract inconsistent with the condition of bailment, not to make unauthorised use of goods, not to mix bailor's goods with his own, to return increase or profits to bailor, to restore goods to the bailor, on demand if bailment is gratuitous and on expiration of time or accomplishment of the purpose in other cases, to the bailor or one of the joint bailor.[19]

[18] (2016) 3 CALLT 494 (HC) ¶41.
[19] 2, Sir F. Pollock and Sir D.F.Mulla, The Indian Contract & Specific Relief Acts, (15th ed., R Y Vardhan & Chitra Narayan, 2017).