

CONTRACT OF PLEDGE

A pledge is only a special kind of bailment, and chief basis of distinction is the object of the contract. Where the object of the delivery of goods is to provide a security for a loan or for the fulfilment of an obligation, that kind of bailment is pledge.

ACCORDING TO SECTION 172 OF INDIAN CONTRACT ACT, 1872

The bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor is in this case called the “Pawnor”. The Bailee is called the “Pawnee”.

Example

Joseph is in urgent need of money so he deposits his gold watch to Michael as security for the money lent. This is a case of pledge whereby gold watch is bailed as a security for the amount lent. Here, Joseph is the pawnor and Michael is the pawnee.

FEATURES OF CONTRACT OF PLEDGE

1. Delivery of possession

One of the most basic but important characteristics of the pledge is that there should be the delivery of possession from one party to another. The property pledged should be delivered by the pawnor to the pawnee. The delivery of the possession can be either actual or constructive.

2. In pursuance of the contract

It's an important feature of the pledge is that the delivery of the goods by the pawnor to the pawnee shall be done in pursuance to the contract of pledge. But it's important to note that that the contract for pledge and delivery of goods need not be contemporaneous, in sense that it's not necessary that contract for pledge and delivery has to be done at the same time, the delivery of goods can be done before which ripens the pledge as soon as the advance is made.

3. Who can pledge

Ordinarily, goods may be pledged either by the owner or any person with the owner's consent. Here, it's essential that the owner's consent is present for making the pledge like if the owner of the good left his possession to the maid & then maid makes the pledge then the pledge won't be a valid one as there was no consent of the owner.

Similarly, when the goods are left in possession of someone for some special purpose then also the goods can be pledged by that person. So to avoid confusion regarding who can pledge and does the consent of the owner is always necessary or not, the Indian Contract Act, have provided section 178 & 179 in that effect.

RIGHTS OF PAWNOR

Some rights are also assigned to the pawnor so that pawnee doesn't get unduly benefit at the expense of the pawnor. The rights are as follows:-

A. Right to receive back the goods

The pawnor after the due payment of the debt has the right to receive back the goods which have been delivered to him as security. The underlying principle is

that the basic motive of giving security is not to sell that good to satisfy the claim but to give it as security to ensure that due payment is made.

And once the due payment is made the goods need to be returned. Now if the pawnee has sold the goods or is unable to return the goods then the debt against the pawnee shall be deemed to have been satisfied.

B. Pawnor's right to redeem

Pawnor's right to redeem is stated in section 177 of the Act. Section 177 states that "If a time is stipulated for the payment of the debt, of performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default."

The section states that if the pawnor fails in the payment of the debt at a stipulated time then he shall have the option to redeem his security any time before the sale takes place provided he shall be liable to pay the debt amount along with any additional expenses which the pawnee has incurred.

The principle is that pawnee has the absolute right to redeem the property pledged upon tender of the amount advanced.

Where the pawnee redeems the good after the fixed period of time, then he shall have extended liability of paying not only the debt amount but also any additional expenses which pawnor has incurred. Another aspect of this section is that, while redeeming of the goods, the pawnor has the right to take back not only the security but also any increase with the security which have taken place during the period of the pledge.

C.Right to suit

This right is indirectly discussed above that pawnee has the right to sell but after giving reasonable notice. This right entails that the pawnor cannot sell that good as and when he wants but he should give some notice to the pawnor so that if he wants then he can pay the debt amount and free his security. So if the pawnee makes any unauthorized sales then pawnor has the right to file the suit against that sale.

D. Care & maintenance

The pawnee has the duty to take proper care and maintenance of the security so that the security doesn't depreciate its values as that would mean that pawnor incurs additional expenditure over & above the debt amount and that would be an injustice to him. Then, in that case, pawnor can ask pawnee to reduce the value of the debt to the amount to which the good has lost his value.

RIGHTS OF PAWNEE/PLEDGEE

Following are the rights of pawnee:

RIGHT OF LIEN: (SEC. 173)

When the goods are pledged the pawnee gets a lien or right of retaining the goods until not only the principal amount is paid but also the Interest and other expenses which the pawnee had to incurred with regard to keeping the goods pledge.

RIGHTS OF RETAINER

Pawnee's right to retain the security has been discussed in section 173 & 174 of the Act.

Section 173 states that pawnee has the right to retain the goods not only for the payment of the debt but also for the interest of the debt or for any necessary expenses incurred for the preservation of the goods pledged.[1] Also, section 174 of the Act states that pawnee doesn't have the right to retain the goods for any other debt other than the one for which the security has been provided by the pawnor.

RIGHT TO EXTRAORDINARY EXPENSES

Right to extraordinary expenses has been stated in section 175 of the Act. The section states that "The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged."

This section states that when the pawnor pledges any good and the pawnee has to bear any extraordinary expenses regarding the preservation of the good, then the pawnee shall have the right to receive such expenses from the pawnor. But for such act, he doesn't have the right to retain the goods to recover them.

RIGHT TO SELL

Pawnee's right to sell the lodged goods has been stated in section 176 of the Act. The section states that "If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are

greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.”

This section states that in case the pawnor fails in the repayment of the debt then pawnee shall have two options: –

1. Either bring the suit against the pawnor and retain the goods or,
2. Sell the goods so pledged after giving reasonable notice of the sale to the pawnor.

It further states if the pawnee takes the second option then in that case three alternatives arise:-

1. If the amount received is more than the amount in debt, then, in that case, the pawnee shall pay back the excess amount to pawnor
2. If the amount received is less than the amount in debt then, in that case, pawnor will still be liable for the remaining of the amount
3. If the amount received is exactly the same to that of the amount in debt then, in that case, the debt will stand to be discharged.

DUTIES OF A PAWNOR (SEC.175)

Pay the debt: The pawnor is liable to pay the debt or perform his promise as the case may be.

Pay deficit on sale: If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.

Pay extra – ordinary expenses: The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods.

Disclose faults in goods: The pawnor is liable to disclose all the faults which

- (a) are material for use of the goods; or
- (b) may put the pawnee to extraordinary risks.

Indemnify the pawnee: If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

DUTIES OF A PAWNEE

Not to use the goods: The pawnee has no right to use the goods. However, he may use the goods, if he has been so authorised by the pawnor.

Return the goods: The pawnee must return the goods if the pawnor pays the debt or performs his promise.

Take reasonable care: The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods.

Not to mix goods: The pawnee must not mix his own goods with the goods pledged.

Return increase in goods: The pawnee must return to the pawnor any accretion to the goods pledged with him.

CONCLUSION

In the pledge, the pawnor transfer/bailed his goods to the Pawnee as security against the amount he takes from the Pawnee. The pawnor has a duty to pay the amount back to the Pawnee and the Pawnee has a duty to return the goods after pawnor pays the amount. The Pawnee should not makes unauthorized use of the goods bailed to him if he does, he will be liable to pay compensation to the pawnor.