



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

a professional Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM-degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

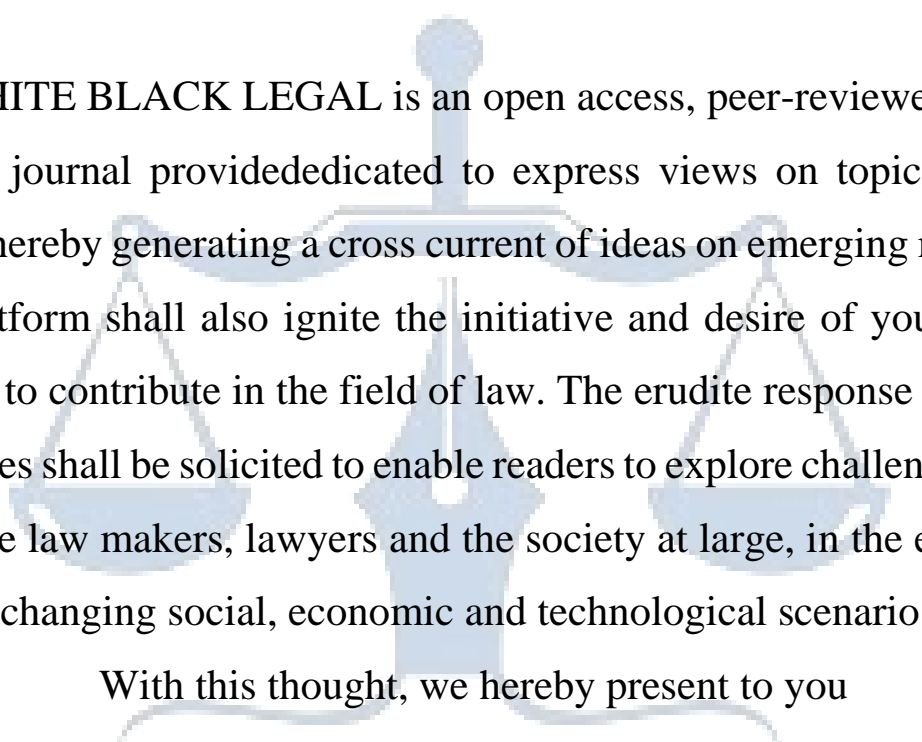


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

CASE COMMENTARY: THE APPLICABILITY OF “BAILMENT” ON BANK LOCKERS

AUTHORED BY - AADITYA KUMAR¹ &
KHUSHI JAIN²



INTRODUCTION:

The bank locker of United Bank of India in Kolkata has been the subject matter of a bailment dispute between the locker holder and the bank. The ruling in *Amitabha Dasgupta V. United Bank of India and Ors.*³ by the Supreme Court of India have cleared and clarified many provisions regarding the Section 148 of The Indian Contract Act which defines “Bailment”, “Bailor” and “Bailee”. This judgement will have much significance in other jurisdictions and in such jurisdiction are very likely to follow developed in this landmark case. Clearly, this case will guide many courts throughout India to evaluate the relationship between bailment and bank lockers. It’s interesting to note that the Indian Court has started to accept the standards laid down in *Amitabha* case which provides guidelines to operate bank lockers.

The core of this case discusses the dispute between Amitabha Dasgupta, who was the holder of the bank locker and United Bank of India (UBI). Amitabha alleges that there was a deficiency in the services provided by UBI for bank lockers as the contents were missing and subsequently filed a consumer complaint. Further, UBI has been charged with several liabilities: misconduct and negligence, contractual liabilities, mental agony and deficiency of

¹ Aaditya Kumar, 1st Year, ICFAI Law School, Hyderabad

² Khushi Jain, 1st Year, ICFAI Law School, Hyderabad.

³ *Amitabha Dasgupta Versus United Bank of India and Others* [2021] 2 MLJ 459. Judgement Dated: 19th February 2021.

services in bank.

The District Forum⁴ held the bank liable for deficiency in service as they've opened their locker even though there were no pending dues but there was no evidence for the missing content and instead of the request of compensation for Rs. 3,00,000 the forum allowed a compensation of Rs.50,000 only for mental agony, harassment and the cost of litigation stating that bank lockers being a part of the constructive bailment under Section 148 of Indian Contract Act 1872. It was challenged in The State Commission⁵ for less compensation amount which even reduced the amount to Rs. 30,000 which was further challenged in The Apex Court after going through The National Consumer Dispute Redressal Commission.



WHITE BLACK
LEGAL

⁴ The District Consumer Disputes Redressal Commission.

⁵ The State Consumer Disputes Redressal Commission, Kolkata.

The Supreme Court of India relied on the guidelines of RBI regarding bank lockers and the judgement of previous court and quashed the judgement of High Court addressing that bank can't go away from the liabilities towards their customer after violating the rights of consumer services and also addressed the bank lockers as not being a part of bailment. The decision given by The Supreme Court of India also addresses some appropriate questions about bank locker services especially regards to bailment with a global significance.

Brief Facts:

The mother of the appellant took a locker (No. A-222) for rent in the 1950's in the Deshapriya Park, Kolkata branch. When the appellant re-visited the bank to operate the locker, he was informed that the bank had broken the locker on 22.09.1994 because of the non-payment of payment of rent dues for the period of 1993 to 1994 and the locker was reallocated to another person.

The appellant claimed that the conduct of bank by breaking the locker was illegal since he cleared all the dues of 1993-1994 before the breaking up of locker. After this the chief manager of that bank admitted that he had broken the locker of the appellant without any justification, and he apologized for the course of his action.

After that, the appellant has gone to collect the contents of the locker on 17.06.1995, but he only found only one pair of bangles and only one pair of ear pussa out of the 7 ornaments he sealed in an envelope. However, the bank said that those were the only two ornaments found in the appellant's locker when it was broken open.

The appellant filed a consumer complaint before The District Consumer forum, to return all those seven ornaments or claim to compensate with Rs. 3,00,000 towards the recovery of the cost of jewellery. The district consumer forum allowed the complaint and held the bank liable and told them to compensate Rs.50,000 for the deficiency in service, mental agony and the cost of litigation as there were no evidence of the presence of all those 7 ornaments. Then appellant then gone to the State Consumer Forum, and the order came on 12.10.2004 they

even reduced the amount from Rs. 50,000 to Rs. 30,000.

They further filed the revision petition to The National Consumer Dispute Redressal Commission which was dismissed.

Provisions That Were Applied:

- Definition of Bailment, Bailor, and Bailee Section under 148 of The Indian Contract Act, 1872.
- Delivery of bailee under Section 149 of the Indian Contract Act, 1872.
- Special leave to appeal that is granted by the Supreme Court under Article 136 of The Indian Constitution.
- RBI Draft Circular on Safe Deposit Locker (2006 Circular)⁶ **Issues:**
 1. Whether the bank owes a duty to the locker holder under Section 148 that defines “bailment”, “bailor” and “bailee” or any other provisions of The Indian Contract, 1872?
 2. Whether the appellant has suffered any loss because of the misconduct, negligence or breach of contract by respondent?
 3. Whether any compensation should be provided to the plaintiff for such non-compliance of duty of care?

Arguments Made by the Parties:

By The Appellant:

1. It was argued that it would be difficult to discover what is in the locker if the matter was returned to the ordinary court because only the locker owner is aware of it. They brought up the Charan Singh v. Healing Touch Hospital and Others⁷ case to argue that

compensation for the service provider's attitude to shift significantly, payment must be given. In that instance, the court ruled that the injured party should be compensated to force the service provider to act better going forward.

2. The counsel also states that once the relationship between the respondent and the appellant is established as that of bailor and bailee, the respondent's ignorance would not impact their obligation to pay the appellant. The counsel maintained on many occasions that the parties' relationship is one of bailment as that term is defined in Section 148 of the Indian Contract Act of 1872 and cited the case of *Cussen v. Southern Cal. Savings Bank*⁸ which made the bank liable after the money was lost from locker under bailment in The Supreme Court of California.

By The Respondent:

1. The respondent argued that the earlier decision is completely correct and stated that if there is no evidence that all the seven ornaments were there in the locker then one can't ask for

⁶ Draft Circular on Safe-Deposit Lockers ('2006 Circular') by RBI.

https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=3196.

⁷ *Charan Singh v. Healing Touch Hospital and Others* LNIND 2000 SC 2115 : (2000) 7 SCC 668 : AIR 2000 SC 3138.

⁸ *Cussen v. Southern Cal. Savings Bank*, 65 P. 1099 (1901).

compensation regarding the same. They've also stated that they already gave compensation to the appellant regarding the deficiency in their service.

2. The respondent also argued that holding a bank locker doesn't amount to bailment under Section 148 of The Indian Contract Act as the bank don't have any idea about the contents of locker which doesn't fulfil one of the essentials of bailment.

JUDGEMENT:

Despite the fact that the bank was unaware of the contents of the locker, the Supreme Court ruled that the relationship between the bank and the locker holder was unquestionably one of bailor and bailee. The worldwide viewpoint established in *Roberts v. Stuyvesant Safe Deposit Co.*⁷ has always been there. They also held the bank liable and observed that even though the client paid all his debts, and they didn't notify him in advance, they nevertheless broke into his locker. It took the client a whole year to find out! This was a serious betrayal of trust and wasn't supposed to happen.

This error has no justification. It was the bank's own negligence, not an accident or someone else's fault. Here, there was subpar service.

The bank must compensate the consumer with Rs. 5,00,000 as a result. The relevant workers' salaries—assuming they are still employed—will be the source of this funding. The bank is responsible for paying itself if they retire. In addition, the consumer would receive Rs. 1,00,000 to pay the expense of court fees.

ANALYSIS:

Coming to the analysis, we can see that although many allegations were levelled against the United Bank of India, the main problem revolved around whether bank lockers come under

the ambit of bailment or not. The prevailing perspective held by courts worldwide is that, regarding the items the locker holder has placed inside, the bank is in the role of a bailee. In the case of *Roberts v. Stuyvesant Safe Deposit Co.*⁹, the defendant corporation granted the police permission to inspect and seize the items found in the plaintiff's locker. The items were later taken from police possession, nevertheless. The plaintiff filed a lawsuit, claiming that by allowing the police to seize items that weren't specified in the search warrant, the defendant corporation violated the legal duty of care. The Court of Appeals of New York upheld the plaintiff's claims and noted the following regarding the parties' relationship of bailment:

"This dispute arose from the defendant's legal connection with the plaintiff, which was that of a bailee or depository for hire. Whether the defendant fulfilled the legal responsibilities and obligations to the plaintiff for the care and custody of her property based on the uncontested evidence in the record is the central question in this case. It did note, though, that the plaintiff would have to establish beyond a reasonable doubt that they had placed the money in the locker

before it was lost. The onus of evidence would thereafter transfer to the defendant bank to demonstrate that it took the appropriate precautions as mandated by bailment rules to safeguard its contents.

Therefore, the court must determine whether the plaintiff had given the bank ownership of the objects before applying the bailment rules based on the specific facts of the case.

Referring first to the pertinent sections of the Indian Contract Act, 1872 (the "Contract Act") is important to determine if the bank and the locker holder have a relationship of bailment under Indian law.

Regulating whether banks are liable under bailment rules for lost items kept within lockers is a question that is sadly unanswered by substantive domestic legislation or sector-specific regulations. The Reserve Bank of India (RBI) published a draft circular on safe-deposit lockers on December 4, 2006.¹⁰ Since this circular was simply sent to the banks as a recommendation, it is not legally enforceable. Reading the 2006 Circular makes it clear that, even if the bank is unaware of the contents of the locker, at that time the RBI had advised that the laws of bailment should govern the relationship between the bank and the locker holder.

Additionally, the RBI has released instructions on a number of topics, including the safe custody of items stored within lockers in 2007 Circular on 17.04.2007¹¹. However, the observation was made that this may not be very relevant to the current case because it was made in the specific context of returning the safe custody of items to the survivors or legal heirs of dead locker holders.

The Court further noted that appellants received compensation for items that were stolen or lost from bank lockers in cases like Mahender Singh Siwach v. Punjab and Sind Bank¹¹ and Punjab National Bank v. K.B. Shetty¹².

One remark from the Supreme Court is that our nation's locker management system is confusing and ineffective. Therefore, it established a set of recommendations to guarantee that banks exercised due diligence while managing their locker facilities until appropriate directives are given by the appropriate body. Maintaining the locker register, informing the locker holder of any changes, utilizing contemporary technology for digitization, keeping track of locker access, carrying out locker verification processes, and other related requirements were some of the crucial directives.

⁹ Roberts v. Stuyvesant Safe Deposit Co (1890) 123 N.Y 57.

¹⁰ supra.

¹¹ https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=3422

¹¹ Mahender Singh Siwach v. Punjab And Sind Bank (2006) 4 CPJ 231(NC).

¹² Punjab National Bank, Bombay v. K.B. Shetty 1991 (1) C.P.C. 592.

Ultimately, the Court decided that, despite the appellant having settled all of his debts, the bank's action to enter his locker without giving him any prior warning or justification was unjustified. Therefore, there was an obvious lack of service and a breach of the bank's duty to the client as a service provider.

CONCLUSION:

Similarly to the bond between a bailor and a bailee, banks have a distinct duty of care to their clients. The defence that they had no idea what was in the locker is not one they can use. The confidence of investors and bank customers would be undermined if banks adhered to the principle of non-liability. In light of this, the Supreme Court ordered the RBI to publish detailed instructions in this ruling, dictating the actions banks must take to manage their locker facilities. It also stipulated that until these rules are released—which must happen within six months—the comprehensive set of criteria established in this ruling would be adhered to.

Additionally, the RBI establishes detailed guidelines dictating the actions banks must take to maintain safe deposit and locker facilities. The ability of banks to unilaterally and unfairly impose terms on customers should be restricted.

WHITE BLACK
LEGAL