(2001) 01 MAD CK 0026

In the Madras High Court

Case No : C.R.P. No. 3896 of 1999

K.M. Hidayathulla APPELLANT

Vs

Bank of India RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:
Contract Act, 1872 — Section 176

Citation : AIR 2001 Mad 251 : (2003) 2 BC 484 : (2001) 2 MLJ 257

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : M.V. Krishnan, for the Appellant; V. Gopalakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The sole question involved in this revision petition is relating to interpretation of Section 176 of the Indian

Contract Act, 1872. The brief facts are that the petitioner appeared to have pledged certain gold jewels with the respondent herein for a borrowal

of certain amount on 10-12-1993; and that on the petitioner failing to repay the borrowed amount within the stipulated period, the respondent

Bank was obliged to bring the jewels for auction after giving reasonable notice to the petitioner. The auction is stated to have been held on 20-5-

1997. The grievance of the petitioner is, that, inasmuch as, Section 176 contemplates the filing of a suit for recovery of the debt and the period

described for filing such a suit being three years, the provision contained in the said section which enables the pawnee to sell the pledged goods on

auction after giving reasonable notice for the said sale should also be done within the period prescribed for filing the suit as provided in the earlier part of the said section, I am afraid that such a construction is neither called for nor contemplated u/s 176 of the Indian Contract Act.

2. Section 176 of the Indian Contract Act reads as under :

''176. ''Pawnee'' right where pawnor makes default--

If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which 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 on 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.''

3. A reading of the said provision discloses that in the event of pawnor committing default in the payment of the debt within the stipulated time in

respect of which the goods were pledged; two avenues are available to the pawnee, either to file a suit against the pawnor upon the debt or the

promise by retaining the goods pledged as a collateral security or to resort to the sale of the pledged goods by giving reasonable notice to the

pawnor. As per the provision contained in the Act, the two remedies provided to the pawnee are disjunctive in nature. There is absolutely no

scope for holding that merely because there is a period prescribed for filing of the suit, it should be held that in the event of the pawnee resorting to

the alternate course of sale also, the period prescribed for the suit should be extended.

4. I therefore do not find any illegality or irregularity in the order passed by the Court below. The revision fails and the same is dismissed. No

costs.

