Construing Section 176, it was held that the very wording of the section makes it clear that it is the discretion of the pawnee to sell the goods in case the pawnor makes default but if the pawnee does not exercise that discretion no blame can be put on the pawnee and pawnee has the right to bring a suit for recovery of the debt and retain the goods pledged as collateral security.

"12. We may notice that in the present appeal there are no disputes on facts. The contentions are purely legal. Now we would consider the first contention regarding applicability of section 176 of the Contract Act. Section 176 provides for pawnee's right where pawnor makes default. It inter alia stipulates that on pawnor making default in payment of the debt, at the stipulated time, in respect of which the goods are pledged, the pawnee may bring a suit against the pawnor on the debt and retain the goods pledged as a collateral security; or he may sell the goods pledged, on giving the pawnor reasonable notice of the sale and if the sale proceeds are deficient the pawnor would be liable to pay the balance and if more, the surplus amount shall be paid to the pawnor. The contention of Mr. Nadkarni is that the only effect of aforenoticed Clause 6 is that the Bank can dispose of the security without giving any notice to the respondents. It is only a waiver of the stipulation of right of the respondents to a reasonable notice before the Bank decides to appropriate the security. Learned Counsel relies upon a decision of the Delhi High Court in Bank of Maharashtra v. M/s Racmann Auto (P) Ltd., AIR 1991 Delhi 278. In the said decision, the question which came up for considerations was whether there was any legal duty cast on the plaintiff Bank to take early steps for disposing of the pledged goods. Construing Section 176, it was held that the very wording of the section makes it clear that it is the discretion of the pawnee to sell the goods in case the pawnor makes default but if the pawnee does not exercise that discretion no blame can be put on the pawnee and pawnee has the right to bring a suit for recovery of the debt and retain the goods pledged as collateral security. Doubt was also expressed whether a defendant as pawnor could force the pawnee to dispose of the pledged goods without defendant clearing the debt. However, on the facts of the present case, we need not go into this latter aspect on which doubt has been expressed. It has been categorically held in the cited decision that it is the discretion of the plaintiff Bank to have filed the suit for recovery of the debt and retain the pledged goods as collateral security or in the alternative it could resort to selling the pledged goods after giving reasonable notice of sale to the defendants. In that case the plaintiff Bank had in its wisdom exercised the first option of filing the suit and retaining the collateral security.

13. We are in respectful agreement with the legal proposition propounded in the aforesaid decision and thus there would be no question of judicious or arbitrary exercise of discretion by the Bank as to the time of appropriation of the amount from the collateral security given to it in the form of FDRs."

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