IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1608 of 2006 (O&M)
Date of decision: 02.12.2015

Ved Parkassh

... Petitioner

versus

Hari Pal

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Munisha Gandhi, Senior Advocate with
Mr. Gourav Goel, Advocate for the petitioner.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Saurabh Guha, Advocate for the respondent.

<u>K.Kannan, J</u>.

In the petition filed by a mortgagee, the Additional District Judge had passed the impugned order holding that the redemption had been foreclosed rejecting the objection taken that the petition under Section 8 of the Bengal Regulation Act of 1806 (in short the 'Act')for foreclosure of the mortgage was not competent. The revision by the respondent in the petition was brought to this Court and a Single judge referred the matter to a larger Bench for consideration of the Forum of adjudication for an application filed under Section 8 of the Act. On reference to the Division Bench, it has been held through its order on 24.02.2015 that the petitioner presented before the District Judge was competent. The reference having been so answered, the matter is placed before this Court for disposal.

Learned senior counsel appearing for the petitioner states that even apart from the plea of maintainability and the forum of adjudication there had been objections taken with reference to the recitals in the mortgage itself as having been brought about by practice of collusion with the deed writer and that it could not be enforced. It is the contention that mortgagor is only liable to pay interest. There has been no evidence given and the court has not considered the pleas made by the defendant and would hence seek for the matter to be remitted to the trial Court for consideration of the objection taken in the written statement.

Learned senior counsel appearing for the respondent states that admittedly the revision petitioner is in possession and even as per his own statement, is liable to pay interest. The suit has been pending since 2004 and no payment has been made so far. Even while remanding the matter as requiring consideration on the contentions raised challenging the recitals in the mortgage, I would direct as an interim measure that the revision petitioner and respondent before the Court below shall pay interest as contracted and deposit all the accumulations from the date of the institution of the suit within 8 weeks from today. The objection regarding rate of interest will be considered by the trial Court and present deposit will abide by the final outcome of the adjudication made in the petition. If the amount is not paid, the mortgagor is at liberty to apply to the Court for suitable directions including even a right to have the defence struck down and the trial Court will pass appropriate order that will fit the circumstance.

The order already passed which is impugned is set aside and the matter is remitted to the trial Court for adjudication on merits, taking into account the law laid down by the Division Bench in the order brought after reference dated 24.02.2015.

The revision petition is disposed of with the above observations.

If the amount is paid during the pendency of the suit, the same may be adjusted.

(K.KANNAN)
JUDGE

02.12.2015
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