THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.12749 of 2016

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ORDER: (per Hon'ble Dr. Justice B. Siva Sankara Rao)

Writ petitioner is the plaintiff/decree holder in O.S.No.6 of 2012 on the file of the I Additional District Judge, Machilipatnam. The suit was filed for recovery of the amount due based on a mortgage. There are three defendants, who are respondents 2 to 4 in the present writ petition. Pending the suit, there was a compromise arrived at between the parties. Pursuant to the terms of the compromise submitted before the trial Court, the same was referred to the Lok Adalat Bench. The Lok Adalat Bench passed an Award on 05.05.2012 in L.A.C.No.632 of 2012. In the Award, there was no mention about the default clause viz., failure of the defendants to pay the due amount may entitle the mortgagee/decree holder to foreclose the right of redemption by applying for final decree to realise the amount. Seeking to incorporate the said clause in the Award, the plaintiff/decree holder filed a petition. The Lok Adalat Bench returned the petition vide docket order dated 24.02.2015 observing that before passing of the Award, the terms and conditions of the parties were not filed and that the same were filed on 08.05.2012 and accordingly held that the petition was not maintainable.

Perusal of the terms of the compromise submitted before the trial Court clearly shows that a preliminary decree to be passed for Rs.20,50,000/- and that the defendants have already paid Rs.50,000/-. The remaining amount of Rs.20,00,000/- agreed to be paid in 40 equal monthly instalments @ Rs.50,000/- on or before 10th of each month and in case the defendants fail to pay any two consecutive instalments, the plaintiff would be at liberty to apply for a final decree for realisation of the due amount with interest @ 12% per annum on the principal amount due from the defendants as well as following

execution proceedings and deduct the amounts already paid towards part payment.

Once it is a mortgage suit and the plaint is very clear for passing of a preliminary decree as contemplated under Order XXXIV of the Code of Civil Procedure, 1908, for fixing period of redemption and in case of failure to redeem to extinguish the right of redemption envisaged by Section 60 of the Transfer of Property Act, 1882, the plaintiff/decree holder would be entitled to seek for final decree and even in the terms of the compromise the last sentence clearly speaks to recover the amount with charge on the schedule property, which is nothing but seeking for a preliminary decree in terms of the compromise with default clause to liquidate the due amount within the time stipulated, in case of failure, by seeking for a final decree. The same ought to have been incorporated.

Hence, the writ petition is allowed. The impugned docket order dated 24.02.2015 is set aside and the first respondent is directed to incorporate the default clause as stated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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Dr. B. SIVA SANKARA RAO, J

Date:08.06.2016

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