IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

332

RSA No.267 of 2021 (O&M)
DATE OF DECISION: 14th OCTOBER, 2024

Sanjeev Kumar Gupta

…. Appellant

Versus

Deepak Hooda

…. Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Jigyasa Tanwar, Advocate and
Ms. Narender Kaur, Advocate for the appellant.

Mr. Sanjay Kaushal, Senior Advocate with
Ms. Ojaswini Gagneja, Advocate and
Mr. Sushil Panchal, Advocate for the respondent.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

1. This is the Regular Second Appeal, whereby, the appellant-defendant in the original suit, has challenged the concurrent findings, judgments and decrees of the Courts below, vide which, the suit for declaration and possession filed by the respondent-plaintiff for declaring him as owner on account of the conditional sale having become absolute has been decreed.

2. For the purpose of the present appeal, the parties herein, would be referred as the plaintiff and defendant as they were described in the original suit filed before the trial Court.

3. The brief facts, as can be seen from the judgments of the Courts below; are that the respondent-plaintiff had filed a suit for declaration and possession asserting therein that the appellant-defendant in the suit, had mortgaged his house fully detailed in para 2 of the plaint in favour of the plaintiff in the sum of Rs.60,00,000/-. The mortgage deed

was executed and registered on 11.05.2017 with registration No.1590. It was further stated that the entire amount was paid by the plaintiff to the defendant. Accordingly, it was agreed between the parties that the defendant would get the mortgage redeemed after payment of the above said amount along with interest at the rate of 3% per month to the plaintiff on or before 10.05.2018, failing which the suit property shall be deemed to have been sold to the plaintiff and he shall be entitled to get a declaration to that effect from the Court. Since, the mortgage deed contained a stipulation of conditional sale by mortgage, therefore, when the defendant had not made the payment within stipulated time, then the plaintiff had sent a legal notice dated 14.05.2018 requiring the defendant to make the above said payment along with the interest and to get the mortgage redeemed at the earliest or within a period of 30 days. However, again no such payment was made. Constrained by the circumstances, the plaintiff had filed a petition before the District Judge under Regulation 8 of The Bengal Land (Redemption and Foreclosure) Regulation, 1806 (for short, 'the Bengal Land Regulation') praying for foreclosure of the mortgage. The notice of the said petition was duly issued to the defendant on 04.07.2018. Summons issued by the Court was duly served upon the defendant. Thereupon, the defendant had engaged a counsel who had filed power of attorney in the said proceedings. However, when no further steps were taken by the defendant, the District Judge, disposed of the said proceedings, vide order dated 18.09.2018 recording therein that the appellant-defendant was well aware of the proceedings, therefore, he would have a time of one year to make the payment, failing which the effect of Bengal Land Regulation would follow. However, again no payment was made to the plaintiff or deposited with the District Judge in the above said proceedings under Regulation 8 of the Bengal Land Regulation. Accordingly, the present suit was filed for a decree for declaration that the respondent-plaintiff had become owner by way of conditional sale and accordingly the possession was claimed.

4. The plaintiff led his evidence in the suit by examining the relevant witnesses and by exhibiting the documents of the proceedings undertaken under Regulation 8 of the above said the Bengal Land Regulation. On behalf of the defendant, only the defendant himself appeared as a witness and no other evidence was led. After appreciating the material on record, the trial Court decreed the suit, vide judgment and decree dated 21.09.2020. Feeling aggrieved against the same, the defendant had filed first appeal before the lower Appellate Court. However, the said appeal has been dismissed by the lower Appellate Court, vide judgment and decree dated 16.04.2021. Hence, the present appeal has been preferred by the defendant challenging the concurrent judgments and decrees passed by the Courts below.

5. Arguing the case, learned counsel for the appellant has submitted that while filing the written statement, the defendant had denied the assertions made by the plaintiff, including the assertions regarding the legal notice, allegedly, served by the plaintiff upon the defendant before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation. However, the plaintiff had not even filed any replication to the said written statement. Therefore, it shall be presumed that the plaintiff had admitted non-service of notice upon the defendant,

as required under Regulation 8 of the Bengal Land Regulation. Accordingly, it is submitted that since the plaintiff has not proved the service of the said demand notice upon the defendant as required under Regulation 8 of the Bengal Land Regulation in the present suit by leading any evidence, therefore, the suit filed by the plaintiff has to fail. To support her argument, learned counsel for the appellant has relied upon the judgment rendered by the Larger Bench of Supreme Court in the case of ***Murarilal since deceased and after his death his newly substituted legal representatives Umedi Lal and others Versus Devkaran since deceased and after his death his legal representatives, Jagan Prasad and others, 1965 AIR (Supreme Court) 225***, another judgment rendered by this Court in the cases of ***Pirthi and others Versus Daya Kishan and another, 2008 (1) RCR (Civil) 705***, ***Baljinder Singh and others Versus Maan Singh and others, 2017 (1) PLR 744*** and ***Sohan Lal Versus State of Haryana, 2001 (4) RCR (Civil) 483*** and the judgment rendered by Lahore High Court in the cases of ***Ahsan Elahi Versus Alla-ud-Din, 1938 AIR (Lahore) 809***, ***Gian Chand Versus Chanan Shah and others, 1916 AIR (Lahore) 333*** and ***Munshi Ram Versus Nauranga and others, 1924 AIR (Lahore) 176***. Still further, learned counsel for the appellant has submitted that; otherwise also; the terms of mortgage were unreasonably onerous because it provided for interest at the rate of 3% per month. Hence, this condition reflects upon the contract being unconscionable contract besides being unethical in nature. Hence, the plaintiff could not have maintained any suit on the basis of such a contract. Moreover, even the payment of full amount of mortgage money has not been proved on record. No other argument has been raised.

6. Replying to the arguments raised by learned counsel for the appellant, learned senior counsel for the respondent has submitted that the entire evidence required for the Court to pass a decree in the civil suit has already been led before the Court. So far as the proceedings under Regulation 8 of the Bengal Land Regulation is concerned, it was duly filed with the requisite documents, including the copy of demand notice served upon the defendant in writing; along with the postal receipt for the said notice having been sent through registered post. The said application along with all the enclosures therein; was duly sent to the defendant by the District Judge in the proceedings under Regulation 8 of the Bengal Land Regulation. Not only that, the defendant had even appeared before the said authority through his counsel who had filed power of attorney of the defendant signifying that notice had been received by the defendant and that he was well aware of the proceedings of the foreclosure. The copy of the application moved before the District Judge under Regulation 8 of the Bengal Land Regulation, along with the summons sent by the said authority has duly been exhibited in evidence in the present suit. Therefore, the pleadings of the plaintiff stand duly proved as required under the law. So far as the service of demand notice upon the defendant before initiating proceedings under Regulation 8 of the Bengal Land Regulation is concerned, it is submitted by learned senior counsel for the respondent-plaintiff that since the summon was duly sent; and it is not even denied by the defendant that such summon sent by the District Judge was accompanied with the application moved by the plaintiff, which contained the postal receipt, as well, therefore, there is a presumption of service of the said notice upon the defendant as per the

provisions contained under Order 5 Rule 9 CPC and under Section 27 of the General Clauses Act, 1897. Learned senior counsel has further submitted that the defendant had never raised any issue before the authority under Regulation 8 of the Bengal Land Regulation disputing the factum of service of demand notice upon him. Not only that, after the plaintiff had filed the present suit; and it had even been decreed by Civil Court; and thereafter, when the defendant had filed first appeal before the lower Appellate Court, then on the same day, the defendant had also filed a review application for reviewing the order passed by the District Judge under Regulation 8 of the Bengal Land Regulation. Even in the said review application, there is not even iota of assertion that the demand notice was not served upon the defendant before resorting to the proceedings under Regulation 8 of the Bengal Land Regulation. The said review application was filed on other grounds like non-presentation of the application under Regulation 8 of the Bengal Land Regulation before the appropriate authority. Nothing else was raised even in the said review application. Therefore, the issue of non-service of demand notice before initiation of proceedings under Regulation 8 of the Bengal Land Regulation is only an afterthought devised by the defendant.

7. Carrying forward his arguments, learned senior counsel has submitted that the defendant appeared in the witness box as DW1. He was confronted with the proceedings initiated before the District Judge under Regulation 8 of the Bengal Land Regulation. In the cross-examination, the defendant has duly admitted the receipt of summon, Ex.P14, which was sent by the District Judge in the proceedings under Regulation 8 of the Bengal Land Regulation and has also admitted that

after receipt of the said summon, no money was paid by him to the plaintiff. On the aspect of payment of money to the defendant, learned senior counsel for the respondent has further submitted that an amount of Rs.47 Lakh is not even disputed by the defendant because of the same being through RTGS. So far as the amount of Rs.13 Lakh is concerned, the same finds mention in the mortgage deed itself as having been received by the defendant; and the said mortgage deed is a registered document. No witness has been examined by the defendant to rebut the presumption of the registered mortgage deed. Rather, it is the plaintiff, who examined two attesting witnesses i.e. PW4 and PW5, who duly deposed that the amount of Rs.13 Lakh was paid to the defendant in their presence. Hence, the factum of receipt of total amount already stands proved on record. Qua the argument of learned counsel for the appellant that the agreement itself was unconscionable and unethical, learned senior counsel for the respondent has submitted that as per mortgage deed, the money was to be repaid by the defendant by 10.05.2018, however, not even a single penny was re-paid by him even during pendency of the civil suit. Therefore, the conduct of the defendant himself has been unethical. Hence, it does not lie in the mouth of the defendant to take a plea of the contract being unconscionable. Moreover, the agreement was entered into between the parties with open eyes. Therefore, the conditional sale would become conclusive if the conditions of the mortgage are not complied with; within the stipulated time, irrespective of their nature. On account of non-compliance of the conditional sale, the plaintiff has become absolute owner as per the provisions of Section 58 (c) of the Transfer of Property Act, 1882.

8. Before proceeding further, it is apposite to note that at the stage of motion hearing, the appellant had expressed his intention to pay the money if the High Court permitted him to redeem the mortgage. Accordingly, notice was issued in this case, subject to deposit of Rs.60 Lakh by the appellant. The said amount was duly deposited by the appellant. The same is lying, statedly, in a fixed deposit with the nationalized bank, as got created by the Registrar General of this Court. Hence, before the start of arguments, learned counsel for the appellant was asked whether the appellant intends to redeem the mortgage by paying the mortgage money with interest upto date. However, after getting instructions from the appellant, learned counsel has pointed out that the appellant was not in a position to pay the mortgage money with interest. Hence, this Court has to proceed further with decision of the case on merits.

9. After hearing learned counsel for the parties and after perusing the record, this Court finds that it is not even in dispute that Section 58 (c) of the Transfer of Property Act, 1882, as well as, Regulation 8 of the Bengal Land Regulation are applicable in the State of Haryana. Therefore, the mortgage and the consequences thereof are, primarily, to be governed by the said provisions, which are reproduced as under:-

> ***"Transfer of Property Act:***
> ***58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—***
> *(c) **Mortgage by conditional sale**.—Where, the mortgagor ostensibly sells the mortgaged property —*
> *on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or*

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

Bengal Land Regulation:

8. Procedure for mortgagee or conditional vendee desirous to foreclose mortgage or render conditional sale absolute:-

Whenever the receiver or holder of a deed of mortgage and conditional sale, such as is described in the preamble and preceding sections of this Regulation, may be desirous of foreclosing the mortgage and rendering the sale conclusive on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower or his representative) apply for that purpose by a written petition, to be presented by himself, or by one of the authorised vakils of the Court to the Judge of the zila or city in which the mortgaged land or other property may be situated. The Judge, on receiving such written application shall cause the mortgagor or his legal representative to be furnished, as soon as possible, with a copy of it; and shall at the same time notify to him by a parwana under his seal and official signature that, if he shall not redeem the property mortgaged in the manner provided for by the foregoing section within one year from the date of the notification, the mortgage will be finally foreclosed and the conditional sale will become conclusive."

10. Even the transaction of mortgage and the stipulations contained therein are not a matter of dispute between the parties as a

matter of fact. Under the said stipulations, the appellant was to repay the mortgage money to the plaintiff by 10.05.2018 along with interest at the rate of 3% per month. The said mortgage deed is a registered document. Therefore, coupled with the registered nature of document and no dispute qua the factual aspects of the stipulations having been raised by the appellant-defendant, the same has to be read, as such, in the first instance. The terms of the conditional sale specifically provides that if the mortgage money was not returned along with the interest by the stipulated date, then the transaction itself shall convert into a transaction of sale. Even this is not disputed that the money was not re-paid by the defendant on or before the date specified in the mortgage deed. Hence, the transaction, on the face of it, is to be taken as a transaction of sale.

11. The next aspect to be considered by this Court is whether the appellant was having sufficient opportunity to redeem the mortgage or not and whether before seeking foreclosure of right of redemption on the part of the defendant, the plaintiff had followed the procedure as prescribed under Regulation 8 of the Bengal Land Regulation or not ? In this regard, the plaintiff has placed on record the entire material of the proceedings initiated by him before the District Judge, Rohtak for foreclosure of the right of redemption of mortgage on the part of the defendant. A perusal of the said proceedings shows that the plaintiff had moved an application before the District Judge for foreclosure of the right of redemption. The application moved by him was duly accompanied by the demand notice served by the plaintiff upon the defendant before he initiated the proceedings before the District Judge under Regulation 8 of the Bengal Land Regulation. Not only that, the said application was also

accompanied by a postal receipt qua the demand notice having been sent by the plaintiff to the defendant through the registered post. The District Judge had sent summons to the appellant-defendant qua initiation of the proceedings by the plaintiff under Regulation 8 of the Bengal Land Regulation. The fact that the defendant had, in fact, received the said summons sent by the District Judge, is clear by the fact that the defendant had engaged a counsel to represent him before the District Judge in those proceedings and the said counsel had even filed his power of attorney for appearance in the said proceedings. Therefore, no doubt is left that the necessary proceedings under Regulation 8 of the Bengal Land Regulation was duly filed by the plaintiff. The said proceedings culminated into the District Judge passing an order noting therein that since the defendant was well aware of the proceedings, therefore, he would have one year time to repay the mortgage money, failing which the conditional sale shall become conclusive in terms of the Regulation. Undisputedly, no money was re-paid within the period of one year; as was granted by the District Judge, vide his order dated 18.09.2018. Therefore, no fault could be found with the right of the plaintiff to file a suit for getting declaration qua transfer of title of the suit property to him by way of conditional sale.

12. One of the arguments of learned counsel for the appellant is that since the transaction of conditional sale was inequitable, therefore, the suit for the same could not have been entertained by the Civil Court; and learned counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Murarilal since deceased and after his death his newly substituted legal representatives Umedi Lal and others (supra)***. However, a bare perusal of the said judgment itself shows that

Hon'ble the Supreme Court was dealing with a case wherein there was no statutory provisions governing the 'conditional sale' prevalent in the area to which that case belonged. Therefore, by specifically noting this fact that there was no legislative instruments or statutory provisions to the contrary, it was held that the principles of equity would be applicable and, therefore, there cannot be a clog upon equity of redemption. Therefore, from this judgment itself it is clear that if there is a statutory provision governing the aspect of conditional sale, then it is the statutory or legal provisions, which shall prevail and not the equity of redemption. Therefore, the judgment of Hon'ble the Supreme Court is of no help to the case of the appellant. Otherwise also, it is well established by now that in India equity is to be followed only to the extent it is contained in the statutory provisions or it relates to an aspect which is not governed by any statutory provisions. Therefore, equity has no place in Indian Legal System to contradict and supplant the statutory provisions. In the present case, since there are provisions in the form of Regulation 8 of the Bengal Land Regulation, as applicable to the State of Haryana, as well as, the provisions contained in Section 58 (c) and Section 67 of the Transfer of Property Act, 1882, therefore, the conditional sale would be governed by the said provisions and not by any superseding equity of redemption.

13. Another argument raised by learned counsel for the appellant is that the civil suit could not have been decreed by the Civil Court merely by presuming the proceedings initiated by the plaintiff under Regulation 8 of the Bengal Land Regulation, to be valid, rather, each and every aspect required for the said proceedings have to be independently proved before the Civil Court; so as to succeed in the case,

however, in the present case the plaintiff had not proved service of demand notice upon the defendant, as required under Regulation 8 of the Bengal Land Regulation. Learned counsel has also submitted that in the written statement, the defendant had specifically pleaded that no such demand notice was served upon him and the plaintiff had not even filed any replication, therefore, it has to be assumed that the plaintiff has admitted non-service of the demand notice upon the defendant before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation, and learned counsel has relied upon the judgment rendered by this Court in the case of ***Pirthi and others (supra)*** and another judgment passed by the Division Bench of this Court in the case of ***Sohan Lal (supra)***. However, a careful perusal of the record and the said judgments would lead to the inference that the argument of learned counsel for the appellant has to be noted only to be rejected. Order VIII Rule 5 CPC has provided that in case the plaintiff makes an assertion and the defendant does not deny that assertion specifically, then the said assertion shall be deemed to have been admitted by the defendant, however, there is no such provision contained in CPC *vice versa* qua the pleadings taken by the defendant in the written statement and presumption of admission by the plaintiff thereof in case of non-filing of the replication. The provision contained in Order VIII Rule 5 CPC to this effect is reproduced herein below:

> ***"Order VIII: [Written statement, set-off and counter-claim]***
> *5. Specific denial.—1 [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant,*

shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]"

14. In absence of such a provision in the CPC, it would be totally inappropriate to raise such a presumption against the plaintiff only because he has not filed a replication in the matter. Raising such a presumption against the plaintiff would tantamount to adding a full-fledged provisions to the CPC, which otherwise is totally non-existent in the CPC. Not only that, it deserves to be noticed that the plaintiff does not even have a right to file a replication *per se*. Rather, under Order VIII Rule 9 CPC filing of any pleadings after filing of written statement is prohibited, unless specifically and separately permitted by Court. Replication can be filed only as additional pleadings after seeking permission from the Court, as per provisions contained in Order VIII Rule 9 CPC. A step which cannot even be taken by the plaintiff in his

own right, rather which is prohibited by law, and for which he requires specific permission from the Court, cannot be used to raise a presumption against him regarding admission of the pleadings in the written statement. Under CPC a presumption against the plaintiff can be raised only when he is to reply counter claim filed by the defendant, as per the provision contained in Order VIII Rule 6E, which is reproduced herein below:

> ***"Order VIII***
> ***[Written statement, set-off and counter-claim]***
> *[6E. Default of plaintiff to reply to counter-claim. - If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.]"*

15. Under this provision also the presumption is to be raised against the plaintiff for not specifically denying a pleading because in counter claim the plaintiff becomes the defendant only. Beyond that, the aspect of 'Admissions' is dealt with by a different part of the CPC as contained in Order XII. However, under that provision 'Admission' is not a matter of presumption, rather, it has to be specifically in writing. Not only that, Order XII has even prescribed the 'forms' in which the party is to be put to admit a fact or a document; and also the 'forms' in which the admitting party is to admit a fact or a document. There is no scope for presumptions under this provision. Though, learned counsel for the appellant has relied upon the judgment rendered by Division Bench of this Court in the case of ***Sohan Lal (supra)***, however, a perusal of the said judgment shows that the provisions of the CPC have not even been referred to in the said judgment. The observations qua admission by

plaintiff are only by way of a passing observation. Therefore, with due deference to the said judgment of the Division Bench of this Court, though the said judgment deserves all respect as decision on a *lis* between the parties in that case, however, the same cannot be taken as a precedent on the aspect that a pleading taken by the defendant in the written statement, if not denied by plaintiff by filing a replication, shall be deemed to have been accepted by the plaintiff.

16. So far as the proof of the service of demand notice upon the defendant before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation is concerned, the plaintiff has placed on record the copy of application moved before the District Judge under Regulation 8 of the Bengal Land Regulation as Ex.P13, as well as, the summons sent by the court of District Judge to the defendant qua the proceedings initiated by the plaintiff under Regulation 8 of the Bengal Land Regulation. None of these documents has been denied by the defendant while appearing as a witness in the suit as DW1. Rather, in the cross-examination, he has specifically admitted having received the summons which specifically mentioned that it is accompanied by the application containing enclosures. Not only that, he has also admitted in cross-examination that he had not paid the money after receiving notice of the said proceedings from the court of District Judge, and has further deposed that there has not been any fraud with him in this entire matter. This leaves no doubt about the claim raised by the plaintiff in the suit and his assertions duly stand proved on record and also admitted by the defendant. Furthermore, after the suit of the plaintiff had been decreed by the Civil Court, the defendant had even filed a review application before

the District Judge for reviewing the order passed in the proceedings under Regulation 8 of the Bengal Land Regulation. In that review application, as well, there is not even iota of assertion that he was not served the demand notice by the plaintiff before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation or that he had not received the complete application along with its enclosures. That also clearly shows that the defendant was wrong in his assertion that he was not served any notice of demand by the plaintiff before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation. The assertion of learned counsel for the appellant that the service of demand notice has not been specifically proved in the civil suit is also discounted by the fact that the demand notice was claimed to have been served through registered post and the receipt to that effect was attached with the application filed before the District Judge and, thus, was received by the defendant along with the summons. The letter having been sent through a registered post raises a presumption of service of the same upon the addressee as per the provisions contained in under Order 5 Rule 9 CPC, as well as, under Section 27 of the General Clause Act, 1897, though such a presumption would be rebuttable one. However, except making a bald statement that he was not served the demand notice, no evidence has been led by the defendant to rebut the said presumption, in any manner, whatsoever. Moreover, as is mentioned above, once he admits having received the summons sent by the court of District Judge, which accompanied the application moved by the plaintiff along with its enclosures, then the defendant cannot be permitted to take a somersault and start disputing the service of demand notice upon him through the said registered post. In view of these facts, the judgment relied upon by learned counsel for the appellant in the case of ***Pirthi and others (supra)*** is also no help to his case. For the same reason, even the other judgments being relied upon by learned counsel for the appellant-defendant do not support the case of the appellant.

17. As observed above, Regulation 8 of the Bengal Land Regulation was having force of law in the State of Haryana as on the date of transaction involved in the present case as well, therefore, the proceedings undertaken under that provision has to be presumed as the proceedings under the law; taken before the court of a District Judge. Therefore, the said proceedings cannot be discarded whole-hog only because the defendant have chosen to take a different stand in the civil suit despite having admitted having received the summons of those proceedings from the court of District Judge; and despite being aware of the same. Another aspect of some importance involved in the matter is that though the Regulation 8 of the Bengal Land Regulation requires demand from the mortgagor, however, the regulation does not require the same to be in writing or through a legal notice. The object of inclusion of requirement of demand is only to ensure that the proceedings under Regulation 8 of the Bengal Land Regulation are not unnecessarily resorted to without first granting an opportunity to the mortgagor to redeem the mortgage. Since, Regulation 8 of the Bengal Land Regulation itself requires that mortgagor shall be granted one year time to make the payment and to redeem the mortgage, therefore, the requirement of serving any written demand notice upon the mortgagor cannot be even taken as mandatory requirement. The only situation where non-service of

demand notice upon a mortgagor before initiation of the proceedings under Regulation 8 of the Bengal Land Regulation acquires some significance would be where the mortgagor denies having received notice of the proceedings initiated before the District Judge under Regulation 8 of the Bengal Land Regulation. In that situation, he can assert that he was not granted opportunity to redeem the mortgage by making payment of the debt, firstly, on account of non-issuance of demand by the mortgagor as required under Regulation 8 of the Bengal Land Regulation, and thereafter, on account of non-receipt of the notice of the proceedings initiated under Regulation 8 of the Bengal Land Regulation. However, once issuance and receipt of the summons by the court of District Judge qua the proceedings under Regulation 8 of the Bengal Land Regulation is admitted by the mortgagor and he had full one year to redeem the mortgage by making the payment, then he cannot take a somersault by harping on non-service of demand notice by the mortgagee and thereby, render the proceedings initiated by the District Judge as totally nugatory. Essence of the provisions is to give sufficient opportunity to the mortgagor to exercise his right to redeem and that opportunity is to be taken to have been sufficiently granted once the mortgagor admits having received notice of the proceedings initiated by the District Judge under Regulation 8 of the Bengal Land Regulation. Thereafter, it is the deliberate conduct of the mortgagor not to redeem the said mortgage. Hence, he cannot be permitted to take advantage of his own fault for the purpose of defeating the suit of the plaintiff. This court finds substance in the arguments raised by learned senior counsel for the respondent-plaintiff in regard to the above said aspects.

18. Although, learned counsel for the appellant has also argued that he was not paid the complete amount of Rs.60 Lakh, and that the terms of the contract were unreasonable, however, on this aspect also, this Court finds substance in the arguments raised by learned senior counsel for the respondent-plaintiff because an amount of Rs.47 Lakh was received by the appellant through RTGS and another amount of Rs.13 Lakh has been proved to have been paid to him by the deposition of two witnesses produced by the plaintiff, i.e., PW4 and PW5, who are the attesting witnesses of the mortgage deed, which contained stipulation that an amount of Rs.13 Lakh has been paid to the defendant. Both these witnesses have deposed that an amount of Rs.13 Lakh was paid by the plaintiff to the defendant in their presence.

19. Qua the un-reasonableness of the terms of the contract, suffices it to say, as observed above, that it was a contract entered into between the competent parties with the eyes open. The consequences of the terms of the contract are governed by the statutory provisions. Therefore, the plea of unreasonableness in equity cannot be entertained by the Court by travelling beyond the scope of Contract Act. Otherwise also, the unreasonableness claimed by the appellant is only qua the rate of interest which was provided for in the mortgage deed. However, this argument is to be rejected for two reasons. Firstly, it is not a suit for recovery, rather, it is only a suit for declaration of conditional sale as an absolute sale in terms of the mortgage deed where only non-compliance of terms of mortgage is the only issue. Secondly, the interest at the rate of 3% per month is not alien or unknown to the private loan agreements. Rather in some cases it goes much beyond this rate of interest. Therefore,

the same cannot be said to be unreasonable. Hence, the arguments raised by learned counsel for the appellant have to be rejected by the Court; and accordingly the same are rejected.

20. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

21. In view of the above, finding no merit in the present appeal, the same is dismissed.

22. Since, an amount of Rs.60 Lakh was deposited by the appellant as a precursor for issuance of notice in the appeal, and the appeal is being dismissed on merits, therefore, the said amount along with interest earned by that amount, if any, in the fixed deposit in which it is stated to have been invested, be returned to the appellant under proper receipt.

23. The pending miscellaneous applications are also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

14th OCTOBER, 2024
'Sandeep'

Whether speaking/reasoned: Yes No
Whether Reportable: Yes No

SANDEEP KUMAR
2024.10.22 15:36
I attest to the accuracy and integrity of this order/judgment.