

7.

RIGHTS OF MORTGAGEE:

Re-sale.

Following are the rights of the mortgagee:

RIGHT TO FORECLOSURE OR SALE: Section 67

In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage money has been paid or deposited as hereinafter provided, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property or a decree that the property be sold.

Note: A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

(II) RIGHT TO SUE FOR THE MORTGAGE MONEY: Section 68

The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely,

- ✓ (a) The mortgagor binds himself to repay the same.
- (b) By any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient and the mortgagor has failed to do so.
- ✓ (c) The mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor.
- ✓ (d) The mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him.

without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.

Provided that in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgaged money.

POWER OF SALE WHEN VALID: Section 69

A mortgagee, or any person acting on his behalf shall have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage money.

APPOINTMENT OF RECEIVER: Section 69-A

A mortgagee having the right to exercise a power of sale under section 69 shall be entitled to appoint a receiver of the income of the mortgaged property or any part thereof.

ACCESSION TO MORTGAGED PROPERTY: Section 70

If, after the date of mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

ILLUSTRATION:

- (a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.
- (b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

RENEWAL OF MORTGAGED LEASE: Section 71

When the mortgaged property is a lease and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

RIGHTS OF MORTGAGEE IN POSSESSION:

- (i) **TO SPEND MONEY FOR THE PRESERVATION OF PROPERTY: Section 72 (a) (b)**

A mortgagee may spend such money as is necessary for the preservation of the mortgaged property from the destruction, forfeiture or sale.

2 (ii) **SUPPORTING MORTGAGOR'S TITLE: Sec. 72 (c)**

A mortgagee may spend such money as is necessary for supporting the mortgagor's title to the property.

3 (iii) **TO MAKE HIS OWN GOOD TITLE: Section 72 (d)**

A mortgagee may spend such money as is necessary for making his own title thereto good against the mortgagor.

4 (iv) **TO RENEW THE LEASE: Section 72 (e)**

A mortgagee may spend such money as is necessary when the mortgaged property is a renewable lease hold, for the renewal of the lease.

5 (v) **RIGHT TO ADD MONEY: Section 72 (e)**

A mortgagee may add such money to the principal money at the rate of interest payable on the principal and where no such rate is fixed at the rate of nine percent per annum.

6 (vi) **RIGHT TO INSURE: Section 72 (f)**

Where the property is by nature insurable, the mortgagee may also in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property and the premiums paid for any such insurance shall be added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed at the rate of nine percent per annum.

RIGHTS TO PROCEEDS OF REVENUE SALE OR COMPENSATION ON ACQUISITION: Section 73

- (i) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgaged, the mortgagee shall be entitled to claim payment of the mortgaged money in whole or in part out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(ii) **ACQUISITION OF PROPERTY UNDER LAND ACQUISITION ACT 1894**

Where the mortgaged property or any part thereof or any interest therein is acquired under the Land

Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage money in whole or in part out of the amount due to the mortgagor as compensation.