

8. LIABILITIES OF MORTGAGEE IN POSSESSION:

Following are the liabilities of the mortgagee in possession:

(I) **MANAGEMENT OF PROPERTY: Section 76 (a)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must manage the property as a person of ordinary prudence would manage it if it were his own property.

(II) **COLLECTION OF RENTS AND PROFITS: Section 76 (b)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must use his best endeavours to collect the rents of profits thereof.

(III) **PAYMENT OF GOVERNMENT REVENUE: Section 76 (c)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must, in the absence of the contract to the contrary, out of the income of the property, pay the Government revenue.

(IV) **PAYMENT OF PUBLIC CHARGES: Section 76 (c)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must in the absence of a contract to the contrary pay all other charges of a public nature.

(V) **PAYMENT OF RENTS: Section 76 (c)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must, in the absence of the contract to the contrary pay all rent accruing due in respect thereof during such possession.

(VI) **PAYMENT OF ARREARS: Section 76 (c)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must in the absence of the contract to the contrary pay any arrears of rent in default of payment of which the property may be summarily sold.

(VII) **NECESSARY REPAIRS OF PROPERTY: Section 76 (d)**

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must, in the absence

of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause, (c) and the interest on the principal money.

NOT TO COMMIT DESTRUCTIVE ACTS: Section 76 (e)

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must not commit any act which is destructive or permanently injurious to the property.

APPLICATION OF INSURED MONEY IN REINSTATING PROPERTY: Section 76 (f)

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property or, if the mortgagor so directs, in reduction or discharge of the mortgage money.

ACCURATE ACCOUNTS: Section 76 (g)

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property he must keep clear, full and accurate accounts of all sums received and spend my him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported.

DEBIT OF RECEIPTS AGAINST MORTGAGEE: Sect 76 (h)

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (c) and (d) and interest thereon, be debited against him, in reduction of the amount from time to time due to him on account of interest and so far as such receipts exceed any interest due, in reduction or discharge of the mortgage money, the surplus, if any, shall be paid to the mortgagor.

ACCOUNT FOR THE RECEIPTS: Section 76 (i)

When during the continuance of mortgage the mortgagee takes possession of the mortgaged property when the

mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be, and shall not be entitled to deduct any amount there from on account of any expenses incurred after such date or time in connection with the mortgaged property.

➔ **Loss occasioned by his default:**

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

9. CONCLUSION:

To conclude that in order to constitute a mortgage it is necessary that there should be transfer of interest in immovable property to the mortgagee. There should be a certain immovable property. The interest in the property should be to secure the debt. There should be a consideration of the mortgage contract between the two parties which are mortgagor and mortgagee. This mortgage contract should be for the lawful purpose. The right of foreclosure or sale can only be exercised in cases of mortgage by conditional sale and anomalous mortgage.