

**102. Service or tender on or to agent :** Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient :

Provided that, in the case of a notice required by Section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit in any Court in which a suit might be brought for redemption of the mortgaged property, the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

#### COMMENTS

**Scope :** This section relates to the service of notice or tender to an agent of a mortgagee. The section allows the mortgagor to apply to the Court for direction if the mortgagee or his agent cannot be found in the District in which the mortgaged property is situate. Even if the mortgagor knows the mortgagee or his agent's whereabouts outside the District, the section allows him to apply to the Court. The third paragraph also contains a similar provision as regards tender. Unless the whereabouts of the mortgagee or his agent are entirely unknown to be mortgagor or unless the mortgagee or his agent cannot be found anywhere, the mortgagee is not entitled to apply to the Court for direction. In paragraph 2 it is provided that the application for the service of notice shall be made to the Court in which the deposit has been made and to no other Court. In paragraph 3, it is provided that the deposit is to be made in the Court in which a suit for redemption could be filed.

**103. Notice, etc., to or by person incompetent to contract :** Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to

contract, such notice may be served on or by, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interest of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian-*ad-litem* for the purpose of serving or receiving of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

### COMMENTS

**Scope :** Where the mortgagee is a minor, in that case the tender should be made to his lawful guardian, so also the notice of deposit should be served upon his guardian. If, however, there is no lawful guardian, the mortgagee must see that a proper person is appointed guardian. If the mortgagee fails to do it, he cannot be said to have completely performed his part so as to exempt him from the payment of interest under Section 84.

When a mortgage, though executed in favour of a minor member, is in reality a mortgage taken by the head of the joint family of which the minor is a member, the mortgage money having been supplied from the joint family funds, an offer to pay the money on such a mortgage to the managing member guardian of the family is good and valid tender in the eye of law and no *ad litem* is necessary to be appointed for receiving the tender. AIR 1922 All. 355.