



CASE DIGEST

**ALP INVESTMENTS LIMITED VERSUS BANK OF
INDIA (U) LIMITED ORIGINATING SUMMONS
NO. 0001 OF 2024**

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1. Summary of Court Findings.

The High Court has clarified on the requirement and instances in which to issue a notice of sale, notice to take possession and valuation before conducting a sale under the Mortgage Act and Regulations. The Court in this case has held that the requirement to issue a notice of sale of mortgaged property is mandatory and cannot be dispensed with even when it's being exercised pursuant to a Court Order.

The Court has also pronounced itself on the mandatory requirement for valuation of the mortgaged property before any sale of the same and failure to do so renders the sale void. Court also held that even though the right to sale and right to take possession are distinct reliefs under the law, a mortgagee can exercise both options of taking over possession of the mortgaged property and sale of the property.

The Court has gone ahead to further clarify that the law allows a mortgagee who intends to take over possession of the property to use reasonable force to achieve the objective where the mortgagor is non-compliant.

2. Factual Background

The Plaintiff ALP Investments Limited obtained a credit facility of USD. 1,300,000 from Bank of India (U) Limited (the Defendant) in 2018 and as security, it mortgaged its property comprised in FRV 349 Folio 12 and FRV 349 Folio 7 Plot 49, Kanjokya Street. The Plaintiff failed to fulfill its loan repayment obligations and the loan was classified as non-performing.

In 2023, both the Plaintiff and the Defendant were sued by Geetha Kakade Nandeshwar Mahendrakar and Chakdradhar through civil suit No. 204 of 2023 over the above mortgaged properties. Geetha Kakade Nandeshwar Mahendrakar and Chakdradhar thereafter applied for a temporary injunction restraining Bank of India (U) Limited from dealing in the property in any way. Court granted a temporary injunction with a condition that the Applicants (Geetha Kakade Nandeshwar Mahendrakar and Chakdradhar) deposit 30% of the outstanding amount of the loan within 1 month from the injunction date. This Condition was breached and Bank of India (U) Limited went ahead to sell the mortgaged property in November 2023. The Bank neither conducted a valuation for the property nor did they issue a notice of sale before selling the property by public auction.

3. Detailed findings of Court

(a). The requirement to issue a notice of sale to a Mortgagor for mortgaged property is mandatory and cannot be avoided through a Court Order.

Bank of India (U) Limited admitted having only issued a notice of default to the plaintiff in December 2022 but did not issue a notice to sale of the property. It argued that the requirement to issue a notice of sale before Sale had been overtaken by events this being the failure by the Applicants in the temporary injunction application to deposit 30% of the outstanding loan amount as was directed in the temporary Injunction order. The Defendant argued that with this failure, it could go ahead and sell the property without issuing a notice of sale. The Court order to them was self-executing and this rendered the need to issue a notice to sell before sale redundant.

Court in addressing the issue held that the failure to deposit the 30% simply meant that the defendant could then proceed to exercise its rights against the plaintiff in accordance with the law as prescribed in **Section 26(2) of the Mortgage Act, 2009** which required that a notice of sale be issued before any sale is made and the failure to do so amounted to a serious violation of the express statutory procedure.

(b). The requirement to value property before sale is a mandatory requirement that ought to be adhered to in all circumstances.

Bank of India (U) Limited contended that its failure to value the land before sale was occasioned by the fact that the Plaintiff became non-compliant and actually refused the Defendants agents access to the mortgaged property.

Whereas Court recognized that there was evidence to back up their allegations of the Plaintiffs belligerent conduct, the requirement to value the mortgage property as required by **Regulation 11 of the Mortgage Regulations** is mandatory and there is nothing that can be used to justify failing to value the property before any sale.

If the Respondent was facing any resistance, Court had reasoned that whereas the taking of possession of the mortgaged property and sale of the mortgaged property are two distinct reliefs available to an unpaid Mortgagee, the law allows the unpaid Mortgagee to exercise all the two reliefs by taking possession for the purpose of valuing the property for sale.

The right procedure would have been therefore for the Bank to first of all take possession (through serving a notice of entry upon the Plaintiff for 5(five) working days as required by Section 24 of the Mortgage Act) and thereafter once in possession go ahead to issue a notice of sell to and value the property before selling.

(c). The Mortgage Act permits the Mortgagee to use reasonable force while taking over possession of the mortgage property where the mortgagor is non-compliant with the Mortgagees intended entry.

It was the Plaintiff's argument that the Mortgagee is prohibited from using force to take over possession of the mortgaged property. Court in applying the provisions of **Section 24(2) (a) of the Mortgage Act** did hold that the sections does envisage a situation where the Mortgagor is non-compliant with the Mortgagee's intended entry and therefore allows the Mortgagee to use reasonable force to take over possession and where there are allegations of excessive force, the same can be reported as criminal complaints to police or even to Courts of law as Civil Suits.

(d). Legal Implications and Key Banking Law Practice Takeaways.

(i). The Mortgagees have to ensure that before exercising any option of sale of mortgaged property either arising out of a court order or agreement, that a notice of sale of the mortgaged property is readily issued and properly served on the mortgagor.

(ii). A mortgagee has to ensure that before it exercises its rights under the Mortgage Act to sell, take possession or appoint a receiver, it has issued all the relevant statutory notices as its failure to do so can lead to reversal of the sale.

(iii). The Mortgagees should also always guard against selling any mortgaged property without conducting a valuation within 6 months before the sale as failure to do so renders the sale void.

(iv). Where the Mortgagee faces a challenge of accessing the mortgaged property yet it intends to sale the same, it can first exercise its right of entry through taking possession of the mortgaged property by issuing a 5 days' notice to take possession as required by the law and once in possession it can go ahead to conduct a valuation and issue a notice of sale before selling the mortgaged property.

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