

## **MONEY AND MORTGAGE SUITS**

LIMITATION, ADMISSIBILITY AND APPRECIATION OF EVIDENCE VIS-À-VIS BURDEN OF PROOF AND ONUS OF PROOF

*by*

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### **INTRODUCTION**

#### **MONEY SUITS**

Nowadays, we come across circumstances where the opposite party fails to return the money or repay the amount within the stipulated period. Hence, there is various legal remedy that can be taken by the aggrieved party against the defaulter party. If the aggrieved party still doesn't receive the payment, they can go for one of these options, Summary Suits, Negotiable Instruments Act, Criminal case or Insolvency and Bankruptcy Code.

A Suit for recovery of money is a civil relief and acts as an effective remedy to recover money from the delinquent. Every person, who has a right to sue, can file a money suit. This category of people includes:

1. The Principal and Agent
2. Co-holders of a debt or actionable claim
3. Partners
4. Trustee and Trust beneficiary
5. A Religious Institution and its Member(s)
6. A Hindu Joint Family & Its Members
7. Banking Companies and Financial Institutions
8. Civil and Military Officers (for recovery of fine or penalty)
9. Other Statutory Authorities
10. Executor so on and so forth.

## **MORTGAGE SUITS**

As per Section 58 of Transfer of Property Act, 1882 the following words are defined

### **Mortgage**

A mortgage is the transfer of an interest in immovable property for the purpose of securing the payment of money advanced, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability.

### **Mortgagor and Mortgagee**

The person who transfers the interest in an immovable property is called the mortgagor. The person to whom it is transferred is called the mortgagee.

### **Mortgage Money**

The principal money and interest of which payment is secured for time being is called mortgage money.

### **Mortgage Deed**

The instrument by which the transfer is effected is called a mortgage deed.

A mortgage is a transfer of an interest in immovable property and it is given as a security for a loan. The ownership of an immovable property remains with the mortgagor itself but some interest in the property is transferred to the mortgagee who has given a loan.

Essential conditions of a mortgage:

1. There is a transfer of interest to the mortgagee.
2. The interest created in specific immovable property.
3. The mortgage should be supported by consideration.

Kinds of Mortgage:- As per Section 58 of Transfer of Property, there are six kinds of mortgages

### **Simple Mortgage**

- Simple Mortgage is defined under Section 58(b) of Transfer of Property Act, 1882.
- In a simple mortgage, the mortgagor does not transfer immovable property to the mortgagee but agrees to pay the mortgage money.
- The mortgagee agrees on a condition that in the event of not paying

the mortgage money the mortgagee has every right to sell the property and can use the proceeds of the sale and such a transaction is called a simple mortgage.

### **Conditional Mortgage**

- Mortgage by conditional sale is defined under Section 58(c) of Transfer of Property Act, 1882.
- In this mortgagee places three conditions to the mortgagor, and the mortgagee shall have the right to sell the property if:
  1. mortgagor defaults in payment of mortgage money on a certain date.
  2. as soon as the payment is made by the mortgagor the sale shall become void.
  3. on the payment of money by the mortgagor, the property is transferred and such a transaction is called a mortgage by conditional sale.

### **Usufructuary Mortgage**

- Usufructuary Mortgage is defined under Section 58(d) of Transfer of Property Act, 1882.
- In this mortgage, the mortgagor delivers the possession of the property to the mortgagee and authorises the mortgagee to retain such property until the payment is made by the mortgagor and further authorise him to receive the rent or profit arising from such mortgaged property and to appropriate the same instead of payment of interest. Such a transaction is called a Usufructuary transaction.

### **English Mortgage**

- English Mortgage is defined under Section 58(e) of Transfer of Property Act, 1882.
- In this mortgage, the mortgagor transfers the property absolutely to the mortgagee and binds himself that he will repay the mortgage money on the specified date and lays down a condition that on repayment of money mortgagee shall re-transfer the property. Such a transaction is called an English mortgage transaction.

**Deposit of title-deeds**

- Deposit of title-deeds is defined under Section 58(f) of Transfer of Property Act, 1882.
- In this mortgage where a person is in Calcutta, Madras, Bombay and in any other towns as specified by the state government and the mortgagor delivers to a creditor or his agent the documents of title of immovable property with an intent to create security and then such a transaction is called Deposits of title-deeds.

**Anomalous Mortgage**

- An Anomalous Mortgage is defined under Section 58(f) of Transfer of Property Act, 1882.
- A mortgage which is not any one of the mortgages mentioned above is called an anomalous mortgage.

**LIMITATION:-**

Indian Law defines a period of limitation as a period prescribed in the Limitation Act for institution of any suit, appeal, or application. The prescribed period is the period of limitation computed in accordance with the provisions of the Limitation Act. The principal authority governing the law of limitation in India is the Limitation Act, which consolidates the law on limitation for suits and other connected proceedings. The Limitation Act prescribes different periods of limitations for different legal actions.

While prescribing the limitation period for different suits, the Limitation Act:

- Describes the time from which the period of limitation starts (section 3, Limitation Act).
- Provides for different instances which may impact the running of the limitation period, such as legal disability or fraud or mistake (sections 6 and 17, Limitation Act).
- Lays down the manner for computation of the period of limitation and the circumstances in which limitation period would stop running.

**Counterclaims**

The law of limitation applies to counterclaims in the same manner as it applies to a claim or a suit. Counterclaims are treated as a plaint (civil suit)

and are therefore governed by the rules applicable to them. [Order VIII Rule 6(A)(4), Code of Civil Procedure, 1908 (CPC)]. Counterclaims fall within the category of suits and are deemed to have been instituted on the date on which they are made in the court (section 3(2)(b)(ii), Limitation Act). The limitation period provided under the Limitation Act for a suit or claim also applies to a counterclaim [Thomas Mathew v. Construction Engineer K.L.D.C. Limited, 12 SCC 560 (2018)].

### **Amendments to Pleadings:**

#### Applicability of Law of Limitation to Amendments to Pleadings

The CPC governs the procedure for filing civil proceedings in India. If a party wants to amend the pleadings filed by it in a suit, it may file an application under Order 6, Rule 17 of the CPC before the court in which the proceedings are pending. The application may be filed at any stage of the proceedings and allowed by the court at any stage of the proceedings. The court at its discretion may allow or disallow the application after examining whether the amendments being made are:

- Necessary for the purpose of determining the real questions in controversy between the parties.
- In cases where trial has already commenced, whether despite acting with due diligence, the party could not have filed the application before the commencement of such trial. Courts, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation on the date of the application and when the pleadings itself reveal that the claim raised is time-barred [Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors., 2 SCC 394 (2020); South Konkan Distilleries and Anr. v. Prabhakar Gajanan Naik and Ors., 14 SCC 632 (2008)].

### **Commencement of Time**

#### When Does Limitation Period Start Running: -

Under section 9 of the Limitation Act, once time has begun to run, no subsequent disability or inability to sue stops it. Different situations act as triggers for starting the period of limitation for different proceedings. However, the Limitation Act itself prescribes exceptions to the above rule, including:

- Where before the expiration of the limitation period for institution of a suit or application in respect of any property or a right, an acknowledgement of liability of the property or right has been made in writing signed by the party against whom the claim is made, a fresh period of limitation is to be computed from the time the acknowledgment is signed (section 18 Limitation Act).
- Where payment on account of a debt is made before the expiration of prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation is computed from the time when the payment is made (section 19, Limitation Act).
- Where there is a continuing breach of contract or a continuous tort, a fresh period of limitation begins to run at every moment during which the breach continues (section 22, Limitation Act).

#### **Stopping and Suspending the Limitation Period:-**

Subject to the provisions of the Limitation Act, every suit instituted, appeal preferred, and application made after the prescribed period of limitation shall be dismissed (section 3, Limitation Act). The

Limitation Act further provides that once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops the running of the limitation period. (Section 9 Limitation Act) Neither the court nor any other judicial authority can:

- Carve out an exception on equitable grounds warranting the stoppage of time.
- Postpone the operation of the law of limitation.
- Introduce an extension of time that is not recognized under the Act.
- [Siraj Ul- Haq Khan v. The Sunni Board of Waqf, U.P., SCR 1287 (1959); Popat Bahiru Govardhane and Ors. v. Special Land Acquisition Officer and Ors., 10 SCC 765 (2013)]

#### **Limitation for filing money suit:-**

In India, the time limit for bringing a civil recovery claim is three years from the day. Suits filed after the statute of limitations has expired will be dismissed. The reasons for seeking the exemption must be specified if the action is filed after the limitation period has expired.

**Limitation for filing mortgage suit:-**

To enforce payment of money secured by a mortgage or otherwise charged upon immovable property, the limitation period is **twelve years**, from the date when the money sued for becomes due. A fresh period of limitation shall be computed from any payment or acknowledgement is made, in view of section 19 of the Limitation Act, 1963.

**ADMISSIBILITY AND APPRECIATION OF EVIDENCE**

The term "admissibility" means the state or quality of being admissible or permissible. In the legal sense, the term "evidence" means anything admitted by a Court to prove or disprove alleged matters of fact in a trial. Thus, the admissibility of evidence means any document, testimony, or tangible evidence used in a Court of Law. All evidence is not allowed in the Court, only that evidence which is reliable and relevant is admitted in the Court of Law. Evidence is introduced to a judge or a jury to prove a point or an important element in a case.

The term 'admission' is defined in Section 17 of the Indian Evidence Act, 1872. In general sense, the term admission means power or permission to enter, admittance, entrance, access, the power to approach. In the legal sense, acquiescence or concurrence in a statement made by another and distinguishable from a confession in that an admission presupposes prior inquiry by another, but a confession may be made without such inquiry. A fact, point, or statement admitted; as the admission made out of Court are received in evidence.

The term evidence is defined in Section 3 of the Indian Evidence Act, 1872. In the general sense, the term evidence means facts or observations presented in support of an assertion. In the legal sense, the term evidence can be described as anything admitted by a Court to prove or disprove alleged matters of fact in a trial.

**Section 118 of N.I. Act:- Presumption:-**

When a suit is filed in court of law, basing upon the pleadings of both defendant and plaintiff, the court will frame issues and basing upon the strength of evidence the court will deliver the judgment. In this process, the

court may decree the suit or dismiss the suit. The party which makes a pleading should adduce evidence in support of the pleading. It is called the burden of proof. Burden of proof naturally differs from case to case. But, regarding the proofs on promissory notes, there are certain special rules of evidence. Under those special rules of evidence, the court can presume the existence of certain factors as true. But, all those presumptions are rebuttable. Unless and until the contrary is proved, the court is bound to presume that certain presumptions are true. Section 118 of Negotiable Instruments Act deals with presumptions. Those presumptions are applicable to promissory notes and also to cheques and bills of exchange. This section is very important and there are a number of decisions delivered by various High Courts and Supreme Court regarding presumptions relating to Negotiable Instruments Act. Certain judgments are in fact contradictory to each other. In fact the law of presumptions regarding negotiable instruments is in a way complicated. Hence, it is just and necessary to study in detail the concept of presumptions, because, the burden of proof rests upon those presumptions.

In most cases regarding promissory notes the defence is of two types:-

- (1) Denial of execution of promissory note.
- (2) Admitting the execution of promissory note, but at the same time denying consideration.

If the defendant denies the execution of promissory note, the burden of proving the execution of promissory note is upon the plaintiff. When once the plaintiff proves the execution, the presumption follows that suit pronote is executed for consideration and the court is bound to decree the suit. In these cases where the defendant denies execution of promissory note as the burden is on the plaintiff to prove the execution, he should begin the trial of the suit by examining witnesses. When once the evidence for the plaintiff was over and the plaintiff proves the execution of the promissory note, it is for the defendant to rebut the execution through his evidence. If the defendant fails to disprove the evidence of the plaintiff, the court will decree the suit by virtue of Section 118.

In cases where the defendant admits the execution but denies the passing of consideration in whole or in part, the burden of proof is on the defendant to prove that the consideration was not passed even though they



executed the promissory note. In that process the defendant is bound to prove the circumstances under which he executed the promissory note without consideration. Hence, the defendant has to first to adduce his evidence and when once his evidence is over the burden shifts upon the plaintiff. to rebut the evidence of the defendant. That means it is now for the plaintiff to prove that the promote is supported by valid consideration. If the court believes the evidence of the defendant, the suit will be dismissed. If not, the suit will be decreed.

Burden of proof plays a very important role in deciding a case. As special rules of evidence are applicable to promissory notes and other instruments, it is just and necessary to look at Section 118 of Negotiable Instruments Act which is as follows: -

"118. Until the contrary is proved, the following presumptions shall be made: -

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed negotiated or transferred for consideration.

(b) as to date: that every negotiable instrument bearing a date was made or drawn such date.

(c) as to time of acceptance: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

(d) as to time of transfer: that every transfer of a negotiable instrument was made before its maturity.

(e) as to order of endorsements that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

(f) as to stamps: that a lost promissory note, bill of exchange or cheque was duly stamped.

(g) that holder is a holder in due course that the holder of a negotiable instrument is a holder in due course."

Provided that where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him. From the above

definition it is clear that the presumptions mentioned in the above section are rebuttable presumptions. That means the presumptions can be proved wrong by adducing substantial evidence. As the burden of proving not proving the presumptions under Section 18 is very important it is just and necessary to know the few things about the concept of burden of proof.

### **Burden of Proof:-**

Burden of Proof means the obligation on the part of a party to prove the existence or nonexistence of a particular thing or fact. As it is observed by Justice K.Subba Rao on one occasion "the phrase burden of proof has two meanings the burden of proof as a matter of law and pleading and the other the burden of establishing a case. The former is fixed as a question of law on the basis of pleadings and is unchanged during the entire trial whereas the latter is not constant but shifted as soon as a party adduces sufficient evidence to raise a presumption in his favour" (Kundanlal Lallaram vs. Custodian evace property, Bombay, AIR 1961 S.C. 1316). The presumption under law will be effected by the evidence necessary to establish such a presumption. In other words when a presumption is based on certain pleadings the burden of proof is to produce all the relevant material documents in support of the pleadings. If the party so pleads fails to produce all the relevant documents and material, the court is competent and can rebut the presumption of law raised under Section 118 of Negotiable Instruments Act. For example: A plaintiff files a suit on the basis of a pronote. The averments in the plaint are that the plaintiff supplied certain goods to the defendants and the promissory note was executed as consideration for the goods and that the relevant account books and other relevant papers regarding the supply of goods are in possession of the plaintiff. Under the Section 118, the presumption raised by the court is that the promissory note executed by the defendant is for valid consideration. The burden is upon the plaintiff to produce all those books. If he fails in discharging his burden, the court can rebut the presumption of law raised under Section 118 of Negotiable Instruments Act that the said promissory note is supported by consideration. The burden of proof may be shifted by presumption of law or by a fact. The presumption of law may be rebutted not only by evidence either direct or circumstantial but also by presumption of law or fact. The above illustration

proves this established fact of law. Another important thing regarding burden of proof is that it is an endless process.

**Here is an example:**

*"A' files a suit against 'B' on the basis of a promissory note. The defendant denies the execution of promissory note. The initial burden is now on the plaintiff to prove the promissory note. A adduces evidence to prove the execution. Then the court presumes under Section 118 (a) that B executed the promissory note. Then the burden shifts on B to prove that consideration was not passed under the promissory note. B adduces direct and circumstantial evidence to prove that the promissory note was supported by consideration. Then the burden again shifts on the plaintiff to prove that the promissory note was supported by consideration. This follows that the statutory presumption is both a question of law and also a question of fact to be proved in each and every case".*

The mortgage is a document required to be attested by two attestors under section 59 of the Transfer of Property Act and to be attested by two attestors. The mode of proof of documents required to be attested is contained in sections 68 to 71 of the Evidence Act. Under section 68, if the execution of a document required to be attested is to be proved, it will be necessary to call an attesting witness, if alive and subject to the process of Court and is capable of giving evidence. But in case the document is registered- then except in the case of a will - it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. This is clear from section 68 of the Evidence Act. It reads as follows:

"Section 68: If a document is required by law to be attested, it shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied."

Section 22 of the Act, reiterates the rule laid down in section 64 of the Act, wherein, it requires that a document must be proved by primary evidence, i.e., by production of document itself except in cases thereafter mentioned, i.e., where secondary evidence is allowed. Section 22 provides that:

When oral admissions as to contents of documents are relevant: -

Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question. Under section 22, the contents of documents like true copies, attested, certified, xerox, duplicate copies can be produced along with an oral evidence. Under section 22 it has been laid down that when there has been a document, nobody can be allowed to prove oral admission about the contents of that document e.g., X executed a deed of mortgage in favour of Y. Y files a suit for the possession of the property mortgaged on the basis of that mortgage. During the trial X denied the execution of the mortgage. Now in this case Y cannot prove by oral evidence that he had before some persons admitted that he had mortgaged the property to him. Y can prove the execution of the mortgage and can get possession of the property only when he files that deed of mortgage in the court and proves it. There are two exceptions to this rule:

(1) When a person is entitled to give secondary evidence of the contents of some documents he will be entitled to rely on oral admission;

2) Under section 65, secondary evidence of the contents of a document can be given when the original is lost or when it is in possession of the opposite party and so on. Thus, we see that under section 22 a party can prove oral admission of the contents of the document when he proves that the document has been lost, destroyed or that it is in possession of the opposite party.

Oral evidence of admission can also be given when a document is produced and its genuineness is disputed.

## **COSTS AND INTERESTS – CASE LAW**

### **COSTS:-**

According to Black's Law Dictionary "costs is a pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit or a distinct proceeding with a suit". Costs are an allowance to the party for expenses incurring in prosecuting or defending a suit, an incident to the judgment.

**Section 35:** Section 35 of the Code of Civil Procedure contains the provision as to costs. The costs of an incident to all suits are in the discretion of the Court and the court shall have full power to determine by order out of what property and what extent such costs are to be paid. All necessary direction for these purposes will be given by the court. Where the Court directs the costs are not to follow the events, the court shall give it in writing.

**General Rule:** It is a general rule to award costs is at the discretion of the court. Normally, in civil proceedings "costs shall follow the event".

### **Kinds of costs:**

The code provides for the following kinds of costs:

- 1) General costs-Section 35;
- 2) Miscellaneous costs-Order 20-A;
- 3) Compensatory costs for false and vexatious claim or defences-Section 35-A;
- 4) Costs for causing delay-Section 35-B.

**Anand Prakash v. Bharat Bhushan (2009) 2 SCC 656** - In spite of the elaborate provisions contained in the Code, the civil cases pending before the trial courts are not being disposed of as expeditiously as is desirable. The causes for these delays are of course many, which need not be detailed here. It suffices to mention that the matter received the attention of the Law Commission, which made an elaborate inquiry into the matter and submitted its report to the government of India with the recommendation that the code of Civil Procedure 1908 be thoroughly over hauled and re-enacted. The said report contained a recommendation that a new section namely Section 35B be added to the Code to make provision for costs being awarded to the aggrieved party for the delays in the prosecution of the suit caused by its opponent.

**The Hon'ble Supreme Court said in Ashok Kumar Mittal's case:**

*"9. The present system of levying meager costs in civil matters (or no costs in some matters), no doubt, is wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation borne out of ego or greed, or resorted to as a "buying-time" tactic. More realistic approach relating to costs may be the need of the hour. Whether we should adopt suitably, the western models of awarding actual and more realistic costs is a matter that requires to be debated and should engage the urgent attention of the Law Commission of India."*

**Similar views were echoed in Vinod Seth's case. The Hon'ble Supreme Court observed as under after discussing various aspects relating to costs:**

*"53. The lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and speculative suits, apart from rendering Section 89 of the Code ineffective. Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streamline the civil justice system will fail in the absence of appropriate provisions relating to costs. There is therefore an urgent need for the legislature and the Law Commission of India to revisit the provisions relating to costs and compensatory costs contained in Section 35 and 35-A of the Code."*

**INTERESTS:-**

Black's Law Dictionary (Fifth Edition) defines these expressions as follows:

Interest:- Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money...Payments a borrower pays a lender for the use of the money."

Simple interest:- That which is paid for the principal or sum lent, at a certain rate or allowance made by law or agreement of parties. Interest calculated on principal where interest earned during periods before maturity of loan is neither added to the principal nor paid to the leader. That paid on the principal

lent as distinguished from compound interest which is interest paid on unpaid interest.”

Compound interest:– Interest upon interest, i.e., interest paid on principal plus accrued interest. Exists where accrued interest is added to the principal sum, and the whole treated as now principal for the calculation of the interest for the next period. Interest added to principal as interest becomes due and thereafter made to bear interest.” (Union Bank Of India vs Dalpat Gaurishankar Upadyay) Strouds Judicial Dictionary of Words and Phrases (5th edition): - interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money.

Section 2(1) of the Usurious Loans Act says, interest is a return to be made, over and above what was actually lent, where the sum is charged or sought to be recovered specifically by way of interest or otherwise.

The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.

The Constitution Bench of the Hon'ble Apex Court in Central Bank of India Vs Ravindra held that,

*“the general idea is that the creditor is entitled to compensation for the deprivation; the money due to creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute.”*

Mahant Narayana Dossjee Varu vs The Board Of Trustees: AIR 1959 AP 64, the Hon'ble Andhra High Court observed that Sir D.F.Mulla in his Civil Procedure Code treats the subject of interest under the following heads, wherein it is explained by the author that interest under the first head is a matter of substantive law, the section does not refer to the payment of interest under the first 'head and it applies only to the second and third heads:

“(1) interest accrued due prior to the institution of the suit on the principal sum adjudged.

(2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree; and

(3) further interest on the aggregate sum adjudged i.e., the principal sum plus interest, from the date of the decree to the date of payment or such earlier date as the Court thinks fit at such rate as the Court deems reasonable”.

Three Divisions of interest:

1. Pre-lite; 2. Pendent-lite; and 3. Post lite

Pre-lite: -

(1) Pre-lite: interest accrued due prior to the institution of the suit on the principal sum (due) adjudged. Interest for the period anterior to institution of suit is not a matter of Procedure as it is referable to substantive law and can be sub-divided into two sub-heads; (i) where there is a stipulation for the payment of interest at a fixed rate (contract rate) and (ii) where there is no such stipulation as per statutory provisions providing certain rate of interest and in its absence as per the interest Act (from date of demand (from date of service of demand notice) and at prevailing market rate and bank lending rate as guidance). [See M.Rajeswar Rao & others...Vs.Chitluri Satyam (Died) & others (2013).] Though, the pre lite interest was awarding on grounds of equity also(from common law principle of justice, equity and good conscience) by the courts as per certain precedents including from, Bengal Nagpur Rly Co Ltd Vs Ruttamji Ramji of Privy Council and following it of the Apex Court in Satinder Singh Vs Amrao Singh and Hirachand Kothari Vs State of Rajasthan and from the wording of old Interest Act, 1839 proviso to Section -1- which reads that “interest shall be payable in all cases in which it is now payable by law” and the same since repealed by the Interest Act, 1978 with no such and similar provision, no interest appears to be awarded on equitable grounds so far as pre-lite substantive interest concerned, however held that it requires a detailed examination in an appropriate case as expressed in LIC of India Vs S Sindhu. Thus, the observations in the larger bench (five judges bench) decision of the High Court in APSRTC Vs. B.Vijaya may also require reconsideration to the extent of interest pre lite can be awarded on equitable grounds as a Court of equity, though as on date, it is a binding precedent If there is a stipulation for the rate of interest, from the parties voluntarily



agreed upon, the Court must allow that rate up to the date of the suit subject to three exceptions; (i) any provision of law applicable to money lending transactions, or Usurious Loans Act or any other debt relief law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties;

(ii) if the rate is penal (under any debt relief law or market rate), the Court must award at such rate as it deems reasonable (as per prevailing market rate); (iii) even if the rate is not penal the Court may reduce it if the interest is found excessive and the transaction was substantially unfair (subject to such observations and conditions supported by reasons). If there is no express stipulation for payment of interest and rate of interest; the plaintiff is not entitled to interest much less at the rate claimed except on proof of mercantile or trade usage having the force of law or statutory right to interest like by Section 80 of the Negotiable Instruments Act & Section 23 of the Trusts Act or Section 61 of the Sale of Goods Act or the like or an implied agreement and under the provisions of the Interest Act vide decision *Vithal Das Vs. Rup Chand*.

**Pendent-lite:-**

(2) Pendent-lite: In addition to pre-lite interest, it is the additional interest on the principal sum adjudged or declared due from the date of the suit either at contract rate if reasonable or at such rate as the Court deems reasonable in the discretion of the Court (as per Section 34 CPC till date of decree or under Order 34 Rule 11 C.P.C. in case of mortgage debt if contract rate is unreasonable and excessive to reduce even from date of suit till expiry of the period of redemption) as not a substantive law; [See *M.Rajeswar Rao & others... Vs. Chitluri Satyam (Died) & others (2013)*]

**Post-lite:-**

(3) Post-lite: In addition to pre-lite interest on principal sum and pendent-lite interest on the principal sum adjudged or found due, it is the further interest on such principal sum (as per Section 34 CPC or under Order 34 C.P.C. as not a substantive law, from the date of the decree to the date of the payment and in mortgage decree from date of preliminary decree till expiry of period of redemption and thereafter till realization/payment as the case may be in any

decree for money held due with or without charge preliminary or final or partly final decree) or to such earlier date as the Court thinks fit, in the discretion of the Court, at a rate not exceeding 6 per cent per annum except where the transaction is a business or commercial one to grant above 6 percent but does not exceed contract rate as also laid down by the larger bench of the AP High court in APSRTC Vs. Vijaya. [See Rulings APSRTC Vs. Vijaya; and M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013)]

Some other important points as to 'Interest':

Clariant International Ltd. & Anr vs Securities & Exchange Board Of India, (2004) the Apex Court held:

*'We also do not agree with the contention that the payment of interest for delay in making the public offer is a commercial transaction.'*

([2006] 8 SCC 457), Gurpreet Singh v. Union of India referring to Sec.26 of the Act it is held,

*"every award shall be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure and every reasoned award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure".*

([2011] 4 SCC 734), State of Punjab v. Amarjit Singh, the Hon'ble Supreme Court was dealing with various factors to be taken into account while awarding compensation under Sec.23(1A) of the Act.

Malladi Krishnaya S/o. Satyanarayana and another Vs Tadikonda Siva Suryaprakasa Rao (died) S/o. Krishnaya and two others (2014), His Lordship HONBLE Dr. JUSTICE B.SIVA SANKARA RAO observed that it is to be kept in mind that, interest is a premium paid for use of money vide decision in AIR 1959 AP 64. Loan is the amount that lent. Debit is the amount that is fallen due. Thus, loan is the principal sum and debt is inclusive of interest on such principal sum vide decisions in AIR 1968 SC 1042 & AIR 1972 Bombay 238.

Bhika Ram v. Union of India, 238 ITR 113 (Del): He invited our attention towards following observations of the Hon'ble Delhi High Court: -

*"However, learned counsel for the petitioner relied on Satinder Singh v. Umrao Singh, AIR 1961 SC 908, to submit that*

*compensation would not be treated as income. Learned counsel further submitted that the decision of the Supreme Court in Satinder Singh's case AIR 1981 SC 908 was not brought to the notice of the Supreme Court when Bikram Singh's case [1997] 224 ITR 551, was decided. It is also submitted that the reasoning on which their Lordships have proceeded in the case of Satinder Singh, AIR 1961 SC 908, was also not argued before the Supreme Court in Bikram Singh's case [1997] 224 ITR 551. Not only are we not satisfied about the correctness of the submission so made, we are also of the opinion that such a plea is not open for consideration by us and Bikram Singh's case [1997] 224 ITR 551 (SC), being a later pronouncement of the Supreme Court by a Bench of co-equal strength, it is binding on us". (Also see Datamatics Financial Services' case: (2005) 95 TTJ Mum 944).*

### **INTEREST IN MORTGAGE SUIT:-**

In mortgage suits, court has discretion in the matter of grant of interest pendent lite and subsequent interest – It is not absolutely obligatory on court to decree interest at contractual rate up to date of redemption. – Dara Namassivaya and other V. Smt. Veturi Ratnalamma – 2005 (6) ALT 118. Civil court has discretion under Order 34 Rule 11, CPC to reduce the contractual rate of interest depending upon the facts and circumstances of each case in spite of the provision of Section 21-A of Banking Regulation Act providing for charging compound interest at contractual rate. (Paras 23 and 24). – State Bank of India, Settipalle Branch, Tirupati rep. By its Chief Manager Vs. P. Veerananarayana – 2014 (1) ALT 714. VILAS V. AFZULPURKAR,j. The very purpose of the enactment of Usurious Loans Act is to ensure that the persons in need of money are not exploited by the lenders – The reasonableness of the rate of interest mentioned in the contract falls within the realm of adjudication by Court on the touchstone of settled principles.(Paras 10 and 11). – Investment Trust of India Limited, Chennai Vs. P.Varahamma and another – 2013 (6) ALT 212 (D.B. ). L. NARASIMHA REDDY and S.V. BHATT.

**CONTOURS OF JUDGMENT WRITING IN MONEY AND MORTGAGE  
SUITS – SPECIAL REFERENCE TO OPERATIVE PORTION – PRECEDENTS**

A judgment is the statement given by the Judge, on the grounds of a decree or order. It is the end product of the proceedings in the Court. The writing of a judgment is one of the most important and time consuming task performed by a Judge. The making and the writing of a judgment and the style in which it is written, varies from Judge to Judge and reflects the characteristic of a Judge. Every Judge, of every rank has his own distinct style of writing.

A mortgage suit is a legal action taken to enforce the terms of a mortgage agreement and recover the mortgage money or the mortgaged property. It is an action in rem, which means it involves the enforcement of a right in rem, specifically the right to the property that has been pledged as security for the loan [Booz Allen and Hamilton Inc. VS SBI Home Finance Ltd.]. The suit is filed by the mortgagee, who is seeking to recover the mortgage money or take possession of the property if the mortgagor fails to repay the loan [Bhani VS Ram Karan].

In a mortgage suit, the plaintiff needs to establish the existence of the mortgage agreement and the amount of money owed. The suit may also involve determining the validity of the mortgage, the right of redemption, and any other rights and obligations of the parties involved [N.Saileswaran VS ING Vysya Bank Limited]. The plaintiff may seek a preliminary decree of redemption, which directs the defendant to deposit the mortgage deed and hand over vacant possession of the property [Murari Lal Dubey, S/o Late Shiv Adhia Dubey, Resident Of Mohalla-new Godown, P. S. Kotwali, District-gaya. VS Shailesh Kumar Pandey, S/o Late Jagdish Narayan Pandey]. If the defendant fails to comply, the court may order the property to be delivered through the process of the court [Wattni VS Biru].

It is important to note that a mortgage suit is not simply a suit for money. It is an action in rem that involves the enforcement of a right in rem, which distinguishes it from a money suit [Deccan Chronicle Holdings Limited VS L&T Finance Limited]. A money suit, on the other hand, is filed to recover a debt or money owed by the defendant to the plaintiff, without any specific

rights over property being asserted [Deccan Chronicle Holdings Limited Vs L&T Finance Limited].

In terms of the procedure, a mortgage suit needs to be filed within the applicable limitation period, which is typically 12 years from the date the money sued for becomes due [Tamil Nadu Industrial Investment Corporation Limited, represented by its Branch Manager, Special Recovery Branch, Chennai-600 035 VS Kalathi & Co., represented by its Managing Partner, No. 1/11A, (New No. 22/20), Sorakkaipettai Village & Post, Pallipattu 631 208]. The suit may involve the examination of documentary evidence, such as the mortgage agreement and any subsequent transactions related to the mortgage [Pritam Kaur VS Ram Chander]. The court will consider the evidence presented by both parties and make a decision based on the applicable laws and regulations [Interaccess Marine Bunkering Ltd. & Others VS K. M. Allauddin & Another].

In summary, a mortgage suit is a legal action taken to enforce the terms of a mortgage agreement and recover the mortgage money or the mortgaged property. It is an action in rem that involves the enforcement of a right in rem. The suit needs to establish the existence of the mortgage, determine the amount owed, and may involve other related issues such as the validity of the mortgage and the right of redemption. It is important to file the suit within the applicable limitation period and present relevant evidence to support the claims made in the suit.

1) M. Pundarikakshudu V/s. Kuppa Venkata Krishna Sastri . S.A.No. 1711/1952; Judgment dt. 18-08-1955 - The presumption under Sec. 118 (a) of the Negotiable Instruments Act that a promissory note was executed for consideration would apply to the promissory note sued on. The decisions referred to above enable the debtors to plead that a later promissory note in renewal of an earlier one was executed merely as a voucher acknowledging the earlier debt and in many cases the plea has been sought to be substantiated by oral evidence of an unreliable character.

2) Vaddadi Venkataswami V/s. Hanura Noor Mahammad Beegum. S.A.No. 2048/1950; Date of judgment. 02-12-1954 - Section 46 of the Negotiable Instruments Act provides only for one mode of transfer i.e. by negotiating an instrument by means of endorsement and delivery. The use of

the expressions 'indorsed' and 'transferred' in Sec.43 and 'indorsed', 'transferred' and 'negotiated' in Sec.118 of the Negotiable Instruments Act indicate that transfer otherwise than by negotiation is permissible and the Negotiable Instruments Act does not prohibit other modes of assignment, Sec.130 of the Transfer of Property Act.

3) M. Satyanarayana @ Pedda Raju v. Katama Raju & Anr C.R.P. No 614 and 717/2009; Date of judgment. 15-04-2009 - Bona fide mistake committed can be rectified under Section 151, CPC in the interests of justice when no prejudice is caused thereby to other side.

The Supreme Court has decided on several money recovery suit. These rulings have helped plaintiffs and defendants understand the law.

Union of India v. Hindustan Construction Company Ltd. is significant. The Supreme Court ruled that a money recovery litigation must be filed within three years. A plaintiff must sue within three years of the cause of action.

State of Andhra Pradesh v. M.V. Prakash Rao is another noteworthy case. In this decision, the Supreme Court ruled that a plaintiff can recover interest. Courts set interest rates.

The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A judge, however, is not expected to drift away from pronouncing upon a controversy, and to sit in judgment over the conduct of the judicial or quasi judicial authority, or the parties before him and indulge in criticism and commenting thereon unless such conduct comes, of necessity under review and the expression becomes part of reasoning to arrive at a conclusion necessary to decide the main controversy. So far as possible a judge should avoid derogatory and disparaging remarks. Nonetheless, subtle irony, detectable only by the cognoscenti, is a useful in conveying a key point in the reasoning of a judge. "A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The

availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge”

## **CONCLUSION**

Mortgage transaction is transfer of an interest in immovable property. Mortgage is said to be completed when all the essentials of it are fulfilled. Mortgage transactions, along with their essentials, put some rights and duties on mortgagor and mortgagee. Relationship between mortgagor and mortgagee is that of debtor and creditor. The object of mortgage is to secure debt. In case of default in payment, mortgagee has remedy to recoup money given by sale, foreclosure, where terms of mortgage permit it. Mortgage has a very wide scope, from giving rights to parties, creating formalities for creating mortgage (section 59), and redemption clause and its variants. Mortgage transactions are different from Pledge, Lease, charge. To determine whether it is a mortgage transaction or any other, a test is to be conducted that whether the purpose of transaction is enjoyment of property by the transferee or whether it is intended to secure repayment of debt by transferor. Hence, in case of mortgage, the latter part is the intention of party. Therefore, there is no transfer of ownership; rather, it is transfer of possession for a specified time in mortgage transaction.

Money recovery suits provide a legal recourse for individuals and businesses in Indore to reclaim outstanding debts when all other attempts at resolution have failed. Understanding the legal framework and procedural steps involved in pursuing a money recovery suit is crucial for a successful outcome. By following the prescribed process, gathering relevant evidence, and seeking legal guidance, aggrieved parties in Indore can assert their rights and seek fair compensation for unpaid debts. It is important to consult with an experienced lawyer who specializes in civil litigation to navigate the complexities of the legal system and maximize the chances of a favorable judgment.