

Canara Bank vs. Kuldeep Sharma and others

CMPMO No.450 of 2023

30.07.2025 Present: Ms. Kiran Sharma, Advocate, vice Mr. Hem Singh Thakur, Advocate, for the petitioner.

Mr. Mohit Jaitak, Advocate, vice Mr. Parmod Singh Thakur, Advocate, for respondent No.1, through video conferencing.

Respondent No.4 ex parte vide order dated 27.09.2023.

Mr. Anil Kumar God, Advocate, for respondent No.5.

Learned vice counsel appearing on behalf of respondent No.1 has placed reliance upon the decision of the Hon'ble Supreme Court in ***Mardia Chemicals Ltd. and others vs. Union of India and others along-with connected matters, 2004(4) SCC, 311.*** Relevant extract, whereupon, reliance has been placed is being reproduced here-in-below:-

"51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely [V.Narasimhachariar](#) (supra) p.135 at p.141 and 144, a judgment of the learned single Judge where it is observed as follows in para 22: (AIR p.143).

"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms

of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams v. Scott, (1859) 7 WR (Eng.) 213 (Z49). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Rashbehary Ghose Law of Mortgages, Vol.II, Fourth Edn., page 784)."

Faced with the aforesaid, learned counsel for the petitioner seeks time to have instructions in the matter.

As prayed, list after two weeks.

July 30, 2025 (KS)

(Bipin C. Negi)
Judge