

ORDER SHEET  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE  
COMMERCIAL DIVISION

IA NO. GA/1/2023  
In CS/63/2024

CALCUTTA COMMERCIAL BANK LTD. (IN LIQN)  
Vs  
PRADIP NAHAR

WITH

IA NO. GA-COM/3/2023  
In CS/63/2024

CALCUTTA COMMERCIAL BANK LTD. (IN LIQN)  
Vs  
PRADIP NAHAR

BEFORE:  
THE HON'BLE JUSTICE SUGATO MAJUMDAR  
**Date: 3<sup>rd</sup> April, 2025**

Appearance:

Mr. Pranit Roy, Sr. Adv.  
Ms. Atmaja Bandopadhyay, Adv.  
Mrs. Soma Mishra Chatterjee, Adv.  
...for the Official Liquidator.

Mr. Anirban Bose, Adv.  
Mr. Subhodeep Sen, Adv.  
Mr. Joydeep Dhar, Adv.  
...for the Defendant.

Mr. Shyamal Chakraborty, Adv.  
Mr. Debajyoti Mondal, Adv.  
Mr. Palash Goswami, Adv.  
Mr. Jayanta Kr. Dhar, Adv.  
...for the Intervener.

The Court: The instant application is filed by Sri Sohan Lal Mishra and Sri Rajesh Kumar Modi praying for allowing them to intervene in the suit, along with other prayers.

Contention of the Petitioners can be summarized as follow:

- a) One Bikram Singh Nahar, since deceased, executed a deed of mortgage in favour of Calcutta Commercial Bank Ltd. in respect of certain properties situated in District-Deoghar, within the present State of Jharkhand. The Deed of Mortgage was executed on 12/12/1944, in order to obtain a loan of Rs.1,80,000/- from the aforesaid bank. The loan was to be repaid within three years at an early instalment of Rs.60,000/- each year. But the said Bikram Singh Nahar failed to repay the loan. When the bank went into liquidation, the Official Liquidator filed the Suit No. 1296 of 1950 in this Court praying for a decree along with other prayers.
- b) The suit was finally decreed with liberty to the decree holder to sell the mortgage properties or sufficient part thereof with appropriation of Registrar of the Court to the best purchasers or to such purchasers that can be got for the same which may be considered sufficient.
- c) The said Bikram Singh Nahar died intestate leaving behind him his two sons Samar Singh Nahar and Pradip Singh Nahar who inherited the estate of the deceased.
- d) Samar Singh Nahar, as aforesaid, entered into an agreement for sale with the present Applicants in respect of certain properties which had been and still are mortgaged to the bank. The said

Samar Singh Nahar also received part payment of Rs.5,50,000/- as earnest money. The agreement for sale was duly registered in the office of the sub Registrar at Deoghar, in the year 2013, but subsequently, the said Samar Singh Nahar failed to execute deed of conveyance pursuant to the agreement of sale. The Petitioners were constrained to file, therefore, a Civil Suit being Suit No. 107 of 2021 in the Court of Civil Judge, Senior Division at Deoghar. The said suit was instituted against the said Samar Singh Nahar and his duly constituted attorney Sri Debashis Deb.

- e) The Petitioners came to know from the said suit that the deceased Bijay Singh Nahar left behind him two sons, namely, Samar Singh Nahar and Pradip Singh Nahar. The Petitioner approached the said Pradip Singh Nahar, the Respondent herein but the later expressed his difficulty in execution of a deed of sale since the suit properties were mortgaged with the bank, against which a suit was pending.
- f) On search, the Petitioners got information of the suit as well as passing off the preliminary and final decree. The Petitioners could gather knowledge that no execution proceeding has been initiated to enforce the decree passed in the Suit No. 1296 of 1950. No property has yet been sold too.
- g) The Petitioners have no interest adverse to the interest of the Defendant and/or to the legal heirs of the deceased but the applicants are interested for releasing the properties under the mortgage.

- h) The Petitioners, therefore, filed the instant application, praying, *inter alia*, for permission to intervene in the suit, assessment of the total dues of the bank, an order of redemption of mortgage along with other prayers.

The present Respondent, Pradip Singh Nahar opposed the application by filing affidavit-in-opposition. Contentions of the affidavit-in-opposition may be summarized as follow:

- i) Originally, the instant suit was filed by Calcutta Commercial Bank Ltd. (in liquidation) through the Official Liquidator against the predecessor-in-interest of the Respondent, for a decree for sale of the mortgaged property. The suit was decreed on 26/02/1952 for a sum of Rs.3,05,619.11p which included interest at a rate of 6% per annum. No decree for sale of the mortgaged property was passed. The decretal amount is still unpaid. The Respondents have inherited the sole and absolute right to redeem the mortgaged property.
- ii) The Petitioners have no right to be added as a party in the instant suit simplicitor on the strength of the agreement for sale. The said Samar Singh Nahar did not have the sole and absolute right to redeem the mortgage and duly revoked the power of attorney on the strength of which the agreement for sale was executed.
- iii) It is denied that the Petitioners approached the Respondent to execute a deed of conveyance pursuant to the agreement for sale.
- iv) According to the Respondent, the Petitioners are neither necessary nor proper party to be allowed to intervene in the suit.

- v) According to the Respondent, the instant application is liable to be dismissed.

The Official Liquidator filed affidavit-in-opposition. Referring to Section 60A(1) of the Transfer of Property Act, 1882, it is pleaded that the Petitioners never paid back any loan amount against the mortgaged property. Therefore, they have no right in the property. It is also contended that Samar Singh Nahar, since deceased alone could not convey the property since the property was undivided. The said Samar Singh Nahar had no right to enter into sale agreement in respect of the mortgaged property. It is contended that the agreement for sale in question is null and void, the petitioners has no legal right in the property and consequently cannot be allowed to intervene.

The Official Liquidator was allowed, in course of hearing of this application, to file a supplementary affidavit, in terms of the Order dated 04/03/2024. In the supplementary affidavit, it was contended on behalf of the Official Liquidator that the suit was originally instituted in the year 1950 and was subsequently renumbered as Suit No. 1296 of 1950. A registered deed of conveyance was executed on 30/12/1940 by one Gopendra Nath Ganguly in favour of Calcutta Commercial bank Ltd. There was another registered deed of conveyance dated 12/12/1944 whereby the same properties were conveyed to late Bikram Singh Nahar. The said Bikram Singh Nahar on the same date executed a deed of mortgage of the property so conveyed to Calcutta Commercial Bank Ltd.

It is further contended that the present suit was decreed on 05/04/1954 when the amount due was Rs.3,05,620/-. As on 10/05/2024 the decretal amount stands at Rs.5,22,62,024/- on account of accumulated interest at yearly rest. Particulars are given in details in the supplementary affidavit. It is contended that the property

may be sold and the proceeds may be credited to the account of the Official Liquidator.

Exceptions to this supplementary affidavit were filed.

Learned Senior Counsel Mr. Chakraborty submitted that his clients have invested huge sum of money for purchase of the mortgaged property. Referring to Section 57 of the Transfer of Property Act, 1882, it is further submitted that the present Petitioners have acquired right to purchase of the mortgaged property; they have also right to get the mortgaged property free from encumbrances. It is further submitted that they are ready and willing to pay the decretal amount to the Plaintiff. There is a further submission that the Defendant has lost the right of redemption as the same has become barred under Article 62 of the Limitation Act. In nutshell, it is canvassed that they may be arrayed as a party.

Mr. Bose, the Learned Counsel, appearing for the Defendant, submitted **firstly** that the property was a joint one and only one of the co-owners entered into agreement for sale which created no interest in favour of the Petitioner. **Secondly**, referring to Section 54 of the Transfer of Property Act, 1882, it is submitted that a contract of sale by itself did not create any interest or charge in the property. **Thirdly**, it is argued that the entire application is silent on repayment of the mortgaged money although this is argued by the Petitioner. **Fourthly**, it is argued that being one of the legal heirs of the original mortgager, it is the Respondent who has the right to redeem and not a third party.

I have heard the Learned Counsel as well as Mr. Roy, the Learned Counsel for the Official Liquidator.

Section 60 of the Transfer of Property Act, 1882 provides right of a mortgager to redeem. The Section is quoted hereinbelow:-

**“60. Right of mortgagor to redeem.**—At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage - money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished: Provided that the right conferred by this section has not been extinguished by act of the parties or by [decree] of a Court. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption. Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

**Redemption of portion of mortgaged property.**—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.”

Section 59A of the Transfer of Property Act, 1882 is also relevant for present consideration. It provides as follow:

**“59A. References to mortgagors and mortgagees to include persons deriving title from them.**—Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.”

A conjoint reading of these two sections convey an impression that the mortgager and mortgagee include their legal heirs and successors bringing them within ambit of Section 60. The present Petitioners are of course not legal heirs of the original mortgager.

An agreement for sale was executed, as alleged by the Petitioners, by one of the legal heirs of the original mortgager being the elder brother of the present Respondent.

**Firstly**, an agreement for sale, under Section 54 of the Transfer of Property Act, 1882 does not create any interest or charge on the property. **Secondly**, the said agreement for sale was executed by one of the co-owners in respect of the whole property without concurrence of the other co-owners. That agreement itself did not create any right of redemption or create any equity of redemption in favour of the present Petitioners, in preference to the right of redemption of the legal heirs of the original mortgager. **Thirdly**, although argued that the Petitioner is ready and willing to pay the mortgaged money, there is no pleading in the application expressing the intention of the Petitioner to pay mortgaged money. It is rather an application which contains a prayer that,

- a) an order be made that on payment of the amount being due to the Plaintiff out of the above mortgage, the properties under the said deed of mortgage shall be declared as released and mortgage is redeemed in respect of the properties covered under the said deed of mortgage dated 12<sup>th</sup> December, 1944 made in between the Plaintiff Bank and Bikram Singh Nahar;
- b) an order be made that on payment of the amount assessed as due to the Plaintiff decree passed in Suit No. 1296 of 1950 shall be declared as satisfied;

- c) A declaration be made that the Plaintiff Bank has no due against Bikram Singh Nahar or his legal heirs which arose out of the loan transaction in between the Plaintiff Bank and Bikram Singh Nahar in respect of which the Deed of Mortgage was made on 12/12/1944 in favour of the Plaintiff Bank which was registered as Deed No. 4353 for the years 1944 and which was registered before the Registrar of Assurance, R.A., Calcutta.

Section 60 of the Transfer of Property Act, 1882 which provides confers the right of redemption is very specific on its applicability. For redemption of mortgage, it is obligatory for the mortgagor to pay the mortgaged money or tender the same at a proper time and place. This section makes it clear that redemption is subject to payment of mortgaged money. The present Petitioners showed no *iota* of interest to pay the mortgaged money. If they are allowed to redeem the mortgage in terms of prayers made in the application, the very object of the aforesaid provision shall be defeated.

For reasons aforesaid and in view of the discussions made above, it is conclusion that the present Petitioners have no *locus standi* to intervene in the suit, nor they have any ostensible interest. Therefore, the instant application is not tenable and is dismissed hereby.

GA 1 of 2023 stands disposed of accordingly.

Fix 25<sup>th</sup> April, 2025 for further hearing of pending applications.

**(SUGATO MAJUMDAR, J.)**