

\$P IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7445 of 2000

WITH

CIVIL APPEAL NO.7446 of 2000

Abdul Basheer

...Appellant

Versus

Najmussaib (dead) By Lrs. & Ors.

...Respondents

J U D G M E N T

Both these appeals arise out of the decree passed by the High Court of Karnataka in RSA No.1125 of 1992. While the belated appeal by the plaintiffs in the suit challenges the decree for foreclosure in their favour, the appeal by the defendant-mortgagor challenges the refusal of the High Court to extend the time for depositing the mortgage money with interest to avert the foreclosure and to redeem the property.

2.By the Judgment and decree dated 24.7.1998 the High

Court reversed the judgments and decrees passed by

both the courts dismissing the suit for foreclosure by the mortgagees and decreed the suit for foreclosure, granting time to the mortgagor to deposit the mortgage money of Rs.6,000/- with interest thereon at 6% per annum, though the mortgage was a usufructuary mortgage. The mortgagor accepted the decree, but failed to deposit the amount within the time granted by the court. He applied for extension of time to deposit by I.A.VII. That prayer was rejected. Feeling aggrieved, C.A. No.7445 of 2000 is filed by the mortgagor. The plaintiffs-mortgagees have filed C.A. No.7446 of 2000, against the decree for foreclosure granted in their favour contending that the mortgage should have been foreclosed straightaway and no time should have been granted to the mortgagor or fixed in the decree for payment by the mortgagor of the mortgage money to avert foreclosure.

3.Though counsel for the mortgagees-appellants pursued that contention in their appeal, we find no merit in the same or in the appeal filed by the mortgagees. The appeal is also highly belated. The decree passed by the High Court is one in terms of Order XXXIV of the

Code Civil Procedure and calls for no interference. After all, the principle is that the mortgagor should be allowed to save the property mortgaged, until the last moment and the decree passed is only in terms of that principle.

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2000 is liable to be dismissed subject to the modification we have made hereunder.

4. It is submitted by counsel for the appellant in C.A. No. 7445 of 2000, the mortgagor, that the High Court ought to have extended the time for deposit of the mortgage money and interest and the time may be extended by this Court in the circumstances of the case.

He submitted that the mortgagor should be given one more opportunity to save the property mortgaged even if

this Court finds that he has not been diligent in the matter of depositing the mortgage money and interest.

Learned counsel for the mortgagees submitted that the mortgagor has not come with clean hands to this Court

and that he is guilty of suppression of relevant facts. He

cited authorities for the position that if true facts are not

disclosed, the leave granted to the

mortgagor could be revoked. Though there can be no

quarrel with that proposition, on the facts and in the

circumstances of the case, we do not find any justification for taking recourse to revocation of the leave granted. It cannot be said that the mortgagor had been guilty of such suppression as to warrant such revocation.

5. We find that the property, which was a godown, was originally usufructuarily mortgaged for a sum of Rs.6,000/-. Considering the nature of the property, the contentions raised in the suit, the factum of the dismissal of the suit by the trial court and the first appellate court, the nature of the decree passed by the High Court and the circumstances of the case as a whole, we are satisfied that the mortgagor should be given one more opportunity to save the property by depositing the mortgage money. But we feel that for having dragged the mortgagees to this Court, we should make him liable for a substantial sum of money by way of costs of the mortgagee.

6. Therefore, on the previous date when the hearing remained part-heard, we asked counsel for the mortgagor whether the mortgagor was willing to deposit a sum of Rs.1,00,000/- towards the amount due under

all heads under the decree passed by the High Court.

Today, learned counsel for the mortgagor submitted that

the mortgagor was willing to deposit a sum of

Rs.1,00,000/- in the trial court within a period of four

week from today, in full discharge of his liability under

the mortgage and for saving the property. We accept

this offer on the side of the mortgagor, though counsel

for the mortgagees has urged us not to interfere with the

order of the High Court. We find that the High Court

should have

granted an extension of time to the mortgagor. We,

therefore, direct that the time for deposit of the mortgage

money and the interest and costs which we quantify at

Rs.1,00,000/-, should be deposited by the mortgagor in

the trial court, within a period of four weeks from today.

In other words, we extend the time for deposit filed by

the High Court by four weeks from today, even while we

enhance the amount to be deposited to Rs.1,00,000/-.

7. We, therefore, allow C.A. No.7445 of 2000, set aside the

Order of the High Court in I.A.VII and order that the

time for deposit fixed by the High Court will stand

extended by four weeks from today and the amount to

be deposited by the appellant pursuant to the decree will stand enhanced to Rs.1,00,000/-. The mortgagor should deposit the said amount in the trial court within a period of four weeks from today and give notice of the deposit to the mortgagees-plaintiffs, or to counsel who was appearing for them in the trial court. On deposit of the said amount the property will stand released from the mortgage and all claims of the mortgagees would stand satisfied. If the amount of Rs.1,00,000/- is not deposited within a period of four weeks from today, the order of the High Court challenged in C.A. No.7445 of 2000 refusing to extend the time will stand confirmed and the mortgage will stand foreclosed. If the amount is deposited within the time as fixed by us, the trial court will disburse the amount to the plaintiffs-mortgagees in accordance with law and in terms of the decree.

8. Thus, C.A. No.7445 of 2000 will stand allowed in the above manner and C.A. No.7446 of 2000 will stand disposed of subject to the modification in the amount to be deposited .

.....J.

(A.K. MATHUR)

.....J.

(P.K. BALASUBRAMANYAN)

NEW DELHI

FEBRUARY 06, 2007

ITEM NO.101

COURT NO.9

SECTION IVA

(P.H)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7445 OF 2000

ABDUL BASHEER

Appellant (s)

VERSUS

NAJMUSSAQIB(DEAD) BY LRS. AND ORS.

Respondent(s)

(With appln(s) for early hearing)

WITH

CA No.7446/2000

(With appln. for early hearing)

Date: 06/02/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

