

CHAPTER XIII

MORTGAGE SUITS

303. The following are the rules made by the High Court under section 104 of the Transfer of Property Act :--

I. In these rules, unless there is something repugnant in the subject or context, “mortgagor” includes every person entitled under a decree or otherwise to redeem the mortgaged property;

and

“mortgagee” includes every person entitled under a decree or otherwise to the rights of the mortgagee.

II. A mortgagor making a deposit or a payment into Court under Chapter IV of the Act shall file a verified petition stating the facts of the case.

III. Unless otherwise ordered, the mortgagor shall, in addition to the amount due, deposit or pay into Court a sum sufficient to provide for,---

- (a) The mortgagee's costs of obtaining payment out of Court;
- (b) The mortgagee's costs, when the payment is made under section 83 of the Act, of executing or registering (1) a re-conveyance in the case of an English mortgage, or (2) an acknowledgment of the discharge of the mortgage in other cases,
- (c) The interest of which the mortgagee may be entitled under the 2nd paragraph of section 84 of the Act.

IV. If the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amounts due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee.

V. Where in a suit for foreclosure, the mortgagor has before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as

is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to mortgagor mesne profits for the period beginning with the institution of the suit.

VI. The Court by endorsement on the mortgagor's petition may order the deposit or payment to be received by the Nazir. Such order shall specify the several sums to be deposited or paid and the purpose for which each sum is intended.

VII. The mortgagor's petition shall be entered in the Register of Miscellaneous Applications requiring judicial enquiry.

VIII. Unless the mortgagee has already put in his appearance, the Court shall issue a notice of the deposit or payment to the mortgagee requiring him to deposit in Court on a day to be fixed by it all documents in his possession or power relating to the mortgaged property and also the mortgage deed when such payment is made under section 83 of the Act.

IX. Subject to the provision of section 102 of the Act, the notice shall be served and its service shall be proved in the manner prescribed by the Code of Civil Procedure and Civil Manual.

X. Every application by a mortgagee to obtain payment of money out of Court shall be made by a verified petition accompanied by such of the documents mentioned in rule VI as have not been deposited in Court and, when necessary, by a draft deed of re-conveyance of the mortgaged property or acknowledgment of discharge of the mortgage, as the case may be.

XI. A mortgagee applying for payment of money deposited under section 83 of the Act, shall be required, if in possession, to deliver up possession of the mortgaged property to the mortgagor. No payment shall be made to the mortgagee unless he has handed over possession and executed a deed of re-conveyance or acknowledgment as the case may be.

XII. Every enforceable order under section 83 may be enforced under the provisions of the Code of Civil Procedure and shall for that purpose be deemed to have been made in a suit instituted under that Code.

XIII. The provisions hereinbefore contained as to a mortgagor and mortgagee

shall, so far as may be, respectively apply to the owner of immovable property, subject to a charge (as defined in section 100 of the Act) and the person having such charge.