**APPLICATION UNDER ORDER 34, C. P. C.**

IN THE COURT OF....................

Suit No.............. of 19..................

C. D................................................................... Plaintiff

*versus*

C. F................................................................ Defendant

The applicant most respectfully submits as under: —

1. That a preliminary decree for redemption of the mortgaged property was passed by the Court on............................ (date) in favour of the plaintiff.

2. That under the said decree the plaintiff was liable to pay Rs............................. to the defendant by............................ (date)

3. That the plaintiff (applicant) has paid all amounts due from him under the decree aforesaid in the court vide receipt annexed to the application.

**PRAYER**

It is therefore most respectfully prayed that the mortgaged property or part thereof has been sold in pursuance of a decree. The plaintiff must make a payment in addition to the amount due under the decree together with a sum equal to ............................ % of the amount of the purchase money paid into the court by the purchaser.

It is accordingly prayed.

Plaintiff

Through Advocate

Place

Dated:

**CASE LAW**

**ORDER 34, RULE 1, PARTIES TO SUITS FOR FORECLOSURE, SALE AND REDEMPTION.**

**WHEN GUARANTOR MAY BE PROCEEDED AGAINST — GUIDANCE FOR.**

The decree in execution is a comprehensive decree, personally against the defendants including the respondent and also against the mortgaged property. Since

a portion of the decreed amount is covered by the mortgage, the decree-holder has to proceed against the mortgaged property first and then proceed against the guarantor.

But where the decree-holder had proceeded against the mortgaged property and also against the principal debtor, execution against the guarantor is maintainable1.

**APPLICATION FOR REDEMPTION FILED WITHIN LIMITATION PERIOD — INTIMATION OF — ISSUED THROUGH POST — POSTMAN REPORTED OF NOT FINDING HIM IN THE VILLAGE — DISMISSAL IN DEFAULT — ON THIS POSTAL REPORT — IMPROPER.**

Where the appellant had made an application for redemption within limitation period. But the postman reported as to the information issued to him through post that he was not found in the village, and the application for redemption was dismissed on this postal report. Held that the application for redemption would be within time in this view of the matter on disregarding the illegal order of dismissal for default. The application for redemption was directed to be taken on file for being disposed of in accordance with law treating the same as within time2.

**OUTER LIMIT FOR USUFRUCTURY MORTGAGE.**

***Order 34 Rules 7 and 8***

The order limit for an usufructuary mortgagor for making payment of the amount due under the preliminary decree is passing of the final decree or the date of confirmation of the sale3.

**SCOPE OF THE RULE.**

A proceeding is a prescribed course of action for the enforcement of a legal right, e. g., the right of the plaintiff to apply for a final decree. Such right was to be enforced by the making of an application as prescribed by Rule 5 (3) of Order 34, when the High Court by its order stayed all further proceedings in the suit, the effect of it was that the action that would be taken for the passing of a final decree was also stayed. In other words, the filing of an application for a final decree, the court cannot entertain such an application4.

**APPLICABILITY OF THE RULE**

Order XXXIV, Rule 5 Civil Procedure Code is applicable and not the general provision of Section 148 for the jurisdiction for extention of time for deposit of the price of redemption5.

**NECESSITY FOR FINAL DECREE.**

In a case where only a money decree has been passed initially a final decree under this rule is not necessary although the decretal amount by sale of the judgment-debtor’s property. Where however the property is charged without payment of the decreetal amount, the proper mode of realising the decreetal amount is to obtain a decree absolute for sale6.

**COMPETENCY OF COURT.**

In a mortgage suit the Court by virtue of the provisions contained in order 34 Rule 5(3), Code of Civil Procedure is competent while passing a final decree to direct that the mortgaged property or a sufficient part thereof be sold7.

**COURT’S OBLIGATION UNDER THE RULE**

The Court is bound to set aside the sale under this Rule if the payment has been made before confirmation8.

**SCOPE OF THE RULE**

A suit relating to a mortgage should not be dismissed by reason of non-joinder of parties unless the parties are necessary parties and non-joinder affects the merits of the case. If the parties are merely proper parties, as distinguished from necessary parties, the Court may, though the plaintiff refuses to add them as parties, proceed under O. 1 R. 9 to deal with the matter in controversy so far as regards the rights and interests of the parties before it9.

**SCOPE OF SUIT FOR REDEMPTION**

In a suit for redemption of a mortgage the question of paramount title to the mortgaged property cannot be gone into10.

1. Union bank of India v. Monku Narayana, (1987) 2 S. C. C. 335.

2. Shir Singh v. Assistant Custodian General and others, (1987) 1 S. C. C. 605.

3. K. Parameswaran Pillai v. K. Sumathi @ Jesis Jessie Jacquiline, 1993 (3) C. C. C. 99 (S. C.).

4. Reba Sircar v. Bisweswar Lal, A. I. R. 1980 Cal. 328: (1980) 84 Cal. W. N. 552: 1980 (1) Cal. H. N. 528: (1980) 1 Cal. L. J. 421.

5. Sulaikha Kunju v. Krishna Pillai, 1985 (1) C. C. C. 813 (814).

6. L. C. Bank v. A. R. M. & Co., A. I. R. 1972 Delhi 118.

7. M/s. Satwant Kochhar & Co. v. Punjab National Bank, New Delhi, 1985 (1) C. C. C. 603 (Delhi).

8. M. Sheck Ali v. State Bank of India (Mad. H. C. ), 1985 (2) C. C. C. 198.

9. Housabai Vishnu Yadav v. Kashinath Padharinath Vanpal, (1972) 74 B. L. R. 706.

10. Sita Ram San v. Islam Mian, A. I. R 1973 Pat. 25.