

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sayyid
Mansur Ali Khan v. Sarju Parshad from the
High Court of Judicature for the North-
Western Provinces of India ; delivered 13th July
1886.*

Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

THE suit which is the subject of this appeal was brought by the Appellant for the redemption of a mortgage made by his deceased brother, Sayyid Zahur Ali Khan, to whose estate the Appellant had succeeded by inheritance. The mortgage was by a conditional sale to the Respondent, dated the 14th of March 1868, to secure the payment of Rs. 11,200 which had been borrowed by the mortgagor, and interest thereon at the rate of Rs. 1. 4a. Op. per cent. per mensem, being Rs. 1,680. The condition was that the interest should be paid annually for seven years, with compound interest if it was not paid at the stipulated periods, to be realised from the person and property of the mortgagor, and the principal sum of Rs. 11,200 and Rs. 1,680 on account of interest for the last year was to be paid on 6th Badi Chait (28th March 1875). On the 23rd of April 1875, after the expiration of the time fixed, the mortgagee filed a petition under the Bengal Regulation 17 of 1806, in which he claimed Rs. 17,304 7a. Op. as due for principal and interest, being the principal sum and three years' interest and compound

▲ 22943. 125.—7/86. Wt. 5607. E. & S.

interest thereon. A notification was thereupon issued by the Judge according to the Regulation, but the service of it was not effected till the 20th January 1880. On the 17th of January 1881 the mortgagor deposited in the Judge's Court Rs. 12,881, the principal sum and interest for the last year, with a petition alleging that the interest for the previous years was, according to the condition, to be recovered by a separate suit, and on the 20th of January 1881 he brought this suit.

The Lower Courts have given Judgements at considerable length upon the construction of the mortgage deed, the Subordinate Judge holding that the Appellant was entitled to redeem, and the High Court reversing that decision and dismissing the suit. It does not appear to their Lordships to be necessary to consider the construction of the deed. In the part of India where the Regulation is in force, the right to redeem depends entirely upon it. The words of section 7 are, that where the mortgagee has not been put in possession of the mortgaged property (which was the case in this mortgage), the payment or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgagor to the redemption of his property before the mortgage is finally foreclosed in the manner provided by the 8th section. That section gives the mortgagor one year from the date of the notification to redeem the property, and says that if he does not do so in the manner provided by the 7th section, the mortgage will be finally foreclosed and the conditional sale will become conclusive. It could not be denied by the Appellant's counsel that much more than one year's interest was due. Indeed the arrear of interest had continued to increase from the 23rd April 1875 till the date of the deposit.

The mortgagor had clearly not done what was necessary by the terms of the Regulation to entitle him to the redemption, and for that reason their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal. The Appellant will pay the costs of it.

