KREGLINGER'S RULE AND INDIAN LAW: A LEGAL APPRAISAL OF DOCTRINE OF COLLATERAL BENEFIT

By Sharadindu Shekhar
From School of Law, Bennett University

I-Introduction

In certain cases, the lender may be eligible for anything in addition to the payment of the main balance, interests, and costs of the loan, depending on the conditions of the mortgage. The conditions and characteristics of each mortgage determine whether or not that amendment in the form of addition constitutes a hindrance to redemption.

The fundamental principle is that if the 'something extra' is an onerous deal, unjust or unreasonable, in the form of punishment, or incompatible with the legally recognized entitlement to redeem, the Court will strike it down. Other than that, such a mortgage will be considered legitimate.

Given the aforementioned assertion, an examination of the essence of collateral benefit to the mortgage holder has been conducted by integrating different parameters to understand this concept, which will include the discourse of the legal title of the borrower to redeem, principle of blockage on reclamation, judicial advancement of the postulate of collateral benefit to the lender under English law, and the Indian judiciary's position on Kreglinger's rule in the broad sense.

II- Redeeming Privilege of a Mortgagor

As per laws in India, a borrower is a proprietor who has relinquished certain ownership and control, and entitlement of reclamation is a privilege that he exerts as a result of his supererogatory proprietorship to reclaim what he has relinquished.\(^1\) The clause confirms a privilege of redemption throughout all mortgages, implementing the Privy Council's recommendations in Thumbuswamy's judgment\(^2\) that the legislature must intercede to establish a privilege to redeem in conditional sale mortgages. Nonetheless, as declared by the Judicial Committee and subsequently reiterated by the Apex Court, in India, this privilege of reclamation is fundamental and hence a legal entitlement.\(^3\)

Section 60 states that the borrower has the authority to compel the mortgage holder to convey the mortgage assignment and then all documents about the mortgaged estate, and where the mortgage holder is in the custody of the mortgaged asset, to convey custody thereof of the lienborrower, anywhere at the moment after payment would become largely attributable, on reimbursement or tender of the loan at an appropriate location and time.\(^4\) In English law, sucha power of the loan originator is known as the equitable privilege of redemption. In exercising his ownership rights, the borrower, as a proprietor who has relinquished a certain title to the property, has the authority to reclaim the mortgage instrument or pledged asset. The privilege of reclamation

\(^{1}\) Ms L K Trust v EDC Ltd, AIR 2011 SC 2060
\(^{2}\) (1875) ILR 1 Mad 1: 2 IA 241.
\(^{3}\) Id. at 1.
established by the TP Act of 1882 is therefore a procedural and substantive entitlement that cannot be waived through any arrangement entered as part of the transaction consideration at the outset of the borrowing.\textsuperscript{5} It is widely established that the mortgagor's capacity to cope with the mortgaged estate, as well as the limitations to which it is susceptible, is determined by the characteristics of this control, which is conditioned by the mortgagee's entitlement to recoup his monies from the operations. The mortgagor's entitlement to retrieve the property is an enormous advantage. Even before the mortgage is repossessed or the property is auctioned, the right to redeem the mortgage may be invoked. The lender must be given sufficient communication of the mortgagor's desire to reclaim, and the borrower must completely satisfy his responsibilities under the mortgage.\textsuperscript{6} A mortgagor is entitled to do all reasonable measures to preserve his right to recover the mortgaged estate.\textsuperscript{7}

The privilege of reclamation is a feature of a mortgage that lasted about as long as the borrowing does. It may be eliminated as stated in the provision, and if it is purported to be annihilated by a judgment, the declaration must follow the format relevant to the objectives. The presence of a "mortgage" is required for redeeming. A mortgage is a conveyance of a stake in immovable property to guarantee the repayment of a debt, as outlined by the TP Act of 1882. It is formed as a result of the actions of the persons involved. After that the main money has now become payable, the borrower must claim the mortgage amount and, upon the same deposit, he has the authority to demand the mortgage holder to surrender occupancy, as stated under section 60 of the TP Act, 1882.\textsuperscript{8} This privilege may only be terminated by the parties themselves or by a court order. The capacity to redeem is the name given to this privilege, and an action to execute it is known as a lawsuit for redeeming. Consequently, the primary purpose of an action for reclamation is to preserve the authority to make a mortgage repayment. Although the decision entered in the litigation may eventually affect occupancy, which is alba property claim, a demand to recover as mortgage doesn't at all belong to the land. The section goes on to clarify when the right of redeeming originates, how it is performed, and what the mortgagor's redeeming entitlements entail. Normally, and in the exclusion of a unique provision allowing the borrower to reclaim even during the duration of the mortgage, the claim of reclamation may only emerge at the end of the specified time. The mortgagor's power of redeeming is implemented via paying or tendering the borrowed amount to the mortgage holder at a suitable moment and place. Once it is terminated by the conduct of participants, the conduct should assume the shape laid down by law and follow the requirements.

**III- Bottleneck on Redemption or Reclamation**

As expressly stated by Lord Davey in *Rice v Noakes* as well as quoted with agreement by Viscount Haldane in *Krelinger v New Patagonia*, the concept may be summarized as "once a mortgage, always a mortgage, it's...

\textsuperscript{6} Achaldas Durgaji Oswal v Ramvilas Gangabisan Heda, (2003) 3 SCC 614. 
\textsuperscript{7} Vasu P Shetty v Hotel Vandana Palace, (2014) 5 SCC 660. 
\textsuperscript{8} Gautum Lal v Sukhlal, AIR 2011 Raj. 57.
nothing but a mortgage." In plain English, the mortgagee cannot impose any restriction that prevents a borrower who has settled primary money, dividend, and expenses from receiving his underlying asset in the same precondition as when he left it. It is a reasonable interest in the estate (which is transferrable) that is an inalienable component of a mortgage that cannot be ripped away by the stakeholders without their explicit consent. When a provision is found to constitute a substantial impediment to the entitlement to redemption, it is immediately invalid.\(^9\)

A mortgage may always be repaid. A mortgagor's entitlement to redemption is a natural process. Regardless of any caveat to the flipside, a borrower has the prerogative to reclaim his estate independent of all settings or encumbrances at whichever moment just after paramount payment has now become due for payment but before his equity of redeeming has been shuttered (i.e., a decree has been forwarded in a repossession suit). This privilege of redeeming cannot be forcibly removed from him by any statute or agreement; it is inextricably linked to the mortgage. It cannot be changed into a transaction by the mortgagee's voluntary conduct. The proverb "once a mortgage, always a mortgage" perfectly encapsulates this idea.\(^10\)

Because the fundamental purpose of a mortgage is to provide the creditor with payment in full of his lending, the creditor should not be entitled to keep the security of the payment is received from the debtor within a specific timeframe after he demands it. Forfeiture of the asset for non-payment somewhat on deadline would indeed be inherently unfair. For example, the creditor may hide to avoid payment, or an unforeseen occurrence may prohibit the debtor from having enough money available.\(^11\)

There are no terms like "in the absence of any agreement to the opposite" before the section. As a result, the privilege of restoration is a statutory duty that cannot be limited according to any circumstance that obstructs or prohibits redeeming. Any stipulation in a mortgage assignment that inhibits the privilege of reclamation will be regarded as a bottleneck or shackle on reclamation and will also be unenforceable and invalid, according to the law. That's because the parties involved in a mortgage arrangement, the borrower and the lender, are not on equal ground. Even when the borrowing terms in the credit agreement restrict the borrower from reclaiming his asset, the borrower would have had no choice but to accept those. In such a case, the law is there to protect the mortgagor's welfare by preventing the lender from exploiting situations that are intrinsically disadvantageous to the borrower. Consequently, any restriction imposed on the borrower in the mortgage instrument that precludes the borrower from reclaiming the assets may be legitimately disregarded by the borrower sans compromising the mortgage's legality.\(^12\)


\(^{10}\) POONAM PRADHAN SAXENA, MULLA’S THE TRANSFER OF PROPERTY ACT 506 (11th ed. 2012).

\(^{11}\) Supra note 10, at 504

\(^{12}\) Id. at 11.
Pollock regarded the concept as anachronistic and urged that it be modernized by restricting it to circumstances in which there was anything onerous or immoral in the agreement. Nevertheless, it is recognized policy in India (by legislation) that a mortgage (save for companies) cannot be rendered entirely irredeemable, nor can the privilege of reclamation be rendered fictitious. Any provision stating that assets will be lost if payment is not made on time, is a punishment. Any stipulation that penalizes the borrower would be a sticking point. The theory is based on the principles of fairness, righteousness, and morality. It should be emphasized, nevertheless, that the theory only applies to transactions that occur between both the participants to a mortgage at the time the agreement is signed. It doesn't qualify if they later change the conditions whereby the borrowing may be repaid. The theory also applies to the entitlements of the mortgagee antecedent to the contract.

**IV- Judicial Development in England of the Principle of Collateral Advantage to the Mortgagor: From Biggs to Kreglinger**

The borrower in Biggs Case was a hotel owner who overleveraged his establishment to a brewer. The borrower and the lender acknowledged in the mortgaged instrument that throughout the five-year term of the mortgage, the lender will only serve alcohol to the borrower and the borrower would only purchase alcohol from the lender. Following two years, the mortgagors ceased purchasing the lenders and demanded the loan be repaid. The Court of Appeal concluded that the borrower must purchase solely from the creditor throughout the five-year mortgaged term and that there could be no redeeming before the scheduled time. The Court went on to say that such a provision would not be a roadblock to reclamation since the contract did not unduly jeopardize the borrower's right to reclaim as it only pertained to the mortgage's term. In business deals, fairness will provide for minimal ancillary benefits.

A café/pub landlord in another case had taken up a mortgage that obligated him to offer sole use of the brewery's goods for the rest of the lease period, irrespective of when the loan was repaid. Since the period did not terminate with the loan's discharge, the Court determined that it provided an undue collateral incentive. The notion was further restrained by the judgment in Kreglinger, wherein the creditor consented to grant £10,000 for ten years, with the debtor having the option to return on 30 days' notification. The creditor imposed a floating charge on the debtor's assets as collateral. The debtor decided to sell his or their animal hides to the creditor first rather than selling them anywhere. When the debt was returned prematurely, the issue about whether the option of the first selection retained emerged. The House of Lords determined that the decision to refuse provision was not a key barrier. It was a side benefit that was neither unreasonable nor unjustifiable. Lord Haldane argued in support of that ruling, arguing that the concept ought not to be extended outside the needs of circumstances that were not genuinely mortgage related. He also

---

13 MEGGARY & WADE, LAW OF REAL PROPERTY 893-4 (2d ed.).
14 Biggs v Hoddinott, (1898) 2 Ch 307.
15 Noakes v Rice (1902) A.C. 24.
emphasized that every case was unique, and that past judgment were not always authoritative. Lord Mersey proceeded even farther, comparing the idea to "an untamed canine that, if not firmly tied to one's enclosure, is inclined to go into areas it should never be."\(^{16}\)

Lord Parker conducted a detailed analysis of the judicial pronouncements in Kreglinger’s case, and his findings have been recognized confidently as reflecting the position of the rules at the time. Lord Parker concluded that a mortgage conferring an ancillary advantage on a lender was not illegal. A clause granting one such incentive, on the other hand, would be unacceptable if it fell into one of the three main categories as highlighted below.

To begin with, if a stipulation offering the lender a tangible benefit was immoral and unreasonable, it would be null and unenforceable.\(^{17}\)

The second reason for contesting a stipulation suggested by Lord Parker was about whether it may be viewed as a penalty impeding the fairness of reclamation. He provided, as an illustration, a provision granting the mortgagee the potential to control possession of the mortgaged property as a result of the mortgagor's failure.\(^{18}\)

A stipulation that was incompatible with or objectionable to the reasonable entitlement to redemption was the third kind defined by Lord Parker. *Samuel v Jarrah Timber and Wood Paving Corporation Ltd* is an instance of this kind of requirement, according to His Lordship. In such a situation, any party might return the debt with thirty days' mention, but the lender was granted a twelve-month opportunity to purchase the underlying asset. The mortgagor would have been unable to utilize either the formal contractual stipulation or reasonable option to acquire the property if the lender accepted the alternative. As a result, Lord Parker considered the clause invalid and a stumbling block to redeeming fairness. While the courts have consistently analysed the mortgagee's conduct against Lord Parker's first classification, that is, disparity and unconscionability, components of those do matter of fact underpin the workout of the authority to help alleviate the borrower, in the contemporary commercial environment the above classifications are easily recognizable from the facts and circumstances.\(^{19}\)

---

18 Id. at 40
19 Id. at 41.
In India, a collateral privilege that lasts longer than the reclamation time is void. A perpetual lease issued by a borrower to a mortgage holder was ruled down by Chief Justice Sargent because the stakeholders were not in a position to negotiate on an equitable basis. A requirement that the lender remains in occupation as a perpetual renter following redemption is unenforceable since it prohibits the borrower from reclaiming the estate unrestricted and clear. Any such precondition is a stumbling block to redeeming fairness, and it will not go away just because the borrower isn't in a problematic or embarrassing position, or if the lender did not enforce the terms forcefully. A lender renter cannot be allowed to behave in violation of the mortgage deed's contractual terms. Whenever the parties have agreed at the moment of the mortgage deed's implementation that perhaps the lender would draw out control at the moment of the mortgage's deliverance, he would indeed be constrained by it, and the judge will indeed issue a declaration of redemption against these lenders, instructing him to consider taking the loan money and pass over the shop to the borrower. Likewise, where mortgage document enclosed a definitive statement that now the leaseholder had decided to surrender the residency rights and became mortgage holders of the estate, hence the active ingredient of the mortgage agreement firmly demonstrated that the consequences of this agreement were incongruent with said continuation or sustenance of the rental agreement, the borrower is entitled to redeem hold both under the mortgage document and the essence of this section, the borrower has an entitled to recover custody on such repayment.

A blockage on reclamation is a precondition for pre-emption in favour of the lender, according to the submission, since the borrower receives his property back on restoration subject to this restriction. There are inconsistencies in the judgments on the matter. There is no blockage if the value is not set and the privilege of pre-emption doesn't remain beyond reclamation, according to Justice Ayyangar in a Madras case. After the House of Lords' ruling in Samuel's case, the very same High Court ruled in a subsequent case that a commitment inserted in a mortgage instrument to sell the property to the lender for the sum already agreed to act as a hindrance on the equitable right of reclamation. The Madras High Court decided in 1948 that an arrangement inserted in a mortgage instrument to sell the home to the mortgage holder for the equivalent sum acted as a blockage on the principle of reclamation. The High Courts of Allahabad and Patna have held that a pact for pre-emption at a specified price was effectively provided the deal was not unreasonable and the right did not persist following reclamation. The Calcutta High Court ruled that a pre-emption condition is permissible and does not violate policy decisions. The modification of the principle of fairness in Kreglinger's case, according to the Madras High Court, has no bearing on the interpretation of enacting legislation like this clause. However, the Judicial...
Committee's verdict in *Kanhaya Lal v National Bank of India* reveals a trend toward restoring the freedom of contract between the borrower and the lender, which is evident in Lord Halsbury and Macnaghten's reservations in *Samuel's case*. Their Lordships said it was ridiculous to implement the rationale of all those instances to a contract between such a body corporate and the trustees of debenture holders. Indian cases were quoted to demonstrate the requirement of protecting mortgagors from an authority of selling even without the permission of the court. In one particular instance, the claimant, a private corporation, actualized a mortgage-deed with the situation that the loan amount within a week of paying off the previous loan would continue to stay with the defendants, who had consented to enhance it only if an agreement for the renovation of the movie theatre house was created with them, to establish the movie theatre house for the claimant. Concurrently, at the request of the defendants, an agreement of partnership was implemented between both the stakeholders, that also, as per the claimant, wasn’t really destined to be functioned upon but was only aimed to just protect the defendant for any expenditures accounted for following the building work above the total amount preserved by the defendants, who, on either hand, proclaimed that they have been collaborators of a legitimately conceived company for operating the company. The defendants did not spend any money in the joint firm, and they chose not to pay the claimant any money. The claimant gave up all of its privileges, including the ability to do business, under the provisions of the partnership agreement.

The reality that the defendants were not responsible for contributing anything at all to the partnership firm but were free to operate it in any way they wanted, to the detriment of the claimant, was by far the most emphatic indication of the conditions appearing unfair. The court found that the partnership deed's provisions, something that made reference to the mortgage contract and attempted to establish assertions of the defendants emerging out from the mortgage contract, specifying first expense concerning advancements made by the defendants towards the renovation of a cinema, were harsh and morally reprehensible, and represented a fetter on fairness to redeem.

**VI- Conclusion**

As previously stated, the privilege of reclamation is an entitlement within statutory law in India, and it is so fundamental that perhaps the parties voluntarily cannot overcome it. No restriction may be placed on this privilege. It’s worth noting that there have been no terms in provisions of section 60 that say, "in the absence of any agreement to the opposite." Any stipulation in the mortgage transaction that impedes the privilege of redemption will be regarded as a blockage on redemption which will be invalid and unenforceable, according to the law. The competence of a borrower to reclaim a mortgage has long been a source of concern in the legal system. Blockage on the fairness of redemption refers to every effort to block a such privilege. The blockage on the fairness of redemption could assume the shape of the mortgagor being completely

---

25 (1923) ILR 4 Lah 284.
26 *Supra* note 23.
27 *Supra* note 10.
precluded from reclaiming the mortgage, or the mortgage holder obtaining an ancillary incentive or imposing a collateral hardship on the lien holder that is predicted to be last well after the liabilities is discharged and the loan is redeemed. Any explicit effort to prohibit a lienholder from reclaiming the loan has been flagrantly unconstitutional and invalid. In the case of ancillary potential advantages, Noakes v. Rice determined that such supplementary requirements that do not fail to act on the reclamation of debt are similarly in the character of a bottleneck on the redemption equity and are therefore invalid. The stance chosen by Noake's case was amended in English law following the succeeding decision of Kreglingar, and peripheral stipulations that pass the criteria put forth in the stated Kreglingar case were judged to be lawful.

In terms of Indian law, various Indian courts have decided that the ruling in Kregliner's case is not enforceable in India because of the language of section 60 of the transfer of property legislation. As a result, a requirement that is meant to function far beyond repayment of a mortgage is a key barrier that cannot be implemented.

*****