**Preliminary Decree for Redemption Where on Default of Payment by Mortgagor a Decree for Sale is Passed (Order Xxxiv, Rule 7) (Where Accounts are Directed to be Taken)**

**( Title)**

1.     This suit coming on this..................day, etc.; It is here by ordered and decreed that that it be referred to............................. as the Commissioner to take the accounts following:----

                      i.                an account of what is due on this date to the defendant for principle and interest on the mortgage mentioned in the plaint ( such interest to be computed at the rate payable on the principle or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

                     ii.                an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without willful default of the defendant or such person might have been so received;

                    iii.                an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses ( other than the costs of the suit) in respect of the mortgage-security together with interests thereon ( such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principle, or, failing both such rates, at nine per cent per annum

                    iv.                an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2.     And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principle.

3.     And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient dispatch after making all just allowance on or before the................................................ day of.....................................and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4.     And it is hereby further ordered and decreed --

                      i.                that the plaintiff do pay into Court on or before the....................day of..............................or any later date up to which time for payment may be extended by the Court, such sum as the sum as the Court shall find due and the sum of Rs........................or the costs of the suit awarded to the defendant;

                     ii.                that, on such payment thereafter before such date as the Court may fix of such amount as the court may adjudge due in respect of such costs of the suit and such costs, charges and expensed as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged

(The First Schedule Appendix D.-Decrees)

No 2 or both of them as the case may be shall be at liberty (when such remedy is open under the terms of their respective mortgages and id not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amounts remaining due to them respectively

5.     And it id hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part there of shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6.     And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction there from of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in his suit and in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in his suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1903 and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7.     And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.