



CRITICAL REVIEW OF MEMORANDUM OF DEPOSIT OF TITLE DEEDS

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Abstract

Transfer of property act 1882, exercises the right of mortgagors and mortgagees in India. It is based on Justice, equity and conscience. The transaction of mortgage is embodied in the transfer of property read with CPC to complete the execution of Law.

In transfer of property Act section 58 to section 104 deals with mortgage of immovable / movable property.

Section 58 defines, mortgage, mortgagee, mortgagor, mortgage money and mortgage deed. It also defines six types of mortgage namely simple mortgage, usufructuary mortgage, English mortgage, mortgage by conditional sale, mortgage by title deed deposit, and anomalous mortgages

This article would enumerate the various aspects pertaining to mortgage by deposit of title deeds. This article would also interpret the finer dimension of mortgage by deposit of title deeds by registering the memorandum drafted for the purpose of mortgage.

Memorandum of deposit of title deed in short called as MODT in the most prevailing and currently happening means of mortgage facility in India.

MODT falls under register of property act 1882 under section 58. The Indian registration act 1908 is the Law that governs the registration of MODT deed. This act stipulates that MODT deed should be registered with appropriate authority's specifically local Sub- Registrar office to make it legally enforceable

Reserve Bank of India, RBI has issued guidelines to banks and financial institutions on the creation and registration of the MODT deed

MODT deed registration is subject to stamp duty in order to make it as legal documents. This stamp duty varies from state to state based on loan amount and type of property.

When all the above compliances are strictly adhered to then MODT becomes a valid legal document.

Process of MODT

When mortgager (individual, Institution, corporate or any other type of entity approach a mortgagee (Banks, NBFC and financial institutions) for any type of financial assistance namely Home loan, Personal loan, Business loan, Term loan, Project loan, OD/CC, bank guarantee etc. The respective banks approve and provide the facility based on the credential of the mortgagor. Once the facility is sanctioned, mortgagee stipulates mortgagor to furnish security / collateral in the form of immovable property. The mortgagor furnishes all the original collateral documents to the lending institutions.

On receipt of the original security / collateral/ property documents, the legal department of the lending institution drafts MODT which binds both the mortgagor and mortgagee. This deed is signed by both the parties. MODT deed signed by Mortgagor and mortgagee is registered with SRO office which has jurisdiction within its area of control of the immovable property provided to the financial institution. The original copy of the MODT deed is provided to the lending institution (mortgagee) and Xerox copy is furnished to the mortgagor.

Based on the MODT deed a charge is created in the encumbrance certificate. When a mortgagor, mortgagee and any other third party call for the encumbrance certificate it would reflect, when the MODT was created and in favour of which financial institution. It also reflects the quantum of financial facility availed by the mortgagor.

On completion of MODT deed registration process with SRO the mortgagee provides the finance facilities to the mortgagor.

- When the immovable property is secured in favour of financial institution by MODT, the institution is only entitled to such rights, which a simple mortgage will have in this regards to the mortgaged property.
- In the event of the mortgagor failing to repay the amount with respect to the contract, the mortgagee has the right cause the mortgaged property to be sold and apply the proceeds towards discharge of the mortgage money.
- The mortgaged property is only a security and mortgagee does not have any right over the rents or income or profits from the mortgaged property. However if a special clause or condition is mentioned in the memorandum, then the mortgagee can exercise his rights over rents or income from the property as per the clause.

Benefit of MODT

- Mortgagee gets the collateral / immovable property clearly secured for the financial assistance provided by him.
- Mortgage is able to adhere to the RBI guidelines stipulated towards sanctioning and providing financial facilities to the mortgagor
- Mortgagee namely financial institutions are able to create a mortgage / charge on the immovable property provided by the mortgagor since MODT deed entry gets reflected in the encumbrance certificate, it is made public that the mortgagor has raised financial facility from mortgagee based on this immovable property
 - No other third party can claim ownership on the MODT created property
 - Over and above the MODT deed a pari pasu agreement can be entered which would be a tri party / multiparty agreement wherein two or more financial institution or mortgagee can provide financial assistance to the mortgagor.
 - In the event of default on repayment by the mortgagor the financial institution can approach DRT (Debt recovery tribunal) towards availing legal cases against the mortgagor.
 - This MODT deed would be helpful to financial institutions / mortgagee to take legal recourse under SARFESI (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act)
 - All the documents pertaining to immovable property is listed clearly in MODT deed. This hold as a valid acknowledgment by mortgagee having obtained the original documents from mortgagor.
 - Mortgagee while holding original documents being their custody is liable for any damage or loss of documents. Mortgagee is liable to compensate the mortgagor or do any alternative solution to mortgagor.

Limitation.

- When a financial Institution files a suit to recover advances secured by a MODT it governed by Article 62 of the Indian Limitation Act as amended by Act 21 of 1929 which prescribes a period of 12 years from the date of money sued for becomes due.
 - Where a promissory note accompanies the deposit, the 12 years run not from the date of the note payable on demand, but from the date the actual demand is made. 228 A suit to redeem would be governed by Article 61(a) of the Limitation Act, 1908.
 - In an equitable mortgage by deposit of title deeds, the money becomes due on the day, the mortgage is created by deposit of title deeds and the limitation of 12 years for the enforcement of the mortgage has to be counted from the date of the mortgage. The suit filed within 12 years of the date of the alleged creation of the equitable mortgage by deposit of title deeds was held not barred by limitation.
 - Indian Companies Act, VII of 1913.—Under Section 109 it is necessary to file with the Registrar particulars of mortgage by deposit of title- deeds whether or not it is accompanied by a memorandum of deposit.

The Indian Companies Act, VII of 1930.—The provisions of Section 109 of this Act apply to a mortgage by deposit of title- deeds whether or not accompanied by a memorandum of deposit.

Challenges:

- MODT deed registration is quiet a encumbrance process wherein the mortgager has to run between mortgagee and sub registrar office.
- Registration of MODT deed can be done only with prior appointment with Sub Registrar office where in at time mortgager has to wait for few days for appointment.
- Charges levied by SRO as stipulated by the state is very legacy and burdens the mortgagor. In some states the tariff is quite low and in some states is exorbitantly high.

Solutions:

- State should get equip the entire sub registrar office under to with modern facilities such that MODT deed registration can be done online.
- This would facilitate the mortgagor and mortgagee to avoid running to SRO towards registration of MODT deed.
- This would facilitate to avoid any middle man between mortgagee and sub registrar office.
- State should reduce the tariff for the MODT deed registration such that the mortgagor does feel the pinch of charges levied towards

In future all the financial institutions and government bodies would make MODT as mandatory for all mortgages. Hence digitalization would come in hand to provide a good solution.

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