

C I R C U L A R No. 100

Subject :- Equitable Mortgage – When covered under
section 35 of the Bombay Public Trusts Act, 1950.

A question has been raised whether the equitable mortgage is a legal mortgage and is covered by the first proviso to section 35 (1) of the Bombay Public Trusts Act, 1950.

2. The legal position seems to be that an equitable mortgage or a mortgage by deposit of the title deeds is an investment authorised by section 35 of the Bombay Public Trusts Act, 1950. The requirements of section 35 of the Act are that (i) there should be a mortgage (ii) it should be a first mortgage on certain type of the immoveable property and (iii) the value of the property should exceed by one-half the mortgage money. Since the word 'mortgage' is not defined under the Bombay Public Trusts Act, 1950, it would mean any of the six types of the mortgages mentioned in section 58 of the Transfer of Property Act, 1882. An equitable mortgage, if it is effected in accordance with law is enforceable in a court of law. Since no exception is made in section 35 of the Bombay Public Trusts Act, 1950, as regards mortgage by deposit of title deeds, it cannot be said that such a mortgage by the trustee is illegal or is prohibited by law.

3. The Regional Officers, therefore, are directed to keep in view the above interpretation and may not insist upon the trustees for regularising investments in mortgage by deposit of title deeds carrying the first charge and

fulfilling all other conditions laid down in section 35 of the Bombay Public Trusts Act, 1950.

Sumant C. Bhat,
Charity Commissioner, Bombay.

Dated : 3rd May 1957