

**HIGH COURT OF TRIPURA
AGARTALA**

Cont.Cas(C) No.178 of 2023

Sri Biswajit Saha & others

..... Petitioner(s);

Versus

Satyajit Saha

.....Respondent(s)

For Petitioner(s) : Mr. C.S. Sinha, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

01/02/2024

Petitioners seek initiation of contempt proceedings against the respondent-Bank relying upon para 15 of the judgment and order dated 30.05.2022 passed in WP(C) No.666/2021 by the learned Writ Court as per which the respondent No.2- Sri Satyajit Saha, S/o Late Sudhir Ranjan Saha was directed to return the title deeds standing in the name of the petitioners, or jointly with the respondent No.2 within 30(thirty) days from the date of judgment.

2. However, the learned Writ Court, after taking note of the stand of the Bank which had realized the outstanding bank dues at the concluding part of the judgment and order, observed as under :

“21. As the respondent-bank did not call upon and it has been stated very categorically that the guarantors role of liquidating the outstanding, has been denied to be acknowledged by the bank-respondent stating that he did not know who make the payment, in such circumstances, this court cannot direct the bank-respondent qua Sections 140, 141 and 144 of the Indian Contract Act by invoking the jurisdiction under Article 226 of the Constitution, to place the petitioners in the position of the creditor to recoup their credit or investment by which he or they had liquidated the outstanding. But the petitioners may, by brining a civil action, can establish the fact as regards who paid the amount for clearing the outstanding to the Union Bank of India and if it is established that the petitioners had paid the said settlement amount, then definitely the petitioners may have a case to claim as raised in this writ petition or to occupy the position of the creditor to recoup their investment they used for liquidating the outstanding due. But such determination cannot be made invoking the jurisdiction under Article 226 of the Constitution of India as the bank-respondent has refused to acknowledge whether the petitioners as guarantors paid the outstanding due from their own credit or by way of investment. The petitioners may approach the Civil Court of the competent jurisdiction for that purpose, if they are so inclined.

Having observed thus, this writ petition stands disposed of.

There shall be no order as to costs.”

3. Mr. C.S. Sinha, learned counsel for the petitioners, has laboured to impress that petitioners in terms of Section 140 and 141 of the Indian Contract Act, 1872 were entitled to benefit on payment of the dues against the principal debtor by handing over the title deeds of the mortgaged property in his favour; but that part of the directions by the learned Writ Court under para 15 is not being complied with by respondent No.2.

4. However, on a complete reading of the judgment and order under offence, this Court is of the view that any direction upon respondent No.2 at para 15 stands qualified by the concluding observations of the learned Writ Court as quoted hereinabove where the petitioner has been asked to bring a civil action to establish the fact as regards who paid the amount for clearing the outstanding dues of the bank and then make a claim as raised in the writ petition to occupy the position of the creditor to recoup the investment that they made for liquidating the outstanding dues. In such circumstances, this Court is of the view that no case of deliberate disobedience of the orders of the Writ Court has been made out.

5. Mr. Sinha, learned counsel for the petitioners, submits that in that event, liberty may be granted to the petitioners to approach the Bank.

6. It is up to the petitioners to approach the respondent-Bank or to move for a civil action.

7. The instant contempt petition is disposed of.

(APARESH KUMAR SINGH), CJ

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PULAK BANIK Date: 2024.02.07
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