

HIGH COURT OF TRIPURA
AGARTALA

RFA No. 02 of 2024

*The Chief Executive Officer, Kailashahar Municipal Council, PO & PS-
Kailashahar, Sub-Division- Kailashahar, Unakoti Tripura.*

.....Appellant

Versus

- 1. Sri Malayendra Ghosh Roy, S/o- Lt. Makhan Lal Ghosh Roy of South
Kacharghat, P.O & P.S- Kailashahar, New Nabojagriti Club adjacent to
Saw Mill. Sub-Division- Kailashahar, Unakoti Tripura. (Partners M/S MEC
Engineering Consultancy Firm and lawful Attorney of the Partners) Pin-
799277.*
- 2. The State of Tripura, represented by the Secretary, Urban Development
Department, Town and Country Planning Organization, Government of
Tripura, Agartala, West Tripura.*

.....Respondent(S)

For the Appellant(s)	:	Mr. Debalaya Bhattacharya, Sr. Advocate. Mr. Samar Das, Advocate. Mr. S. Saha, Advocate.
For the Respondent(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. Samarjit Bhattacharjee, Advocate. Mr. K. Nath, Advocate. Ms. S. Debbarman, Advocate. Mr. D. Paul, Advocate.
Date of hearing & delivery of Judgment & Order	:	17.02.2026
Whether fit for reporting	:	YES

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER(ORAL)

(Dr.T.Amarnath Goud, J)

[1] Heard Mr. Debalaya Bhattacharya, learned Senior counsel assisted by Mr. Samar Das, learned counsel appearing for the appellant i.e., Chief Executive Officer, Kailashahar Municipal Council. Also heard Mr. P. Roy Barman, learned Senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondent No.1.(Plaintiff in Suit).

[2] Facts leading to the present appeal are that, on 09.01.2014 'Nagar Panchayat' Kailashahar issued one work order in favour of the respondent No.1, vide No.F.4(8)/RAY/NP/KLS/2013/25, for preparation of detailed project report for providing housing to eligible beneficiaries under Rajib Abash Yojana. After receiving the work order, respondent No.1 started work and completed the work as per specification of the work order within stipulated period. Thereafter, as per requirement of the authority concerned, partial modification was done. That, after completion of the work and submission of DPR, respondent No.1 submitted bill amounting to Rs. 29,59,000/-. Out of that amount, appellant paid Rs. 10,00,000/-. After that respondent No.1 filed one Money Suit being No. 03 of 2017. The appellant herein contested the suit by filing written statement wherein the appellant

stated that the suit is liable to be dismissed for mis-joinder and non-joinder of the parties. After hearing both parties, the learned Court below on 26.04.2022 delivered a judgment, the relevant portion is as under:-

“O R D E R

30. Accordingly it is ordered that the Chief Executive Officer, KLS. Municipal Council, shall pay the plaintiff the pending amount of Rs. 19,59,000/- for the work of preparation of detailed project report by the 25 of next month and for any delay an interest @ 6% percent per annum shall be given to the petitioner by the respondent, Chief Executive Officer, in addition to the pending amount of Rs.19,59,000/-
31. With this observations and direction the case stands decreed.
32. Prepare the decree accordingly.
33. Place it before the undersigned for signature.
34. Make necessary entry in the relevant TR.
35. The judgement is given under my hand and seal of this Court on this the 26 day of April, 2022.”

[3] Being aggrieved and dissatisfied with the order dated 26.04.2022 passed in the MS 03 of 2017, the defendant No.1 (appellant herein) filed this present appeal seeking the following reliefs:-

“i) Admit this appeal; Issue notice.

ii) Call for the record;
and

iii. After hearing the parties be pleased to set aside/ quash the judgment and decree dated 26.04.2022 passed in MS 03 of 2017.”

[4] Learned Senior counsel Mr. Debalaya Bhattacharya, submits before this Court that the project was financed by HUDCO but the respondent No.1 intentionally did not make party who is the actual party liable to pay the respondent No.1, but the present appellant is only to execute the work on behalf of the HUDCO. He further submits before this Court that the learned Trial Court failed to appreciate that the respondent No.1 is a partnership firm who has not filed the suit and no authorization of parties have been assigned

in the pleadings or in the evidence and as such, the claim against the appellant is not maintainable and the decree is liable to be set aside.

[5] Learned Senior counsel contends before this Court that there was no evidence to the Trial Court that M/S MEC is a partnership firm. He also stated that the respondent No.1 has not mentioned that Rajib Awas Yojana is a project of HUDCO and without approval of the HUDCO, this work is not possible on the part of the appellant concerned. Due to non approval by the HUDCO, the project was not materialized and he pleaded that there is no any fault on the part of Kailashahar Municipal Council. He, therefore, prays before this Court to grant the relief as prayed in the instant appeal.

[6] On the other hand, Mr. Samarjit Bhattacharjee, learned counsel submits before this Court that in terms of the work order which is issued by the authority concerned, the respondent No.1 herein completed the works. Thereafter, the respondent no.1 submitted the bills but the authority concerned provided only a part of the bill and the rest payment remained unpaid. As a result of that respondent No.1 filed a money suit before the learned Court below.

[7] He further submits that the appellant admitted in their affidavit that the rest amount would be paid to the respondent No.1 after approval and sanction fund of the central project but after filing of the instant case no payment of the rest amount has been made yet. He also contends before this Court that the respondent No.1 submitted several representation, but all his efforts remained pending with the party concerned. Referring the issue,

learned counsel pleaded before this Court to dismiss the prayer of the appellant and also to affirm the judgment of the learned Court below.

[8] Heard and perused the evidence on record.

[9] It is seen from the record that the appellant herein issued a work order for providing housing to eligible beneficiaries under Rajib Awas Yojana(RAY) in Kailashahar Nagar Panchayat. As per the work order, respondent No.1submitted the Detailed Project Report (DPR) and also making partial modification in the project as per requirement of the authority concerned. For better appreciation of the matter, the work order is quoted as under :-

“ OFFICE OF THE NAGAR PANCHAYAT
KAILASHAHAR: UNAKOTI TRIPURA
No.F.4(8)/RAY/NP/KLS/2013/25 Dated, Kailashahar The January 09th, 2014

WORK ORDER

SL No.	Name of Work/ Description of work etc..	Rate	Timeof Completion
1	Preparation of Detailed Project Report (DPR) for providing housing to eligible beneficiaries under Rajib Awas Yojana (RAY) in Kailashahar Nagar Panchayat. DPR shall include design & maps for provision of drainage, water & electricity supply sanitation etc.	1(one)% Project cost	14/01/2014

Terms & Condition:-

- i) Work shall be carried out as per Revised Guideline of RAY.
- ii) Work should be completed within stipulated period from the date of issue of this work order
- iii)No extra payment shall be made beyond the approved rate of the project cost..
- iv)No advance payment shall be made before completion of the work.
- v) The Agency should submit 7(seven) copies including soft copy of final DPR to the office of the undersigned after completion of their works in all respect by 14th January 14 positively.
- vi) All payment shall be tax inclusive, which shall be deducted before making payment.

To
M/S MEC
C/O:-Er. Molayendra Ghosh Roy
South Kacharghat
Kailashahar
Unakoti Tripura

sd
Executive Officer
Nagar Panchayat Kailashahar Unakoti District

Copy forwarded to kind information:
1. Chairperson, Kailashahar Nagar Panchayat
2. Vice-Chairperson, Kailashahar Nagar Panchayat”.

[10] Upon perusal of the record, it appears that the contract between the Kailashahar Municipal Council and M/S. MEC is very much valid and was accepted by both the parties. It also appears that, part payment was also made.

[11] This Court is of the opinion that if the appellant of this case, Kailashahar Municipal Council pulls up its hands from making the rest payment by saying that the same has not been approved by HUDCO or the Finance Department then it is not the fault of the respondent No.1 and it cannot be said that the appeal is bad for non-joinder.

[12] This Court is also of the view that before issuing a work order, it is the duty of the appellant to check and verify whether he has the authority to enter into such contract. When he enters into the contract and also make part payment, it becomes his liability to do the rest part of his contract and to pay the rest amount to the party concerned. In the case in hand, it is the Kailashahar Municipal Council which is under a legal liability for making payment of Rs.19,59,000/- along with interest.

[13] It is not open for the appellant to raise new issues for consideration at the stage of appeal as the appellant has not argued on this issues and no such issues were framed by the Trial Court. Further when there

is no agreement entered amongst the parties it is not right on the part of the appellant to argue on the point of agreement and non joinder of proper parties.

[14] The appellant has entered into second correspondence with the plaintiff (respondent No.1 herein) and further assigned the work which took reasonable period to get the work executed as agreed and part payment has been made as agreed and now, when the matter comes for making balance payment, it is not open for the appellant to deny a legitimate right of the respondent No.1. This Court strongly believes that laws are made for citizen but citizens are not made for law. On mere grounds of technical reasons to deny the ultimate justice to the respondent No.1 cannot be appreciated. On one hand, the appellant having getting the work done by the respondent and after making part payment, now depriving for the balance leads to dual standards of the appellant. The action of the appellant attracts maxim “Quad approbo non reprobō” and legal doctrine “approbate and reprobate”.

[15] Since, the entire correspondence between both the parties was made by M/S MEC Engineering and works have been assigned and it is also observed that in a letter addressed by the appellant to the respondent No.1, it clearly indicates that they have been falling under insufficient funds as stated in the written statement of the defendant (appellant herein) or some amounts are yet to be received from HUDCO. According to this Court, this inconvenience caused to the appellant cannot be fastened upon respondent no.1 by denying legitimate right of the respondent on one pretext or the other. Moreover, the appellant has not approached this Court with clean

hands . An instrumentality of the state is expected to act with the citizens in all fairness and at the present, the act of the appellant cannot be appreciated for the discussion made above .

[16] In view of the above and also on perusal of the judgment, this Court finds that there is no infirmities to interfere with the judgment and decree of the Trial Court. Accordingly, the judgment and decree of the Trial Court is upheld and the present appeal filed by the defendant no.1 in the suit (appellant herein) stands dismissed.

[17] Accordingly, this Court feels that the respondent No.1 (plaintiff in the suit) is entitled to get a decree. Thereafter, taking into consideration all these circumstances cumulatively, we find that the decree passed by the learned Trial Court is just and proper and needs no interference. Hence, we find no reason to disturb with the judgment and decree dated 26.04.2022 passed by the learned Court below. Accordingly, the same is confirmed and the instant appeal stands dismissed.

[18] As a sequel, miscellaneous application(s), pending if any, shall stand closed.

S.DATTA PURKAYASTHA,J DR.T. AMARNATH GOUD,J

Paritosh

SABYA
SACHI
GHOSH
H

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by SABYA GHOSH
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