

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 17153 of 2009

Jayanti Karmakar

Versus

The General Manager, District Industries Centre & Ors.

For the Petitioner : Mr. Gokul Chandra Chakraborty, Adv.
Mr. Aditya Shit, Adv.

For the Respondent No. 3 : Mr. Malay Kumar Roy, Adv.

For the Respondent No. 6 : Mr. Sukumar Bhattacharyya, Adv.
Ms. Subhangi Bhattacharyya, Adv.
Ms. Piyali Show, Adv.

Heard on : 02.04.2026

Judgment on : 30.04.2026

Ajay Kumar Gupta, J.:

1. This instant writ petition has been filed by the petitioner seeking relief, *inter alia*, as follows: -

“a) A Writ of or in the nature of Mandamus commanding the respondents

to forthwith initiate legal proceedings against the private respondent for his misdeed of non supply of the machineries after receiving the cheque from the Bank,

b) A Writ of or in the nature of Mandamus directing the respondents not to charge any interest from the petitioner till the machineries are supplied to her, and interest, if any may be charged from the private respondent,

c) A Writ or in the nature of Mandamus commanding the respondents to forthwith take steps so that the machineries as per the quotation are supplied to the petitioner without any further delay,

d) A Writ of or in the nature of Certiorari Commanding the respondents to produce or cause to be produced all relevant records, documents and papers in connection with the payment of loan amount directly to the private respondent so that conscionable justice may be rendered by passing the Judgement.”

- 2.** The brief facts, leading to the filing of this writ petition, have been emboldened herein below: -

- a.** The petitioner herein had applied for financial assistance to establish a Rolling Mill of Bell Metal at Buglidi in the District of Purulia in the name of M/S United Re-Rolling Mills. She prepared a project and submitted it to avail the benefits of a rural employment scheme with the District Industries Centre, Purulia.
- b.** The District Industries Centre, Purulia, approved the project and communicated the same to the Block Development Officer, Pancha Block, District – Purulia vide their Memo No. 667/1(2) dated 27th August, 2004.
- c.** As per the quotation submitted by the petitioner for the supply of machinery to establish a Rolling Mill of Bell Metal and the approval of the project by the District Industries Centre, Purulia, the West Bengal State Cooperative Agriculture and Rural Development Bank (in short ‘the Bank’) issued an account payee cheque bearing no. 685200 on 8th August, 2005, to the tune of Rs. 4,39,530/- in favour of the private respondent, Jagannath Engineering, with a request to deliver the machine as mentioned in favour of the petitioner. The private respondent had to deliver the machine as stipulated herein below after receiving the account payee cheque from the bank.

1. *Sheet Rolling Mill filled with Forged Rolls, box counter + Crown pinions, G.M. Bushes V. Pally, Housings with complete standard accessories (12" X 32");*
2. *Circle cutting machine with complete parts;*
3. *Diesel Oil engine with complete standard accessories.*

d. The petitioner alleged that the private respondent has supplied only the first two items from the aforesaid list, worth Rs. 2,92,110/-, which were also defective. The private respondent, by letter dated 27th March, 2006, informed that the Diesel Oil Engine would be delivered to the petitioner two weeks later, but failed, or rather neglected to supply the machine and also threatened the petitioner with dire consequences when she asked for the supply of the remaining machine.

e. The District Industries Centre, Purulia, by their letter dated 28th June, 2006 requested the private respondent to supply the due machine and/or parts to the petitioner. The petitioner also, by her letter dated 12th August, 2006, requested the Bank Manager to take appropriate steps so that the private respondent would affect the supply of the remaining machine. On 23rd August, 2006, the Bank Manager requested the private respondent to supply the Diesel Oil Engine.

- f.** Surprisingly, the District Manager of the said Bank, by his letter dated 6th November, 2006, informed the petitioner that despite receipt of the loan, the petitioner is not installing the Bell Metal Unit. The petitioner was further advised that if she did not have the machinery installed, the Bank would be compelled to take appropriate measures to recover the loan from her, as the cheque had already been issued in favour of the private respondent as per request, and quotation was submitted by the petitioner herself.
- g.** The contention of the petitioner is that she could not start the Mill due to the non-supply of the remaining machinery as yet; as such, she is not liable to pay any loan amount or interest accrued thereof. Hence, the petitioner filed the instant Writ Petition.
- 3.** Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in no way liable to pay the loan amount with interest because she could not even start the mill due to non-supply of the Diesel Oil Engine. The petitioner approached the bank authorities and also wrote a letter to the private respondent to effect the delivery of the machines in order to start her Mill. However, the private respondent did not take steps to effect delivery despite having received payment to the tune of Rs. 4,39,530/-. On the other hand,

the bank has been claiming the loan amount, along with accrued interest, from the petitioner.

- 4.** It is further submitted that the petitioner had approached the private respondent on several occasions personally, asking for the supply and installation of the machines so that the mill could run. She also informed the bank manager and bank supervisor about the non-delivery of the Diesel Oil Engine, but in vain. It is therefore argued that the bank cannot claim the loan amount and interest thereof from the petitioner; as such, the petitioner sought relief as prayed aforesaid.
- 5.** Per contra, learned counsel appearing on behalf of the Respondent No. 3/Bank vehemently opposed such contention and filed an affidavit-in-opposition denying all the contentions of the petitioner. It is an undisputed fact that the petitioner took a loan of Rs. 4,39,530/- from the respondent no. 3 for establishing a Rolling Mill of Bell Metal, upon approval of the same by the authority. It is submitted that the petitioner had chosen her own supplier and submitted the quotations. As per the petitioner's desire, the bank issued a delivery order to supply the machines to the petitioner by the respondent no. 6.

- 6.** It was further argued that the petitioner received machines from the respondent no. 6 on 27.03.2006 valued at Rs. 2,92,110/- except Diesel Oil Engine valued at Rs. 1,35,000/-. The private respondent no. 6 has supplied the remaining machines to her long back under receipt, but with a view to avoiding repayment of the loan to the bank, the petitioner filed this false and frivolous writ petition in the year 2009.
- 7.** It was further submitted that the bank is only liable to pay the value of the machinery to the private respondent as per the request and quotation submitted by the petitioner. The private respondent informed the Bank that they supplied the Diesel Oil Engine to the petitioner on 17.04.2006 under a delivery challan bearing the petitioner's signature. The petitioner intentionally avoided making payment or loan on the false pretext that she did not receive the Diesel Oil Engine from the private respondent No. 6, which led to her inability to run the Mill.
- 8.** It was further submitted that she had never communicated to the respondent no. 6 for the supply of the Diesel Oil Engine till date, and no letter was submitted before this Court to substantiate her claim that the Diesel Oil Engine was not supplied to her. Therefore, the writ petition is liable to be dismissed.

- 9.** Learned counsel for the Private Respondent No. 6 also denied and disputed the contention of the writ petitioner that the diesel oil engine had not been supplied. Reliance was placed on annexure 'R1' appended with the Affidavit-in-opposition filed by the Respondent No. 3, indicating therein the petitioner's signature to substantiate that she had received the Diesel Oil Engine on 17.04.2006. It was finally submitted that the contention of non-supply of the due machine is false, and only to avoid payment of the loan and interest thereof. Therefore, the writ petition is liable to be dismissed.
- 10.** Having heard the arguments of the learned counsels appearing on behalf of the respective parties and upon meticulous perusal of the materials on record as well as affidavit-in-opposition, this Court finds that a loan was sanctioned in favour of the petitioner to the tune of Rs. 4,39,530/- for setting of the Rolling Mill of Bell Metal, and the said machines were hypothecated to the bank. The bank is only a lender of the loan amount, and therefore has no nexus with the private respondent no. 6. The bank issued a cheque in favour of the private respondent no. 6 as per the request and quotations submitted by the petitioner herself.
- 11.** It is apparent from the record that she had written a letter to several authorities without informing the private respondent no. 6 for non-

supply of the remaining machinery. The petitioner has only pleaded that no machinery was supplied to her to start the Mill. However, the delivery challan reflects her signature authenticating receipt of the remaining machinery.

- 12.** It is an undisputed fact that the agreement is between the borrower and lender, and the machines handed over to the petitioner under the said loan have been hypothecated to the Bank. The Bank cannot be held responsible for the non-supply of machinery as per the quotations supplied by the Petitioner. It is upon the petitioner to have the machines delivered from the private respondent no. 6, and even if the latter did not supply the same, she could have taken steps against the Private respondent No. 6 in accordance with the law. She cannot avoid or be exempted from paying the loan and the interest accrued thereon.
- 13.** This Court finds that the dispute, as projected, is essentially one arising out of a commercial transaction between the petitioner and the private respondent no. 6. The foundational question as to whether the Diesel Oil Engine was in fact supplied or not is a seriously disputed question of fact. The respondent Bank, as well as the private respondent, has relied upon a delivery challan purportedly bearing the signature of the petitioner to contend that the machinery

was duly delivered, whereas the petitioner has denied such receipt and claimed that the signature of the petitioner is a forged one.

- 14.** Therefore, such disputed facts cannot be decided in the writ jurisdiction since it requires evidence to be led by the parties.
- 15.** Insofar as the respondent Bank is concerned, this Court does not find any arbitrariness or illegality in its actions. The materials on record indicate that the Bank had sanctioned the loan in favour of the petitioner and disbursed the amount in terms of the quotation and request furnished by the petitioner herself. The Bank's role was thus confined to that of a loan amount.
- 16.** The contention of the petitioner that she should not be saddled with the liability to repay the loan on account of the alleged default of the supplier cannot be accepted. The liability to repay a loan arises out of the contract between the borrower and the lender, and is not contingent upon the performance of a third party, unless specifically provided for.
- 17.** In the absence of any material to demonstrate that the Bank had undertaken responsibility for ensuring delivery of the machinery or had acted in breach of any statutory or contractual obligation, no direction can be issued restraining the Bank from recovering its dues.

18. It is also pertinent to note that the petitioner has an efficacious alternative remedy in law. If the petitioner's case is that the private respondent has failed to supply the machinery despite receipt of payment, it is open to her to initiate appropriate proceedings for enforcement of her rights, including a claim for damages or specific performance.
19. Therefore, this writ petition fails, and the prayer cannot be allowed by exercising power under Article 226 of the Constitution of India.
20. Accordingly, **WPA 17153 of 2009** stands **dismissed** without order as to costs. Connected applications, if any, are also, thus, disposed of.
21. Interim order, if any, stands vacated.
22. Parties shall act on the basis of server copies of this Judgment duly downloaded from the official website of the High Court at Calcutta.
23. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all necessary and legal formalities.

(Ajay Kumar Gupta, J)