

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 51 of 2021

Duk Nath Nepal,
S/o Late D.R. Nepal,
R/o Daragoan Tadong,
Gangtok, East Sikkim.

..... **Petitioner**

Versus

- 1.** State of Sikkim,
Represented by and through Chief Secretary,
Government of Sikkim,
Tashiling, Gangtok.
- 2.** Land Revenue & Disaster Management Department,
Government of Sikkim,
Represented by and through Secretary,
Tashiling Secretariat
Gangtok, East Sikkim.
- 3.** Allahabad Bank,
Represented by & through
The Chief Manager,
Gangtok Branch, East Sikkim.
Sikkim Traders International
Building, Metro Point, National
Highway 10, Gangtok, East Sikkim.
- 4.** The Recovery Officer,
Debts Recovery Tribunal,
PCM Tower, 2nd Floor, Sevoke Road,
Siliguri 734 001.
- 5.** Shri Dhadi Ram Sharma,
S/o Late H.P. Sharma,
R/o Padamchey, East Pendam,
P/o Pachek, P.S. Pakyong, East Sikkim.

..... **Respondents**

**Application under Article 226 and 227 of the Constitution of
India.**

Appearance:

Mr. Pratap Khati and Ms. Pema Dechen Bhutia, Advocates
for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr.
Sujan Sunwar, Assistant Government Advocate for the
Respondent Nos. 1 & 2.

21.12.2021

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. Heard Mr. Pratap Khati, learned counsel for the petitioner.
The Writ Petition seeks a mandamus against the State
(respondent nos. 1 and 2), the Allahabad Bank (respondent no.3)
and the Recovery Officer (respondent no.4) of the Debts Recovery
Tribunal (DRT). The prayers are -

- a. *Writ in the nature of Mandamus commanding the respondents to uphold the sanctity of the old laws and the new laws of Sikkim.*
- b. *Writ in the nature of Certiorari directing the Respondents to produce, submit and/or authenticate all the relevant records, papers and/ or documents before this Hon'ble Court so that conscionable justice may be rendered upon hearing all the parties.*
- c. *For the cost/costs of and incidental to this Petition be paid by the Respondents."*

2. A narration of the facts in the Writ Petition reflects that the petitioner had taken a loan from the respondent no.3 sometime in the year 2006. On the failure of the petitioner to make payment of the loan, the respondent no.3 had to approach the DRT. It transpires that on 03.11.2015 the DRT passed a judgment issuing recovery certificate in favour of the respondent no.3 for a sum of Rs.31,55,163/- against the defendants therein jointly and severally with pendentelite and future interest @ 13.5% per annum with quarterly rests till realization and cost of the application. The records also reveal that on 13.11.2019 the respondent no.4 proceeded to recover the amount mentioned in the certificate. This order was unsuccessfully challenged by the sons of the guarantor before this court. According to the petitioner the respondent nos.3 and 5 are ignorant about the laws of Sikkim. A perusal of the Writ Petition suggests that the petitioner is seeking to avoid the inevitable i.e. pay back the loan which was admittedly taken and not repaid till date. This court is of the firm view that such a Writ Petition is not maintainable. Accordingly the Writ Petition is dismissed.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**
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