

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Jurisdiction)

SINGLE: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Cont.Cas(C) No.01 of 2025

Petitioner : Duk Nath Nepal

versus

Respondent : Tenzi Yeshi

Application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971

Appearance

Mr. Pratap Khati, Advocate for the Petitioner.

Mr. Dilip Kumar Agarwal and Mr. Aditya Thakur, Advocates for the Respondent.

Date of Hearing : 13-11-2025

Date of Pronouncement : 13-11-2025

Date of Uploading : 13-11-2025

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner is aggrieved by the proclamation of Sale, dated 13-10-2022, concerning property which allegedly was not mortgaged with the Contemner/Opposite Party, which is a Bank. It is submitted by Learned Counsel for the Petitioner that the Opposite Party had deliberately failed to disclose that the property in question had a sole bidder, Smt. Leela Singhal, C/o Shri Anil Singhal, a resident of M.G. Marg, Gangtok. That, the omission and selective disclosure are wilful acts intended to suppress material facts and mislead this Court. That, despite the stay Order of this Court, the Contemnors had executed a Deed of Conveyance in favour of one Smt. Leela Singhal on 06-03-2024, disobeying, disregarding and acting against the Orders of this Court.

2. To comprehend the matter in its correct perspective, it is necessary to look into the backdrop of the instant matter. Initially, the Petitioner was before a Single Bench of this Court in WP(C) No.51 of 2021 seeking mandamus against the State (Respondents No.1 and 2), the Allahabad Bank (Respondent No.3) and the Recovery Officer of Debts Recovery Tribunal, Siliguri (Respondent No.4). The prayers enumerated in the Writ Petition (*supra*) were as under;

- 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."*

3. The Learned Single Judge after considering the facts and circumstances of the case ordered as follows;

"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."

4. The Petitioner was before the Division Bench of this Court by filing WA No.05 of 2023, assailing the Order of the Learned Single Judge passed in WP(C) No.51 of 2021. The Division Bench in Writ Appeal on 01-08-2023 ordered *inter alia* as follows;

“.....

On 08th June, 2023, this Court passed the following order:

“In our order dated 18th April, 2023, we had provided the appellant an opportunity to secure a sum of ₹ 32,00,000/- (Rupees thirty two lakhs only) by way of cash-security to the satisfaction of the Registrar of this Court, in the event he desired for an order for stay of recovery proceedings.

Today, when the matter is taken up for consideration, the Registry hands over to us an affidavit which was affirmed on 03rd June, 2023, wherefrom it appears that the appellant has deposited the said amount of ₹ 32,00,000/- (Rupees thirty two lakhs only) in the office of the Registrar General, High Court of Sikkim.

The only issue which the appellant is trying to raise before us is that the property-in-question — which the Recovery Officer is trying to recover — was never mortgaged with the Bank, in the first place. Since this was the only issue involved — as observed in our order dated 18th April, 2023 — we had proposed to give an opportunity to the respondent-Bank to make its stand clear before this Court — on the basis of record — as to whether the property-in-question was at all mortgaged by the respondent-Bank or not. However, this issue is still not clear to us and the Bank should spell out its stand clearly in this regard.

As such, we grant the respondent-Bank, a further opportunity to come up before this Court with a clear answer, only in respect of this issue, on the next date.

In the meanwhile, there shall be a stay of recovery of proceedings being initiated by the Bank against the appellant, upon taking into consideration the deposit made by the appellant in terms of our order dated 18th April, 2023, with the Registrar General of this Court.

List this matter for further consideration on 06th July, 2023.”

Today, when we take up the matter for further consideration, we have before us an affidavit by the respondent-Bank affirmed on 27th July, 2023 and filed on the same date, wherefrom it appears as follows;

“2. That the main contention of the Appellant in this Writ Appeal is that the property-in-question from which the Recovery Officer is trying to recover was never mortgaged with the Bank by the Appellant. In this regard I would like to submit as follows;

- i) It is an admitted fact that the property-in-question was not mortgaged with the Bank by the Appellant. However, during the proceedings before DRT Guwahati, Respondent No. 5 had submitted through email a copy of letter dated 10.10.2017 issued by the SubDivisional Magistrate, East District Collectorate, Gangtok that Shri Duk Nath Nepal (Appellant) is the owner of the land covered by Plot No.396 (area .2420), 405 (area .0240), 1191 (area .1680), 1489 (area .600), 1489/1789 (area .2460), 1248/1790 (area .1840) and is registered in his name. That the said letter was issued by the District Authority in response to RTI application filed by the daughter of the Respondent No.5. Accordingly, Hon'ble Tribunal had opined that they must try to recover the dues from the actual borrower rather than from guarantor first.
- ii) Pertaining to the order dated 20.02.2018 of DRT, Guwahati property of the Appellant was attached Vide order dated 24.08.2018 by the DRT Siliguri.
- iii) That the Appellant was afforded with several opportunities and explained as to why his attached property should not be put up for sale, however, he failed to appear before the Tribunal despite giving sufficient time. In fact, Respondent No.3 had even offered Appellant for the settlement of loan by paying only Rs.12.50 lakhs approximately under their Sashakt Scheme, that too he did not pay heed to it. As such. Tribunal vide order dated 13.11.2019 had passed a Sale order of the attached property of the Appellant as well as the mortgaged property of the Guarantor.
- iv) It is worth mentioning herein that Appellant had never challenged the attachment order before any authority of law and prayed for the set aside of attachment order 24.08.2018 nor have challenged the sale order dated 13.11.2019, which is still valid in the eyes of law, as such this appeal become infructuous"

Considering the specific assertions made on behalf of the respondent-Bank, as quoted above, we are of the view that in the facts and circumstances of the instant case, the appellant ought to approach the learned Debt Recovery Tribunal (DRT) at Siliguri, West Bengal, where the issue sought to be raised before this Court shall be adjudicated upon by the learned Tribunal at Siliguri, in accordance with law.

In the meanwhile, the recovery proceedings shall remain stayed and the amount of ₹ 32,00,000/- (Rupees thirty two lakhs only) deposited by the appellant in the office of the Registrar General, High Court of Sikkim, shall remain so deposited till the Tribunal at Siliguri finally disposes of the matter.

The appeal stands accordingly disposed of.

....."

It is specific in the Order (*supra*) that the Appellant ought to approach the DRT at Siliguri, West Bengal, where the issue sought to be raised before this Court shall be adjudicated upon by the DRT at Siliguri, in accordance with law.

5. During the submissions made by Learned Counsel for the Respondent he has walked this Court through the Orders of the DRT dated 10-08-2023, wherein the DRT has taken into consideration the Orders of this Court and also recorded that none appears for the Certificate Debtor (CD) the Petitioner herein. The matter was ordered to be listed on 15-09-2023, but was taken up on 01-09-2023 by the DRT on a letter dated 04-08-2023, having been received from the SDM, DAC Gangtok. None appeared for the Petitioner. The matter was again listed on 15-09-2023, the Petitioner/CD, again remained absent. On 21-09-2023 also no appearance was made by the Petitioner/CD before the DRT as also on 04-10-2023. Another date apparently was fixed on 17-10-2023 which also reveals that the Petitioner/CD failed to enter appearance and on 04-12-2023 another date was fixed by the DRT the Petitioner/CD was again not before the Tribunal.

6. It is trite to mention here that the Petitioner/CD has failed to appear before the DRT Guwahati earlier and before the DRT Siliguri despite specific orders of the Division Bench of this Court, dated 01-08-2023. It also needs no reiteration that when a Petitioner approaches the Court, he has to come with clean hands. In the facts and circumstances mentioned above, it is evident that the Petitioner has failed to make an appearance before the DRT despite the categorical orders of this Court and despite several dates having been fixed before the DRT. The conduct of the

Petitioner is itself adequate to indicate his recalcitrance in the matter.

7. In such circumstances, I am of the considered view, that it is in fact the Petitioner who has failed to take steps as ordered by the Division Bench of this Court to enable him to clarify his case. In the absence of the Petitioner/CD the DRT and the Respondent Bank have taken necessary steps which the Petitioner now alleges is wilful disobedience of the orders of this Court. I find that there is no wilful disobedience of the orders of this Court and the allegation made is frivolous and an abuse of the process of Court. The Petition consequently deserves to be and is accordingly dismissed.

8. Pending applications, if any, also stand dismissed and disposed of.

(Meenakshi Madan Rai)
Judge
13-11-2025

Approved for reporting : **Yes**