

HIGH COURT OF TRIPURA
AGARTALA

WA 17 OF 2023

1. Tripura Other Backward Classes Co-operative Development Corporation Ltd.,

Represented by its General Manager having its office at Lake Chowmuhani,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

2. The General Manager,

Tripura Other Backward Classes Co-operative Development Corporation Ltd.,
Lake Chowmuhani, P.O. Agartala, P.S. West Agartala,
District-West Tripura.

3. The Zonal Manager,

Tripura Other Backward Classes Co-operative Development Corporation Ltd.,
Lake Chowmuhani, P.O. Agartala, P.S. West Agartala,
District-West Tripura.

....Appellants.

Vrs.

1. Shri Sabyasachi Kar,

S/o Late Kripendra Kumar Kar,
Resident of 17/3 Thakur Palli Road, Krishnanagar,
Near CNG Station, P.O. Agartala, District-West Tripura.

2. Tripura Tribal Areas Autonomous District Council,

Represented by its Chairman having its office at Kumulwng,
Jirania, West Tripura, P.O. Khumulwng, P.S. Radhapur,
District-West Tripura.

3. The Chairman,

Tripura Tribal Areas Autonomous District Council,
Kumulwng, Jirania, West Tripura, P.O. Khumulwng, P.S. Radhapur,
District-West Tripura.

4. The Zonal Development Officer,

West Zone, Tripura Tribal Areas Autonomous District Council,
Kumulwng, Jirania, West Tripura, P.O. Khumulwng, P.S. Radhapur,
District-West Tripura.

5. The Executive Officer (Administration)

Tripura Tribal Areas Autonomous District Council,
Kumulwng, Jirania, West Tripura, P.O. Khumulwng, P.S. Radhapur,
District-West Tripura.

6. The Drawing & Disbursement Officer,

Zonal Development officer, Tripura Tribal Areas Autonomous District Council, Kumulwng, Jirania, P.O. Khumulwng, P.S. Radhapur, District-West Tripura.

7. The Drawing & Disbursement Officer,

Executive Officer (Admn.), Tripura Tribal Areas Autonomous District Council, Kumulwng, Jirania, West Tripura, P.O. Khumulwng, P.S. Radhapur, District-West Tripura.

8. Sri Shantanu Das,

S/o Sr. Sunil Das,
Resident of Village-Ratannagar, P.O & P.S. Ranirbazar,
District-West Tripura.

....**Respondents.**

Present:

For the appellants : Mr. Biswanath Majumder, Advocate.

For the respondents : Mr. Raju Datta, Advocate.
Mr. B. Debbarma, Advocate.

Date of hearing : **01.08.2023**

Date of delivery of judgment & order : **31.08.2023**

Whether fit for reporting : No

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH

JUDGMENT & ORDER

[Arindam Lodh, J.]

The instant writ appeal is directed challenging the legality of the impugned judgment and order dated 09.12.2022, passed by the learned Single Judge in WP(C) No.379 of 2021 whereby the writ petition filed by the original petitioner [here-in-after referred to as the respondent No.1] was allowed.

2. The essential facts arising out of the instant appeal as projected by the appellants are required to be briefly revisited. The main grievance of the original petitioner namely, Sri Sabyasachi Kar, i.e. the respondent no.1

herein was that he being the employee (LDC) of Tripura Tribal Areas Autonomous District Council [for short, TTAADC] stood as a guarantor in favour of Sri Shantanu Das, the respondent no.8 herein (i.e. the respondent no.10 in the original writ petition) who had borrowed a loan amounting to Rs.4,75,000/- from the Tripura Other Backward Classes Co-operative Development Corporation Ltd.[for short, Tripura OBC Co-operative Development Corporation Ltd.]. But, the respondent-borrower failed to repay the borrowed loan amount to the appellants, i.e. the Tripura OBC Co-operative Development Corporation Ltd. Having found the respondent no.8 a defaulter, the appellants had made a communication on 21.08.2019 informing the respondent no.1 about outstanding loan amount of Rs.5,69,276/- only which would be recoverable from the salary of the respondent no.1 @ Rs.5,930/- per month w.e.f. 2019. The respondent no.1 had challenged the impugned letter dated 21.08.2019, by filing a writ petition before this court under Article 226 of the Constitution of India. Learned Single Judge having considered the pleadings and on the basis of the submissions of learned counsel of the parties, allowed the writ petition directing the respondent-appellants as under:

“Accordingly, the present writ petition is allowed with the direction that the respondent-Tripura Other Backward Classes Co-operative Development Corporation Ltd., shall refund back the amount which has been already deducted from the salary of the petitioner within a period of 2(two) months from the date of receipt of the copy of this order with 7.5% interest.”

3. Being aggrieved, the appellants have preferred this appeal stating *inter alia* that the impugned judgment is not sustainable in law and it has not been passed in its true perspective.

4. Mr. Biswanath Majumder, learned counsel for the appellants at the time of hearing in his first and foremost submission before this court strongly contended that when the original petitioner stood as a guarantor in favour of respondent no.8, he put his signature in an Indemnity Bond towards his DDO declaring that he would be fully liable in making repayment of the loan amount with interest when the borrower would found to be a defaulter. Mr. Majumder, learned counsel, pointed out that in the year 2019 the respondent no.1 Sabyasachi Kar had filed a writ petition being numbered as WP(C) 59 of 2019 before this court and it was disposed on 02.07.2019 on the terms that the petitioner's representation would be considered by the appropriate authority, but, after submitting representation the appellants had called a meeting for consideration of the above matter where, the respondent nos.1 and 8 were asked to be present there, but, none of them was attended that meeting. It was further argued by Mr. Majumder, learned counsel that the original petitioner in his writ petition specifically admitted that he stood as guarantor in favour of respondent-borrower and on 05.05.2012 he signed in a Letter of Guarantee addressed to the Tripura Scheduled Caste Co-operative Development Corporation Ltd. Learned counsel vehemently urged before this court that the appellants have rightly issued a direction to the employer of the petitioner to deduct the outstanding loan amount along with interest accrued upon the borrower-respondent with monthly installments as he stood as guarantor at the time of sanctioning the said loan. Accordingly, Mr. Majumder, learned counsel prayed for setting aside of the impugned judgment and order dated 09.12.2022, passed by learned Single Judge.

5. Mr. Raju Datta, learned counsel along with Mr. B. Debbarma, learned counsel appearing for the respondents refuting the submission of learned counsel for the appellants mainly contended that the petitioner stood as guarantor at the time of taking loan by the borrower from the Tripura Scheduled Castes Co-operative Development Corporation Ltd., but, the appellant being Tripura OBC Co-operative Development Corporation Ltd. cannot agitate that the guarantor would be liable for recovery of the said loan amount if the borrower fails to make such repayment. Learned counsel reiterated that the appellants could have been taken any step to recover the loan amount from the respondent-borrower on being found him defaulter, but, did not take such steps. Mr. Datta, learned counsel further asserted that the cardinal principle of law is that if the borrower fails to pay the loan amount the appellants could have taken steps to get the vehicle in their possession which was purchased by the borrower after taking the loan amount and after applying due process of law they could have even realize the outstanding amount from the loanee. Mr. Datta, learned counsel thus prayed for upholding the impugned judgment and order passed by the learned Single Judge.

6. We have heard learned counsel for the parties and perused the findings of impugned judgment passed by learned Single Judge. Learned Single Judge at Para 11 had observed that-- *the Indemnity Bond that has been placed before this court along with the counter, it categorically indicates that one Mr. Shantanu Das is the person who has executed the documents, but, whereas the petitioner herein is Mr. Sabyasachi Kar.* We have meticulously perused the Indemnity Bond placed on the record and we find that the petitioner-guarantor in the Indemnity Bond has declared that- *If the borrower*

would fail to repay the loan amount with interest accrued thereof partly or fully of the said loan and plus interest, deduction may be made from the monthly pay bill towards repayment of loan plus interest of the said borrower till the full recovery of the said loan. With this declaration before his DDO, he had signed on it and executed the same in favour of the appellant. Learned Single Judge could not appreciate the terms of the said Indemnity Bond in his finding that Shantanu Das i.e. the borrower had executed the said bond which is not at all sustainable. It is aptly clear that the guarantor-respondent no.1 had executed the same taking the liability of repayment of the borrowed loan amount.

7. Therefore, it is well-established that the guarantor-respondent no.1 in sound mind had executed the Indemnity Bond before the appellants that in case of any default by the borrower, he would be liable to make repayment on behalf of the borrower. Even, on perusal of the loan document, as produced by the appellants, it transpired that the petitioner-guarantor has put his signature in the Letter of Guarantee agreeing all the terms and conditions.

8. In the light of the above context, we are of the view that since the borrower failed to repay the loan, the guarantor-respondent no.1 is liable to repay the borrowed loan amount to the appellants as he had no business to question from which institution the loan was borrowed. The bifurcation was the policy matter of the Government. The borrower or the guarantor would have the liability to repay the loan amount to the organization where his account would lie. In the instant case, after bifurcation the loan account of the borrower is lying with the appellants-OBC Co-operative Development

Corporation Ltd. In view of this, the appellants-organization has not committed any illegality in directing the DDO, TTADC to deduct Rs.5,930/- from the salary of the guarantor, i.e. the respondent no.1/writ petitioner.

9. Accordingly, the findings of learned Single Judge are totally erroneous in law and not according to the documents executed by the guarantor-respondent no.1 at the time of borrowing loan by the respondent no.8. Thus, the impugned judgment and order dated 09.12.2022, passed by learned Single Judge in favour of the guarantor-respondent no.1 exonerating him from the liability, is set aside.

10. In view of this, the appeal stands allowed and disposed. The appellants-organization is entitled to recover the outstanding loan amount from the respondent no.1.

Return the records, as produced, to the learned counsel appearing for the Appellants-Corporation.

(ARINDAM LODH),J (APARESH KUMAR SINGH),CJ

SANJAY GHOSH Digitally signed by SANJAY GHOSH
Date: 2023.08.31 17:36:18 +05'30'