

Sri Biswajit Saha vs State Bank Of Travancore & on 30 May, 2022

Author: S. Talapatra

Bench: S. Talapatra

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)No.666 of 2021

1. Sri Biswajit Saha,
son of Late Sudhir Ranjan Saha,
residing at Shibnagar, Masjid Road,
P.O. College Tilla, Agartala, Tripura West,
PIN : 799004

2. Smt Kabita Rani Saha,
wife of late Sudhir Ranjan Saha,
residing at Shibnagar
Masjid Road, P.O. College Tilla, Agartala,
Tripura West,
PIN : 799004

3. Smt Sumana Saha,
wife of Sri Biswajit Saha,
residing at Shibnagar, Masjid Road,
P.O. College Tilla, Agartala,
Tripura West,
PIN : 799004

4. Sri Abhijit Saha,
son of late Sudhir Ranjan Saha,
brother of Sri Biswajit Saha,
residing at Shibnagar Masjid Road,
P.O. College Tilla, Agartala,
Tripura West,
PIN : 799004

5. Smt Nabanita Saha,
daughter of late Sudhir Ranjan Saha,
sister of Sri Biswajit Saha,
residing at Bishalgarh, 10/218,
Ward No.10, Tripura West,
PIN : 799102

VERSUS

..... Petitioner(s)

1. The Chief Manager, Union Bank of India,
Agartala, H.G.B. Road, PIN : 799001

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2. Sri Satyajit Saha,
son of late Sudhir Ranjan Saha,
Agartala, Tripura West, PIN : 799004

..... Respondent(s)

For Petitioner(s)	:	Mr. C.S. Sinha, Advocate
For Respondent(s)	:	Mr. Prabir Saha, Advocate
Date of hearing	:	02.02.2022
Date of delivery of Judgment & order	:	30.05.2022
		YES NO
Whether fit for reporting	:	√

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

The petitioners stood as the guarantors when the respondent No.2 obtained a cash credit facility amounting to Rs.400 lacs from the Union Bank of India in the year 2014. The respondent No.2 was the principal borrower who took the said cash credit facility for procurement of the steel products. According to the petitioners, the stock was purchased by using the said cash credit facility. The said stock was hypothecated to Union Bank of India, represented by the respondent No.1.

2. According to the petitioners, the respondent No.2 wilfully defaulted in repayment of the loan and diverted the fund amounting to Rs.381 lacs to his other personal bank accounts. Eventually, against the petitioners and the respondent No.2, a recovery proceeding was set in under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act [SARFAESI Act for short]. Having the notice as the sureties, the petitioner No.1 along with other four petitioners had requested the respondent No.2 to pay off the outstanding of Rs.381 lacs but he did not pay any heed to their advice. The respondent-bank, without taking any step against the principal borrower, took several actions against the petitioners to recover their dues. However, this allegation has been denied by the bank-respondents. The bank-respondent had forfeited the fixed deposits of the guarantors and given the notice of taking possession of the secured assets for public auction.

3. The petitioners filed one writ petition previously for giving directions to the bank to recover the due from the principal borrower. But the High Court declined to interfere with the bank action,

inasmuch as the guarantors, the petitioners, had coextensive liability with the principal borrower. In order to save the ancestral properties, the petitioners accepted to pay the outstanding dues of the bank. The petitioner No.1 paid the entire due on their behalf. The petitioners have paid all the outstanding amount to the extent of Rs.381 lacs and the said amount was paid on 03.02.2021.

4. The petitioners have now by taking recourse to Section 140 of the Indian Contract Act has filed this writ petition urging that the petitioner No.1 should be provided all the rights of the creditor and the respondent No.1 shall hand over the stocks as shown in para-11 of the writ petition :

"1. Stock lying at M/S Chandimata Traders, Chittaranjan Road, Po-Agartala College, Agartala West Tripura, Pin 799004

2. All part and parcels of land measuring 1933.20 sq. ft. covered by Dag No.16759/74906, 16759/7490p in the name of Mr Satyajit Saha, Agartala."

5. It has been further asserted that the petitioners are entitled to receive those properties on release through the petitioner No.1 as per Sections 140 and 141 of the Indian Contract Act, 1872. According to the petitioners, the respondent No.1 in particular, has infringed the rights of the petitioners by not acting in terms of Sections 140 and 141 of the Indian Contract Act. The petitioners have also referred to the particulars of the secured assets as were drawn up by the authorised officer of Union Bank of India under No.ROG/SARF/185/2018-19 dated 28.01.2019. For purpose of reference, the particulars of the secured assets are reproduced hereunder :

PARTICULARS OF THE SECURED ASSETS

1. Hypothecation of Stock lying at M/s Chandimata Traders, Chitta Ranjan Road, Post Office-

Agartala College, Agartala, West Tripura (Tripura)-799004

2. All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No.16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East, Mouja-

Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Satyajit Saha and bounded as follows :-North-Sudhir Laskar, South- Abhijit Saha, East-Gopal Debnath & West-Gali Road.

3. All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No. 16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East Mouja- Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Abhijit Saha and bounded as follows :-North-Satyajit Saha, South- Biswajit Saha, East-Gopal Debnath & West-Gali Road.

4. All that part and parcel of vacant residential land measuring 13,536.00 sq. ft. covered by Dag No. 17336, 17338, 17339, 17337, 17335, 17334, 17346, 17333, 17347, 17348/20852 situated at Village-Jogendranagar, Tehsil- Jogendranagar, Mouja- Jogendranagar, District-West Tripura (Tripura) in the name of Mrs. Kabita Rani Saha, Mr. Biswajit Saha, Mr. Abhijit Saha, Mr. Satyajit Saha & Mrs. Nabanita Saha and bounded as follows :-North- Sudhir Debnath & Ors., South-Jagadish Banik, East-Sanku Acharjee & West- Road.

5. All that part and parcel of land measuring 1690.00 sq. ft. covered by Dag No. 5581 situated at Village-Khowai, Tehsil-Khowai, Mouja-Khowai, District-Khowai (Tripura) and the building standing thereon in the name of Mrs. Kabita Rani Saha and bounded as follows :-North-Gopal Bhowmik & Kunjalal Deb, South-Haripada Bhowmik, East-Haralal Debnath & West-Teliamura Khowai Road.

6. All that part and parcel of land measuring 12960.00 sq. ft. covered by Dag No. 1193,1195/10278 situated at Village-Khowai, Tehsil-Khowai, Mouja-Ganaki, District- Khowai (Tripura) and the building standing thereon in the name of Mrs. Kabita Saha and bounded as follows :-North-Gagan Ghosh & Gour Binod Ghosh, South-Benu Deb, East- Upendra Lal Chakraborty & Khowai Teliamura Road & West-Gopal Chakraborty.

7. All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No. 16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East Mouja- Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Biswajit Saha and bounded as follows :-North-Abhijit Saha, South-Assam- Agartala Road, East-Gopal Debnath & West-Gali Road

6. The respondent bank has filed the reply and has stated categorically that the bank has never asked or encouraged the petitioners to pay off the outstanding in order to free themselves from the scourge of recovery proceeding. If the outstanding were not paid, the secured assets would have been auctioned out for mitigating the loss of the bank against the loan amount and due charges. It has been categorically asserted by the respondent-bank that by the order dated 26.09.2018 [Annexure-3 to the writ petition], this Court directed the petitioners to clear the dues of the bank.

7. Now, the petitioners [the guarantors] have filed this petition expressing their grievance why the bank respondent has not taken any action against the principal-borrower, the respondent No.2 and why the bank respondent has delivered the deeds standing in the name of the respondent No.2 which was deposited as collateral security to him. The bank is not aware who has paid the loan amount while liquidating the outstanding. Hence, in this writ petition, the respondent bank has been unnecessarily brought into the controversy, by invoking those provisions of the Indian Contract Act as referred by the petitioners. Hence, the bank-respondent is not liable to take any action against the principal borrower while releasing the sale deeds of the secured assets or releasing the hypothecated stock. Under the cash credit agreement, the bank was bound to release those deeds whereby the property described in those documents was put in as the security against the said cash credit facility. This is a frivolous petition and it should be dismissed with huge costs.

8. The respondent No.1 has further stated that all the petitioners had authorised Sri Biswajit Saha to take back the deeds, which stood in their name and urged the Chief Manager, Union Bank of India, the respondent No.1 herein, to take necessary action for release of those deeds to their authorised person, the petitioner No.1 herein, in compliance of the settlement certificate dated 03.03.2021. The said authorisation certificate [Annexure-R/6 to their reply] has been enclosed by the respondent No.1. The respondent No.1 has also filed the acknowledgment voucher accepting the title deeds of the guarantors [see Annexure-R/7]. It is apparent that the respondent No.2 had received two title deeds from the bank. Thereafter, the bank authority issued the release certificate in respect of the title deeds in favour of M/s Chandimata Traders, which is under sole proprietorship of the respondent No.2. In the said certificate, it has been stated that consequent upon the settlement of the credit facility, those deeds as recorded in the said certificate have been released. For purpose of reference, the name and description of the immovable properties which were released from the secured assets are provided herein below :

Nature/Description of Immovable Property All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No.16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East, Mouja-Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Satyajit Saha and bounded as follows :-North-Sudhir Laskar, South-Abhijit Saha, East-Gopal Debnath & West-Gali Road.

All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No. 16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East Mouja-Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Abhijit Saha and bounded as follows :-North-Satyajit Saha, South-Biswajit Saha, East-Gopal Debnath & West-Gali Road.

All that part and parcel of vacant residential land measuring 13,536.00 sq. ft. covered by Dag No. 17336, 17338, 17339, 17337, 17335, 17334, 17346, 17333, 17347, 17348/20852 situated at Village-Jogendranagar, Tehsil- Jogendranagar, Mouja-Jogendranagar, District-West Tripura (Tripura) in the name of Mrs. Kabita Rani Saha, Mr. Biswajit Saha, Mr. Abhijit Saha, Mr. Satyajit Saha & Mrs. Nabanita Saha and bounded as follows :-North-Sudhir Debnath & Ors., South-Jagadish Banik, East-Sanku Acharjee & West- Road. All that part and parcel of land measuring 1690.00 sq. ft. covered by Dag No. 5581 situated at Village-Khowai, Tehsil-Khowai, Mouja-Khowai, District-Khowai (Tripura) and the building standing thereon in the name of Mrs. Kabita Rani Saha and bounded as follows :-North-Gopal Bhowmik & Kunjalal Deb, South-Haripada Bhowmik, East-Haralal Debnath & West-Teliamura Khowai Road.

All that part and parcel of land measuring 12960.00 sq. ft. covered by Dag No. 1193,1195/10278 situated at Village-Khowai, Tehsil-Khowai, Mouja-Ganaki, District-Khowai (Tripura) and the building standing thereon in the name of Mrs. Kabita Saha and bounded as follows :-North-Gagan Ghosh & Gour Binod Ghosh,

South-Benu Deb, East-Upendra Lal Chakraborty & Khowai Teliamura Road & West-Gopal Chakraborty. All that part and parcel of land measuring 1933.20 sq. ft. covered by Dag No. 16759/74906, 16759/74907p situated at Village-Dhaleswar, Tehsil-Sadar East Mouja-Agartala Sheet No.20, District-West Tripura (Tripura) and the building standing thereon in the name of Mr. Biswajit Saha and bounded as follows :-North-Abhijit Saha, South-Assam-Agartala Road, East-Gopal Debnath & West-Gali Road

9. The said certificate was issued by the respondent No.1 on

04.05.2021. It appears that the petitioners have filed the rejoinder in response to the said reply and accepted that fact. The respondent No.2 had collected all the deeds belonging to the petitioners as the proprietor of M/S Chandimata Traders on release of the secured assets. Even hypothecated stock lying at M/s Chandimata Traders was not released in favour of the petitioner No.1. It has been contended that the petitioner No.1, according to the law, was supposed to get the said stocks and barrels. The petitioners have stated that the petitioner No.1 is entitled to receive the hypothecated stock and even the deed in the name of Satyajit Saha [the respondent No.2] in terms of Section 141 of the Indian Contract Act, 1872.

10. Mr. C.S. Sinha, learned counsel appearing for the petitioners has quite categorically stated that since the petitioner No.1 had mobilised the entire outstanding due and paid the same to the bank, he is entitled to hold the entire properties under Sections 140 and 141 of the Indian Contract Act. After the mortgage was discharged, the petitioners through the petitioner No.1 were entitled to hold those properties as the creditor. For purpose of reference, both Sections 140 and 141 of the Indian Contract Act as extensively referred by Mr. Sinha, learned counsel are reproduced hereunder :

"140. Rights of surety on payment or performance-

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. Surety's right to benefit of creditor's securities- A surety is entitled to the benefit of every security which the credit has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

11. Mr. Sinha, learned counsel has strenuously argued that the rights of surety on payment or performance have been postulated in Section 140 of the Indian Contract Act. It provides that where a guaranteed debt has become due for default of the principal debtor in performing a guaranteed duty, the surety upon payment or performance of all that, is liable for, is invested with all the rights

which the creditor he had against the principal debtor. Section 141 of the Indian Contract Act deals with the surety's right to benefits from the creditor's securities. According to that section, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

12. In every contract of guarantee as Mr. Sinha, learned counsel has referred to Section 145 of the Indian Contract Act, there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor whichever sum he has rightfully paid under the guarantee, but, no sum which he has paid wrongfully.

13. Mr. Sinha, learned counsel has, therefore, stated that it was the duty of the respondent No.1 to hand over the control and lien over the property as if the petitioner No.1 were the creditor under authorisation of the other guarantors, but in refusing to do so, the bank has acted illegally.

14. Mr. Sinha, learned counsel has relied on a decision of the apex Court in *Amrit Lal Goverdhan Lalan versus State Bank of Travancore & Others* reported in AIR 1968 SC 1432 where it has been laid down as under :

"7. ".....it is necessary to consider the provisions of Section 140 of the Indian Contract Act, 1872 which states :

"Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for is invested with all the rights which the creditor had against the principal debtor(s)."

This section embodies the general rule of equity expounded by Sir Samuel Romilly as counsel and accepted by the Court of Chancery in *Craythorne v. Swinburne* [1807] 14 Ves. 160, namely :

"The surety will be entitled to every remedy which the creditor has against the principal debtor; to enforce every security and all means of payment; to stand in the place of the creditor; not only through the medium of contract, but even by means of securities entered into without the knowledge of the surety; having a right to have those securities transferred to him, though there was no stipulation for that; and to avail himself of all those securities against the debtor. This right of a surety also stands, not upon contract, but upon a principle of natural justice."

The language of the section which employs the words "is invested with all the rights which the creditor had against the principal debtor"

makes it plain that even without the necessity of a transfer, the law vests those rights in the surety. Section 141 of the Indian Contract Act, 1872 states :

"A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

As pointed out by this Court in *State of Madhya Pradesh v. Kaluram* :

[AIR 1967 SC 1105], the expression "security" in this section is not used in any technical sense; it includes all rights which the creditor has against the property at the date of the contract. The surety is entitled on payment of the debt or performance of all that he is liable for to the benefit of the rights of the creditor against the principal debtor which arise out of the transaction which gives rise to the right or liability. The surety is therefore on payment of the amount due by the principal debtor entitled to be put in the same position in which the creditor stood in relation to the principal debtor. If the creditor has lost or parted with the security without the consent of the surety, the latter is by the express provision contained in s., 141, discharged to the extent of the value of the security lost or parted with. In *Wulff and Billing v. Jay* [1872] 7 QB 756 Hannen, J. stated the law as follows :

".....I take it to be established that the defendant became surety upon the faith of there being some real and substantial security pledged, as well as his own credit, to the plaintiff; and he was entitled, therefore, to the benefit of that real and substantial security in the event of his being called on to fulfil his duty as a surety, and to pay the debt for which he had so become surety. He will, however, be discharged from his liability as surety if the creditors have put it out of their power to hand over to the surety the means of recouping, himself by the security given by the principal. That doctrine is very clearly expressed in the notes in *Rees v. Barrington*, 2 White & T.L.C., (4th Ed.) at p. 1002- As a surety, on payment of the debt, is entitled to all the securities of the creditor, whether he is aware of their existence or not, even though they were given after the contract of suretyship, if the creditor who has had, or ought to have had, them in his full possession or power, loses them or permits them to get into the possession of the debtor, or does not make them effectual by giving proper notice, the surety to the extent of such security will be discharged. A surety, moreover, will be released if the creditor, by reason of what he has done, cannot, on payment by the surety, give him the securities in exactly the same condition as they formerly stood in his hands.' "

It is true that Section 141 of the Indian Contract Act has limited the surety's right to securities held by the creditor at the date of his becoming surety and has modified the English rule that the surety is entitled to the securities given to the creditor both before and after the contract of surety. But subject to this variation, Section 141 of the Indian Contract Act incorporates the rule of English law relating to the discharge from liability of a surety when the creditor parts with or loses the security held by him. Upon the evidence adduced by the parties in this case we are satisfied that there was

shortage of goods of the value of Rs. 35,690 brought about by the negligence of the Bank or for some other reason and to that extent there must be deemed to be a loss by the Bank of the securities which the Bank had at the time when the contract of surety was entered into. It follows therefore that the principle of Section 141 of the Indian Contract Act applies to this case and the surety is discharged of the liability to the Bank to the extent of Rs. 35,690. We accordingly hold that the respondent Bank is entitled to a decree against respondent 6, the appellant only to the extent of Rs. 5,243.58 and not to the sum of Rs. 40,933.58 and to proportionate costs."

[Emphasis added]

15. The respondent No. 2 has illegally accepted and held on the deeds or the joint ownership deeds of the petitioners. Subject to other rights of the petitioners, the respondent No.2 is directed to return the title deeds standing in the name of the petitioners, or jointly with the respondent No.2 within 30 (thirty) days from today.

16. Mr. P. Saha, learned counsel appearing for the bank-respondents, i.e. the respondent No.1, has categorically stated in para-5 that it is not within the knowledge of the bank-respondent who had cleared the bank dues. In their own interest, all the petitioners liquidated the loan. It has been also asserted by the said respondent that ten title deeds were deposited as collateral security for securing the Cash Credit Facility to the tune of Rs.4,00,00,000/-.

17. The petitioners had also filed another writ petition being WP(C)No.1323 of 2019 expressing their intendment to this High Court that they are willing to clear the dues, if they are allowed to sell two of these immovable properties attached by the bank. The bank-respondent was directed to examine the offer of the petitioners for purpose of liquidating the dues of the bank through sale of their immovable properties and also furnish a fresh computation of the dues. The writ petitioners again filed a writ petition being WP(C)No.116 of 2020 in response to the e-auction notice of the secured assets in terms of the order of the Debt Recovery Tribunal. The said e- auction notice dated 28.01.2020 was suspended for a month by the order dated 17.02.2022 enabling the petitioners to approach the Debt Recovery Tribunal. The said order was made subject to payment of cost of Rs.20,000/- on or before 24.02.2020. Therefore, in a series of writ petition, the petitioners never raised their claim over the secured assets or the hypothecated stocks. In terms of the direction, the fresh computed due was provided to the petitioner. On payment of a sum of Rs.23,35,000/-, the due, as stood at that time, the settlement certificate was issued on 03.03.2021. The said amount was paid on 25.02.2021. On 08.03.2021, the guarantors wrote a letter to the Chief Manager, Union Bank of India for handing over the mortgage deeds securitized against the borrowers, Chandi Mata Traders to the writ petitioner No.1 [Biswajit Saha]. In response to the said letter dated 08.03.2021, the bank respondent informed M/s Chandimata Traders that consequence upon the settlement of the credit facility, they would be releasing the securities as noted before. The copy of that communication dated 30.04.2021 [Annexure-R/8] was duly served on the petitioners and the respondent No.1.

18. The petitioners, however, have filed a rejoinder and claimed their right in terms of Section 141 of the Indian Contract Act. Section 145 of Indian Contract Act provides implied promise to indemnify

the surety. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

19. Having appreciated the submissions of the learned counsel for the parties this court acknowledges that under Section 141, the sureties have a right to be benefitted from the creditor's securities. But in this case, the respondent No.1, the Chief Manager, Union Bank of India has categorically stated that they are not aware who had paid the money in liquidating the due in the said Cash Credit Facility, even though it is seen from the settlement certificate that the money was paid by Sri Biswajit Saha, the petitioner No.1 to the bank. What perhaps the bank respondent is indicating is that how the money was mobilized or paid is unknown to the bank-respondent. A settlement certificate only records that the petitioner No.1 had offered one time compromise settlement of the said cash credit account and thereafter, the settled amount was paid, but nowhere it has been acknowledged that the petitioner No.1 or the petitioners had paid the said amount to discharge the duty as provided by Section 41 of the Indian Contract Act, meaning to enjoy all the securities under the control of the petitioners.

20. In *Amrit Lal Goverdhan Lalan* (supra) it has been succinctly laid down that the guarantor having liquidated the due is entitled to the benefit of the real and substantial security in the event of his being called on to fulfill his duty as surety and to pay the debt for which he became surety.

21. As the respondent-bank did not call upon and it has been stated very categorically that the guarantors role of liquidating the outstanding, has been denied to be acknowledged by the bank-respondent stating that he did not know who make the payment, in such circumstances, this court cannot direct the bank-respondent qua Sections 140, 141 and 144 of the Indian Contract Act by invoking the jurisdiction under Article 226 of the Constitution, to place the petitioners in the position of the creditor to recoup their credit or investment by which he or they had liquidated the outstanding. But the petitioners may, by brining a civil action, can establish the fact as regards who paid the amount for clearing the outstanding to the Union Bank of India and if it is established that the petitioners had paid the said settlement amount, then definitely the petitioners may have a case to claim as raised in this writ petition or to occupy the position of the creditor to recoup their investment they used for liquidating the outstanding due. But such determination cannot be made invoking the jurisdiction under Article 226 of the Constitution of India as the bank-respondent has refused to acknowledge whether the petitioners as guarantors paid the outstanding due from their own credit or by way of investment. The petitioners may approach the Civil Court of the competent jurisdiction for that purpose, if they are so inclined.

Having observed thus, this writ petition stands disposed of. There shall be no order as to costs.

JUDGE Sabyasachi B