OD-2

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CSOS/5/2024

IA NO: GA/1/2025, GA/2/2025, GA/3/2025, GA/4/2025

RONENDRA CHOWDHURY AND ORS.

VS

SUBODH KUMAR MAJUMDER AND ANR.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 6th May, 2025.

Appearance:
Mr. Sudipto Sarkar, Sr. Adv.(VC), Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Soumalya Ganguli, Adv.
For plaintiffs
Mr. Partha Sarathi Bhattacharyay, Sr. Adv.
Mr. Jakir Hossain, Adv.
Mr. Shahan Shah, Adv.
Soumen Barman, Adv.
Mr. Raju Bhattacharyay, Adv.
Mr. Sk. Abumusa, Adv.
Mr. Umenun Khan, Adv.
Mr. Md. Shahjahan, Adv.
For applicant in GA/1/2025
Mr. Sabyasachi Chatterjee, Adv.
Mr. Pintu Karar, Adv.,
Mr. Akashdeep Mukherjee, Adv.
For applicants in GA/2/2025, GA/3/2025, GA/4/2025

Mr. Supriyo Gole, Adv.
Mr. Aishwarya Kr. Awasthi, Adv.
For defendants

<u>RE: GA/1/2025</u>

Deficit court fees have been paid.

Supplementary affidavit filed on behalf of the applicants who intend to be added as party respondent is taken on record.

<u>RE: GA/2/2025</u>

Deficit court fees have been paid.

Supplementary affidavit filed on behalf of the applicants who intend to be added as party respondent is taken on record.

<u>RE: GA/3/2025</u>

Deficit court fees have been paid.

Supplementary affidavit filed on behalf of the applicants who intend to be added as party respondent is taken on record.

<u>RE: GA/4/2025</u>

This is an application by 24 applicants who claim to be Government and former employees of Bandhan Bank and as such beneficiaries of Bandhan Employees' Welfare Trust (in short 'BEWT'). The assets whereof is the subject matter of the above Originating Summons Suit. The applicants want themselves to be added as defendants in the suit. This application is moved for the first time. Deficit Court fees should be paid by 19th May, 2025 failing which this application shall be treated to have been filed only by the applicant no. 1.

RE: CSOS/5/2024

This Originating Summons Suit has been taken out by three of the trustees of Bandhan Employees Welfare Trust (in short 'BEWT'). BEWT was constituted by a registered Deed of Trust dated 18th March, 2008. There are two amendments to the said Deed of Trust. The first amendment was made by a registered deed dated 29th December, 2014. The second amendment was brought in by another registered deed dated 6th May, 2022. The defendants in this Originating Summons Suit are two other trustees of the said Trust. The plaintiffs have sought opinion of this Court in respect of following three questions :-

> "(a) *Whether in view of the assertions made by some of the beneficiaries/members of the said trust, the trustees could dispose of all assets of the said trust and distribute the proceeds to all beneficiaries/members?*
>
> *(b) Whether the trustees are empowered to immediately sell all assets of the said trust?*

> (c) *Whether upon liquidation of all assets of the said trust and distribution of sale proceeds, the said trust would stand extinguished and if not whether the trustees are required to undertake any further act or deed for this purpose?"*

So far as the authority of the trustees (plaintiffs herein) to file an Originating Summons Suit is concerned, on a reading of Rules 1 and 2 of Chapter XIII of the Original Side Rules of this Court, I find that trustees under any instrument or any of them can take out an Originating Summons if the same relates to the determination of any question arising in the administration of the Trust as envisaged under Rule 1(g) of Chapter XIII of the Original Side Rules of this Court.

Rule 2 of Chapter XIII the Original Side Rules of this Court also empowers the trustees or any one of them to apply and obtain an order for administration of Trust.

Admittedly, the plaintiffs are trustees and the opinion sought for relates to administration of the said Trust. The plaintiffs have also alleged that the dispute raised by the members of the BEWT as also some non-members as a consequence whereof there are hindrances in the smooth administration of BEWT. This has prompted the plaintiffs to approach this Court. The plaintiffs therefore, has been able to make out a case at least prima facie that they are entitled to take out the originating summons for the purpose of instituting the Originating Summons Suit.

This takes us to Rule 3 of Chapter XIII the Original Side Rules of this Court which speaks of the persons to be served with summons. The said Rule clearly says that in case of determination of any question under sub-Rule(g) of Rule 1 or sub-section (b) of Rule 2 the persons whose right or interest are sought to be effected or the beneficiaries or some of them are required to be served with the summons.

In the instant case, the beneficiaries or stake holders of the said Trust are the members of the said Trust essentially being the employees of Bandhan-Konnagar and Bandhan Financial Services Private Limited or presently of Bandhan Bank.

The Originating Summons being moved before the Court on 12th September, 2024, Hon'ble Mr. Justice Aloke Chakrabarti (retired) was appointed as the Special Officer to do the following:-

"1. To hold meetings with the Trustees and all beneficiaries of the Trust to ascertain the dispute.

2. To cause inquiry on the complaints made by the beneficiaries for misutilization of the fund of the Trust.

3. To ascertain the entire property/assets of the Trust.

4. To obtain audit report from the Trust and if required, fresh audit be conducted through the Chartered Accountant.

5. To ascertain whether the properties can be sold and the amount can be distributed amongst the beneficiaries.

6. The Trust shall bear all expenditure including papers publication or *appointment of Chartered Accountant, if any."*

The learned Special Officer has in the course of this proceedings filed two reports. The first report titled as 'interim report' is dated 18th February, 2025 while the final report was filed on 19th March, 2025.

In GA/1/2025, the applicants claim, except applicant no.236, to be employees of Bandhan Bank Limited and members of BEWT.

The applicants in GA/2/2025, GA/3/2025 and GA/4/2025 claim to be presently employees of Bandhan-Konnagar and are members of BEWT.

The applicants in GA/1/2025, GA/2/2025, GA/3/2025 and GA/4/2025 claim that they are persons whose right or interest are said to be effected and/or beneficiaries of the Trust being the members thereof. The said applicants, therefore, seek to be added as party defendants in the suit. The applicants in support of their contention relies upon the documents annexed to their respective supplementary affidavit filed today and say that they have admittedly contributed to the trust fund and, therefore, are beneficiaries of the said BEWT. They also submit that even if all of the applicants are not beneficiaries of the Trust then also in view of the provisions of Rule 3(A)(g) of Chapter XIII of the Original Side Rules of this Court some of them are entitled to be served with the summons. The applicants also say that even if some of them are members and beneficiaries under BEWT, they are the persons whose right or interest will be affected if the opinions sought for by the plaintiffs are given in their favour.

Going by either of the two Rules as aforesaid, the applicants or some of them are required to be served with the summons. The applicants, therefore, contend that they are the necessary parties to the Originating Summons Suit.

Responding to the arguments advanced by the applicants, it is submitted on behalf of the plaintiffs by referring to pages 106 to 1011 of the supplementary affidavit filed by the applicants in GA/2/2025 that admittedly those employees have received their benefits under the said Trust and have, therefore, admittedly ceased to be members of the same.

Relying upon the letters of engagement annexed to the supplementary affidavit used by the applicant in GA/2/2025, it is submitted by the plaintiffs that all these letters are prior to establishment of the Trust.

It cannot be, therefore, vouched by these applicants that they were employees of Bandhan-Konnagar on the date when the trust was constituted. The plaintiffs say assuming without admitting that these persons were employees on the date of formation of the trust then also to be a beneficiary under the said Trust it has to be shown that they have been working as employees for at least ten years. It cannot therefore, be said at this stage without further scrutiny of records that the applicants are the persons whose interest will be affected or that they are beneficiaries under the Trust and are required to be served with summons. The plaintiffs by relying upon the provisions of the Trust Deed with the amendments incorporated therein say that the management of BEWT is completely vested on the trustees. The members or their representatives constituting the general body have no say in the management of the trust. Moreover, the trustees are empowered under the said trust deed to sell and dispose of any assets of the trust as per their decision. It is also not a trust which provides for any guaranteed return to an employee assuming without admitting that by virtue of being an employee are members of the trust and have contributed in the same. There is as such, according to the plaintiffs, no role for the members to be played when the trustees decide to sell any asset or invest in some properties or assets. The decision taken by the trustees to sell or invest in properties and assets including securities were never objected to or challenged by the members prior to the recent developments which has prompted the trustees to approach this Court by taking out the instant originating summons. Relying on pages 110 to 116 of the plaint filed in the originating summons suit it is submitted by the plaintiff that the author of the letters referred to hereinabove has themselves invited for sale of all the properties and assets of the trust and to pass on the benefits to the members.

Referring to the interim report it is submitted by the plaintiffs that the learned Special Officer after finding it to be difficult to issue notice individually to each of the members and/or beneficiaries of the said trust had published notices in newspapers which amounts to compliance of Rule 3 under Chapter XIIIA of the Original Side Rules of this Court.

It is the contention of the plaintiffs that on the notice being published in the newspapers, the applicants in **IA No. GA/1/2025, GA/2/2025,**

GA/3/2025 and GA/4/2025 cannot complain that they were entitled to be served with a summon, but have not been done so.

At this stage, it is difficult to ascertain which of the applicants in the aforesaid four applications are members or beneficiaries of the trust. Unless this fact is ascertained, it cannot alone be held that the applicants are either necessary or proper parties to the suit. Moreover, adding so many applicants as party defendants in the suit without deciding their respective rights will likely to cause hindrance in proceeding with the suit.

In the aforesaid facts and circumstances treating the applicants or some of them to be entitled to be served with a summons and that there have been paper publication made by the learned Special Officer to inform the members and/or beneficiaries of the trust, I am inclined to hear the applicants without making them parties to the suit but holding that some of them are at least entitled to be served with the summons as members or beneficiaries whose rights may get affected on a decision in the suit.

On a perusal of the order dated 12th September, 2024, I find that the Special Officer so appointed was directed to hold meeting with the trustees and all beneficiaries of the trust to ascertain the dispute.

In answer to this point learned Special Officer in his report has submitted that the first two sittings were held in the presence of all the trustees wherein the relevant back ground facts causing the grievances of the beneficiaries were ascertained.

Referring to paragraph 8 of the applicant, the learned Special Officer has recorded that, according to the plaintiffs, there were originally 3276 members of the said BEWT. 1242 members upon receiving their benefits have ceased to be members of the said trust. The learned Special Officer was also informed by the trustees that around 1200 representations were received by them. After looking into the representations, the learned Special Officer found that there were ten categories of complaint. The learned Special Officer, therefore, decided to give notice to the first complainant of each category of complaints. After giving such notice, a meeting was held by the learned Special Officer on 21st December, 2024 where six out of ten beneficiaries attended. The learned Special Officer recorded the grievances of the beneficiaries expressed through Sreemanta Kumar Das and Sri Rudrajit Sarkar. The learned Special Officer upon noticing that all the members have not been given opportunity to place their grievances before the learned Special Officer decided to invite them by notices through paper publication.

The report also reveals that the situation in the meeting of the Special Officer with the members of the said trust went out of control and in order to prevent a breach law and order situation the police personnel had to intervene. The learned Special Officer has also given a summary of the grievances raised by the members. The learned Special Officer has also given the details of the investments and/or assets and properties of the said trust. The learned Special Officer considering the grievances raised by the representatives of the general body to the extent that proper market value is required to be ascertained through appropriate expert instead of acting on book value of the assets of the said trust appointed a valuer to conduct the valuation by consent of the trustees and the representatives of the general body. The valuer, namely B. Jha & Co., Chartered Accountant had provided the valuation of the assets and properties of the trust which has been annexed to the said report. It is, therefore, apparent that the learned Special Officer has considered the grievances of the members ventilated through the complainants and the members of the general body. It is, therefore, apparent that the apprehension expressed by the applicants that the assets and properties may not be sold at proper value is unfounded at this stage. The report of the Special Officer is available with the applicants and none of them had taken exception thereto till this date. The main crux of the submissions made on behalf of the applicants in the four applications as aforesaid are that they should not be deprived of their respective shares and/or benefits from out of the trust fund. In order to pay the beneficiaries under the trust, the assets and properties of the said trust are required to be liquidated and converted into money equivalent for being paid. Up to this extent after hearing the parties, I do not find there is much dispute. The applicants in IA No. GA/1/2025, GA/2/2025, GA/3/2025 and GA/4/2025 do not object to the selling of the assets and properties of the trust, but say that the same should be sold at a proper value by complying with the provisions of the trust deed and the sale proceeds receives therefrom should be deposited with the Registrar, Original Side of this Court till further directions are given by this Court.

It is also the case of the applicants that the beneficiaries should be provided with their benefits as per their respective entitlement.

In view of such rival contention, I do not find any embargo in allowing the sale of the properties and assets of the trust through the learned Special Officer inasmuch as the valuation thereof has been provided by the valuer appointed by consent of the members of the governing body and the trustees.

In the aforesaid facts and circumstances, after perusing the terms of the trust deed as amended in the light of the submissions made by the parties, I answer the first question raised in the suit in the affirmative. There exists dispute in connection with the administration of the trust in view of the assertion and the trust to sell the properties and assets of the trust in an endeavour to manage the trust. So far as the other questions are concerned, that stage has not arrived as yet.

The plaintiffs, defendants and the applicants have jointly submitted that the learned Special Officer already appointed should be assisted by another person to be appointed as Joint Special Officers. The parties have jointly invited this Court to appoint Mr. Surojit Nath Mitra, Senior Advocate as the other Special Officer to act jointly with the learned Special Officer already appointed in view of which by consent of the parties, Mr. Surajit Nath Mitra, learned Senior Advocate, is appointed as the Joint Special Officer along with Justice Aloke Chakrabarti (Retd.).

The Joint Special Officers will hold a meeting with the members of the general body of the trust and decide the modalities for sale of the properties and assets of the said trust through public auction or any convenient mode which is transparent and enure the best return or sale proceeds therefrom.

The Joint Special Officers shall be at liberty to open a bank account with any nationalized bank of their choice to deposit the sale proceeds that may be received by them from time to time by selling the properties and assets of the trust. The sale proceeds so may be received shall be invested in a highest interest bearing account as per the decision of the learned Joint Special Officers. The entire exercise for selling the assets and properties of the trust shall be completed by 31st August, 2025. The expenses for conducting the sale and any incidental expenses thereto shall be borne out of the trust fund and/or sale proceeds that may be received from time to time.

As appears from the order dated 12th September, 2024 the Hon'ble Justice Aloke Chakrabarti (retired) has been directed to be paid a sum of Rs.3 lakhs as his remuneration. A further sum of Rs.5 lakhs should be paid to Justice Chakrabarti and a sum of Rs.5 lakhs should be paid to Mr. Surajit Nath Mitra, learned Senior Advocate from the trust fund for the time being. The Joint Special Officers shall file their report before the appropriate Bench.

The Originating Summons suit along with the applications being GA 1 of 2025, GA 2 of 2025, GA 3 of 2025 and GA 4 of 2025 are made returnable on 15th September, 2025.

The prayer for deposit of the sale proceeds with the Registrar, Original Side of this Court as made by the applicants is not accepted for the time being as the deposit and withdrawal with the learned Registrar will attract commission and further require fulfilment of stringent formalities for which the same cannot be easily withdrawn or disbursed expeditiously for any purpose.

(ARINDAM MUKHERJEE,J)

Sb/snn/pa