2026:AHC-LKO:55121-DB

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 6410 of 2026

Vineet Pandey .....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. of Cooperative Lko. And 3 others .....Respondent(s)

Along with:

1. WRIT - C No. - 6423 of 2026 :
Anoop Kumar Mishra Versus State of U.P. and 3 others

Counsel for Petitioner(s)	:	Anand Dubey, Abhishek Dwivedi
Counsel for Respondent(s)	:	C.S.C., A.S.G.I.

Court No. - 3

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

1. Heard Shri Anand Dubey, learned Counsel appearing on behalf of the petitioners, as well as Shri Nirankar Singh, appearing on behalf of the respondent No.2 - U. P. Postal Primary Cooperative Bank Limited, and learned Additional Chief Standing Counsel for the State-respondent(s) and perused the materials available on record.

2. Since both the writ petitions filed by two distinct individual petitioners, raise common question of law and are based on over-lapping facts, these writ petitions are being decided by this common order.

3. Apparently, both these writ petitioners substantially seek the following main relief(s):-

> ***"(i)*** *To issue a suitable writ, order or direction in the nature of certiorary thereby quashing the recovery order if any passed against the petitioner for recovery of Rs. 10000.00 being made each month from the petitioner being made by the opposite parties*
>
> ***(ii)*** *To issue a suitable writ, order or direction in the nature of mandamus commanding the opposite parties not to made recovery of Rs. 10000.00 per month from the salary of the petitioner.***"**

4. Vineet Pandey, the petitioner in *Writ-C No. 6410 of 2026;* and Anoop Kumar Mishra, petitioner in *Writ-C No. 6423 of 2026,* had been serving as 'Postal Assistant' in Balrampur Post Office, at Balrampur. Both these writ petitioners stood as 'guarantor' for the loans availed by one of their colleague namely, Vikrant Dubey, (hereinafter referred to as "the principal borrower"), who had been also working as a 'Postal Assistant' in Mankapur Post Office, at District Gonda. The facts reveal that the principal borrower availed three loans from the respondent No.2 i.e. U. P. Postal Primary Cooperative Bank Limited, situated at 3-Balmiki Marg, Lucknow, during 2022-23, being, *(i)* festival loan of ₹50,000/- *(ii)* short-term loan of ₹3,00,000/- and *(iii)* personal loan of ₹18,00,000/-.

5. The principal borrower having been defaulted in repayment of the aforesaid loan, the respondent-Bank initiated recovery proceedings against the principal borrower and simultaneously, sought to recover the outstanding dues from the writ petitioners in their capacity as a 'guarantor'. In furtherance of such recovery, the respondent-Bank addressed a communication to the Postal Department, requesting deduction of a sum of ₹10,000/- per month from the salary of each of these petitioners towards recovery of the outstanding loan amount.

6. Aggrieved by the aforesaid proposed recovery from their salaries, the petitioners have approached this Court under Article 226 of the Constitution of India, contending, *inter alia*, that the respondents are bound first to exhaust all remedies available against the principal borrower and may proceed against the guarantor only in respect of any residual amount remaining unpaid after such exhaustion.

7. The learned Counsel for the petitioners has submitted that the impugned recovery proceedings are illegal and arbitrary in nature. It has been contended by the learned Counsel for the petitioners that the settled principle is that the creditor must first exhaust remedies against the principal debtor, only thereafter, can the guarantor be proceeded against. Simultaneous recovery from both the principal borrower and the guarantor is impermissible and contrary to the concept of guarantee. He has relied on paragraph nos. 10 and 11 of the judgment rendered in the case of ***Ram Kishun v. State of U.P.,*** reported in ***(2012) 11 SCC 511*** in this regard.

8. Learned Counsel for the petitioners has further submitted that the respondent No. 4, vide its letter dated 06.03.2026, had specifically called upon respondent-Bank to explain, why recovery was not being effected from the principal borrower and had cautioned that recovery from the guarantors would not be proper, until the status of Vikrant Dubey (principal borrower) is clarified, to which no satisfactory response was furnished. Despite the said communication, respondent-Bank proceeded to issue the letter dated 15.04.2026 for recovery of a sum of ₹10,000/- per month from the salary of the petitioners.

9. The short proposition which falls for consideration by this Court is 'as to whether the creditor is obliged to exhaust remedies against the principal borrower before proceeding against the guarantor, and whether the liability of the guarantor is co-extensive with that of the principal borrower, so as to render them jointly and severally liable.'

10. The answer to the aforesaid proposition is clearly borne out from a plain reading of the language provided under Section 128 of the Indian Contract Act, 1872, which *inter-alia* reads as under:

> *"**128. Surety's liability.**—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.*
>
> ***Illustration:** A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it."*

Bare perusal of the expression "co-extensive" clearly denotes that the quantum of the guarantor's obligation is the same as that of the principal borrower. The guarantor is liable for the whole of the amount for which the principal borrower is liable, and his liability is neither more nor less, unless the contract of guarantee provides otherwise. The liability is joint and several; the creditor is entitled to proceed against either or both simultaneously.

11. The aforesaid principle has been authoritatively settled by the Hon'ble Supreme Court time and again in a plethora of judgments. In the case of ***Bank of Bihar Ltd. v. Dr. Damodar Prasad and Anr.,*** reported in ***AIR 1969 SC 297;*** the Apex Court held that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety. The Court observed that the very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety until he has exhausted his remedies against the principal borrower. The direction of the Trial Court requiring the bank to proceed first against the principal borrower was set aside in that case.

12. It has to be well ingrained in mind that the surety has no right to dictate terms to the creditor or to insist upon any particular sequence of recovery. This principle was reiterated by the hon'ble Supreme Court in the case of ***State Bank of India v. M/s Indexport Registered & Ors.,*** reported in ***(1992) 3 SCC 159 : AIR 1992 SC 1740;*** wherein it was held that the decree-holder bank can execute the decree against the guarantor without proceeding against the principal borrower. The liability of the guarantor is co-extensive with that of the principal debtor, and there is no hierarchy of remedies that the creditor must follow. Furthermore, hon'ble Supreme Court in the case of ***Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala,*** reported in ***(2009) 9 SCC 478;*** has again affirmed that the liability of the guarantor and the principal borrower is co-extensive and not in the alternative. The creditor can proceed against both or either of them. Both the principal borrower and the guarantor are liable to the creditor at the same time.

13. Therefore, in light of the consistent judicial position, it is indisputable that the liability of the guarantor is immediate, absolute (subject only to the terms of the contract), and co-extensive with that of the principal borrower. The creditor is at liberty to proceed against the surety without first exhausting remedies against the principal borrower. Simultaneous recovery is not only permissible but is also in consonance with the very nature of a contract of guarantee, under Chapter VIII of the Indian Contract Act, 1872.

14. As far as the reliance of the learned Counsel for the petitioners on paragraph nos. 10 and 11 of the judgment in the case of ***Ram Kishun*** *(supra)* is concerned, the same is self-defeating. The paragraphs relied upon are being quoted herein below, which, according to this Court, re-affirm the proposition of this Court and defeat the arguments of the petitioner's Counsel. The aforesaid paragraphs read as follows:-

> ***"10.*** *There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the Contract Act, 1872 (hereinafter called "the Contract Act"), the liability of the guarantor/surety is coextensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should*

> *make the recovery and pursue his remedies against the principal debtor at his instance. (Vide Bank of Bihar Ltd. v. Damodar Prasad [AIR 1969 SC 297] , Maharashtra SEB v. Official Liquidator [(1982) 3 SCC 358 : AIR 1982 SC 1497] , Union Bank of India v. Manku Narayana [(1987) 2 SCC 335 : AIR 1987 SC 1078] and SBI v. Indexport Registered [(1992) 3 SCC 159 : AIR 1992 SC 1740] .)*
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> ***11.*** *In SBI v. Saksaria Sugar Mills Ltd. [(1986) 2 SCC 145] this Court while considering the provisions of Section 128 of the Contract Act held that liability of a surety is immediate and is not deferred until the creditor exhausts his remedies against the principal debtor. (See also Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala [(2009) 9 SCC 478 : (2009) 3 SCC (Civ) 797] and United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260 : AIR 2010 SC 3413] .)"*

A plain reading of the aforesaid paragraphs make it crystal clear that the petitioners, as such, have no right to restrain execution of the decree against them until the creditor (Bank) has exhausted his remedy against the principal borrower/debtor for the reason that it is the business of the petitioners (surety/guarantor) to see whether the principal borrower/debtor has paid or not and not that of the creditor.

Furthermore, the judgment lays down the ratio that the liability of the petitioners as a 'guarantor' is immediate and is not deferred, until the creditor exhausts his remedy against the principal borrower. According to this Court, the judgment relied upon by the petitioners is a self-goal on the part of the learned Counsel for the petitioners, and therefore, does not advance the case of the petitioners in any manner whatsoever.

15. In the present case, the petitioners voluntarily stood as a 'guarantor' for the loans advanced to the principal borrower namely, Vikrant Dubey. No material has been placed on record to show that the contract of guarantee contained any stipulation postponing the liability of the guarantor or requiring the creditor to proceed first against the principal borrower. In the absence of any such contractual restriction, the statutory rule of co-extensive liability under Section 128 of the Indian Contract Act, 1872 squarely applies. The respondent-Bank is fully entitled to seek recovery from the petitioner's salary by way of monthly deductions. The communication of respondent No. 4 dated 06.03.2026 cannot override the statutory liability or the settled judicial precedents of the Hon'ble Supreme Court.

16. The contention of the learned Counsel for the petitioners that principles of natural justice were violated by non-granting of any opportunity of personal hearing to the petitioners, before the proposal dated 15.04.2026 is equally untenable. When the liability flows directly from a contractual guarantee and is co-extensive under Section 128 of the Indian Contract Act, the petitioners had ample opportunity to discharge their obligations or to seek appropriate civil remedies; the present writ petitions cannot be used as a device to defeat the contractual and statutory liability.

17. It is also well settled that the High Court, in exercise of jurisdiction under Article 226, does not sit as a Court of appeal over contractual obligations or interfere with recovery proceedings that are in accordance with law. The petitioners remain free to pursue their rights of subrogation or contribution against the principal borrower after discharging the liability, but they cannot restrain the creditor from enforcing the guarantee.

18. In view of the aforesaid discussion and reasons, the writ petitions are devoid of merits. The recovery proposed by the Bank from the salary of the petitioners at the rate of ₹10,000/- per month is legally sustainable.

19. The writ petitions are accordingly ***dismissed***.

20. There shall be no order as to cost(s).

(Abdhesh Kumar Chaudhary, J.) **(Shekhar B. Saraf, J.)**

August 06, 2026
MVS/-