HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

FAO No. 10/2020

Reserved on: - *04.11.2026*
Pronounced on: - *13 .11. 2026*
Uploaded on: - *13.11.2026*
Whether the operative part or full judgment is pronounced: - Full.

NAZIR AHMAD KUCHAY …. Appellant(s)

Through: - *Mr. Aamir Latoo, Advocate*

V/s

JAMMU AND KASHMIR BANK LIMITED

Through: - *Mr. Rabinder Singh, Advocate*

CORAM: HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01. The appellant, a retired police personnel has approached this Court with the appeal in hand to assail the order dated 02.11.2020, for short referred to as "impugned order", passed in file No. 52/M, by the learned 3rd Additional District Judge, Srinagar, for short the "trial Court", whereby the application for grant of interim relief of the appellant has been dismissed.

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FACTUAL MATRIX

02. The appellant stood as a guarantor to respondent No. 4, in seeking financial assistance from respondent No. 2. The said respondent failed to repay the requisite installments constraining the respondent No. 2, to deduct the same from the Bank Account of the appellant, who had, by then, retired from the active Government service and was managing his livelihood on the pensionary benefits.

03. Upon the appellant gain knowledge about such financial deductions, he approached the respondent No. 2, and apprised him about the factum of his superannuation and his dependence on the pensionary amount. The said request was entertained by respondent No. 2, and appellant was assured that no further amount would be deducted from his pensionary Bank Account. However, the promise turned out to be a mere eye wash, as the respondent No. 2, continued to deduct amount from the pensionary Bank Account of the appellant.

04. The appellant thereafter was constrained to file a civil suit before the trial Court for recovery of money and injunction. The said suit was accompanied by an application for interim injunction.

05. The learned trial Court considered the matter and passed the impugned order after hearing learned counsel for the parties, refusing the grant of interim relief.

06. Aggrieved of the impugned order, the appellant has filed the instant appeal seeking setting aside of the impugned order as also a restraint upon respondent No. 2, from recovering the loan amount credited to respondent No. 4, from the pension Bank Account number of the appellant bearing No. 0134040600000184.

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SUBMISSONS OF LEANRED COUNSEL FOR THE PARTIES.

07. Learned counsel for the appellant submits that the respondent No. 2, is not justified in law to affect any recoveries from the Bank Account of a retired Government employee, the same being only source of sustenance for him and his family.

08. Learned counsel for the appellant in support of his submissions referred to and relied upon the Judgment of Supreme Court delivered in case titled ***"Radhey Sham Gupta Vs. Punjab National Bank"*** AIR 2009 SC 930 and Judgments of this Court delivered in cases titled ***Farooq Ahmad Khan Vs. Mehbooba Khan***, bearing CRM(M) No. 210/2020 decided on 11.05.2022 and ***J&K Bank Limited and Anr. Vs. Chander Udey Singh***, bearing CM(M) No. 156/2022, decided on 01.08.2025 at Jammu Wing. The learned counsel has also referred to the Judgment of High Court Orissa at Cuttack delivered in case titled ***Bharat Chandra Mallick Vs. Branch Manager State Bank of India.***

09. On the contrary, the learned counsel for the respondent Bank submits that the appellant as a guarantor to an individual, who secure financial assistance is liable along with the borrower to repay the loan amount under the principle of joint and several liability recognized in contract law and Banking practice. Learned counsel for the respondent Bank further submits that respondents have not done any illegality that may warrant judicial interference as rightly declined by the trial Court. Learned counsel for the respondents referred to and relied upon the Judgment of Supreme Court delivered in case titled ***Union of India Vs. Jyoti Chit Fund and Finance***, reported as AIR 1976 SC 1163.

ANALYSIS

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10. Heard learned counsel for the parties, considered the submissions made and perused the material made available, particularly the impugned order.

11. It would be appropriate to reproduce the operative portion of the impugned order in the first instance.

> " 27. *Once people enter into legal and solemn engagements or agreements with each other or with the institutions, they must honor those agreements and not resile therefrom. When a bank advances loan to a borrower and a guarantor se-cures the repayment of that loan, the guarantor incurs a liability to repay the loan which is co-extensive with that of the borrower. The guarantor would prima facie be found to have entered into a contract of guarantee with the bank to repay the loan in case of default of the borrower. He cannot but perform that contract on the default committed by the borrower in the repayment of loan. Consistent with the foresaid discussion and the settled legal position this Court would find that it cannot grant the plaintiff the interim relief that he has sought in the application. The application would deserve dismissal. It is accordingly dismissed and so disposed of. However, this order and the observations that this Court has made herein shall not affect or be construed to affect the merits of the suit in any wise or prejudice the trial of the suit. Registry shall compile the application so disposed of and make it part of the main file."*

12. Although the trial Court has passed a detailed order and made the exhaustive analysis, however, the same does not appeared to be based on the sound reasoning and the true spirit of law.

13. This Court is of the considered opinion that the guidance in these kinds of matters is required to be sought from the Judgment delivered by the Supreme Court in ***Radhey Sham Gupta*** case *Supra*, whereby the authoritative principle in respect of pension and other retiral benefits has been laid down, which specifies the said benefits to be protected from the attachment and coercive recovery measures. This Court also in ***Farooq Ahmad Khan*** *supra* and ***J&K Bank Limited and Anr. Vs. Chander Udey Singh***, *supra* has affirmed the said legal position and held that the amount received as pension by a retired Government employee is insulated and protected from the coercive recovery measures.

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14. The appellant, admittedly, is a senior citizen and retired Government employee managing his and his family's sustenance on the sole income of pension. A pension is a regular payment made to a Government employee upon his superannuation as a financial assistance so that the said Government employee does not feel dependent on someone else and he is protected from vagrancy and destitution in his olden days. The said benefit is a welfare measure aimed at to secure the interests of the retired employee and his family, which cannot be subjected to coercive recovery measures on the failure of a borrower to whom the said retired employee stood as a guarantor to repay the financial assistance received by him that too at the time when the said retired employee Government employee was in active service and was maintaining a different Bank Account at a different branch.

15. Having said that this Court does not preclude the respondent Bank from securing its debt from the principal borrower who are left free to proceed against the borrower in this behalf by whatever legally permissive means they can opt for.

16. In view of what has been said hereinbefore, the appeal is allowed and the impugned order is set aside. The respondent Bank is restrained from recovering any amount from the appellant's pension Bank Account as a recovery towards the repayment of financial assistance obtained by respondent No. 4. Insofar as the relief of refund is concerned, the same would effectively be adjudicated upon and decided by the trial Court being of evidentiary value, therefore, appellant is given liberty to pursue said relief before the trial Court. It goes without saying that the trial Court should decide the matter exclusively on its

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merits without getting influenced by any of the observations made by this Court in the Judgment.

17. Disposed of on the above lines along with all connected CM(s).

18. Registry shall convey this order to trial Court as well as respondents 1 and 2 for compliance.

(**Moksha Khajuria Kazmi)**
Judge

SRINAGAR
13.11.2026
"Mohammad Yasin Dar"

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

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