



Sr.No.202

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU****WP(C) No.204/2026
CM No. 482/2026**Reserved On:- 06.02.2026
Pronounced On:- 24.02.2026
Uploaded On: 24.02.2026*Whether the operative part or full
judgment is pronounced- **Full Judgment*****Dev Raj, Age 69 years
S/O Kanshi Ram,
R/O Gagian, R S Pura,
Jammu-181102**

....Petitioners

Through :- Mr. Ayushman Kotwal, Advocate.

Versus

1. Jammu & Kashmir Bank Ltd, through
CEO & Managing Director,
Head Office, M.A. Road, Srinagar.
2. Jammu & Kashmir Bank Ltd.
Branch Head, Kullian, Jammu.
3. Jammu & Kashmir Bank Ltd.
Branch Head, R.S. Pora, Jammu.
4. Gagandeep Choudhary S/O Sudershan Kumar,
R/O Baspur, R. S. Pura, Jammu

....Respondent(s)

Through :- Mr. Vipin Gandotra, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**JUDGMENT**

1. Petitioner, through the medium of this petition, claiming to be a retired Field Assistant from Agricultural Department in the year 2016 and receiving a monthly pension of Rs.36,856/-, which is credited to his account



maintained with J&K Bank Ltd, Branch R. S. Pura alleged that to his surprise, without any prior notice or information to the petitioner, the respondent No.3- J&K Bank Ltd., Branch Head R. S. Pura, Jammu, deducted an amount of Rs.50,000/- from his pension account on 25.08.2025 towards the recovery of the loan raised by respondent No.4- Gagandeep Choudhary from respondent No.2- J&K Bank Ltd. Branch Head, Kulliyian, Jammu, wherein the petitioner had stood as one of the guarantors on 09.03.2018 for repayment of Cash Credit Facility of Rs.15.00 lakhs for meeting the working capital of loanee's business under the name and style as M/S GEE ESS Traders Baspur, R. S. Pura, Jammu, besides other guarantor, namely Sudershan Kumar.

2. It has been pleaded that respondent No.3 had also made three more similar deductions of Rs.15,000/-, Rs.15,530/- and Rs.16,000/- on 18.11.2025, 09.11.2025 and 15.01.2025 from the pension account of the petitioner and thus a total amount of Rs.96,530/- stand deducted till date; that on enquiry from respondent No.3, the petitioner was informed that respondent No.4 had defaulted in regular payment of installment towards repayment of loan obtained by him and, as such, the Bank has decided to effect the recovery from the pension account of the petitioner.

3. It has been contended that the decision on the part of the respondents No.1 to 3, in particular, respondent No.3 regarding deduction from the pension account of the petitioner, the petitioner is aggrieved on the grounds that the deduction from the pension account of the petitioner towards the recovery of the loans obtained by the borrower is illegal, as pension of a retired government servant is exempt from such a recovery even after if



pension is credited to his pension account; that respondent No.3 had deprived the petitioner of his property without any prior notice and contrary to the principles of natural justice; and finally, it was prayed that the respondents be directed not to make any deduction from the pension account of the petitioner towards recovery of the loan obtained by respondent No.4 and direct them to credit to the pension account of the petitioner the amount of Rs.96,530/- already deducted by them from his pension account illegally. Petitioner has placed on record the copy of the deed of guaranty whereby petitioner- Dev Raj, besides one Sudershan Kumar has stood as guarantor for the loan raised by respondent No.4 Gagandeep Choudhary, besides statement of bank indicating the deductions from his account towards the repayment of the loan as pleaded in the petition.

4. Mr. Vipin Gandotra, Advocate on behalf of respondents 1 to 3, strongly opposed the plea raised in the petition by the petitioner, particularly, with regard to maintainability of the petition as well as the liability of the petitioner as a guarantor to liquidate the loan raised by the loanee, for whom he had stood as a guarantor.

5. With consensus of the learned counsel for the parties, the matter is taken up for final consideration in view of legal issues involved in the face of admitted facts.

6. Learned counsel for the petitioner has vehemently argued that any amount for the liability of the petitioner as guarantor, cannot be deducted from his pension account as the pensionary income of the petitioner is protected under Section 11 of the Pensions Act, 1871, even after it is paid to the



petitioner, the same being exempt of any attachment and recovery. He has relied upon judgment of the Supreme Court in case titled ‘Radhey Shyam Gupta V. Punjab National Bank & Anr.’ reported as **AIR 2009 SC 930**, judgment of Hon’ble High Court of Orissa at Cuttack in **WP(C) No. 19648/2025** titled ‘Bharat Chandra Mallick V. Branch Manager, State Bank of India’ decided on 17.10.2025 and judgments of this court in **CRM(M) No.210/2020** titled ‘Farooq Ahmad Khan V. Mehbooba Khan’ decided on 11.05.2022 and in **WP(C) No. 2794/2021** titled ‘Krishan Singh V. Jammu and Kashmir Bank Ltd. Jammu & Ors.’ decided on 14.08.2025, in support of his contentions.

7. Learned counsel for the respondents No.1 to 3, *ex adverso*, argued that the contention raised by the learned counsel for the petitioner with regard to the exemption of pension from attachment under Section 11 of the Pensions Act, 1871 is not tenable, as such money cannot be subjected to seizure or attachment when it becomes due to some pensioner, however, once it is paid into the account of the pensioner, it can be subjected to attachment, as such, the action taken by respondent No.3 for deduction of the amount due in favour of respondent No.2 is legal and also it cannot be questioned in writ jurisdiction, before this court being a contractual matter. He has relied upon the Apex Court judgment reported as **AIR 1976 SC 1163** and argued that the later judgment of the Apex Court reported as **AIR 2009 SC 930**, by equal strength of judges, relied upon by the learned counsel for the petitioner being *per incuriam* is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta* as laid down by three judge bench of Apex Court in a case



reported as **AIR 2014 SC 1745** and that the earlier judgment cited by him holds good to be followed. On the point of non maintainability of the writ petition, in contractual matters, he relied upon the judgment of the Apex Court reported as **(2000) 6 SCC 293**.

8. The Apex Court in a case titled ‘Union of India V. Jyoti Chit Fund & Finance & Ors.’, **AIR 1976 SC 1163** involving the subject, held as follows:

“We may state, without fear of contradiction, that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr. erases them. Indeed our case is an afortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues them, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention”.

9. The aforesaid observation-ruling had been laid down by the Apex Court on a contention raised by the petitioner-UoI, that it is impermissible in



law for amounts representing provident fund contribution and pensionary benefits to be attached having due regard to Sections 3 and 4 of the Provident Funds Act, S. 11 of the Pensions Act and Section 60(1), provisos (g) and (k) of CPC.

10. A similar matter came up for consideration before a three judge bench of the Apex Court in Civil Appeal titled ‘UOI Vs. Radha Kissen Agarwalla & Ors’. reported as **(1969) 1 SCC 225**, wherein after retirement of an employee of East India Railway, two cheques in his name to Reserve Bank had been sent with regard to his Provident Fund against whom a money decree had been obtained by the respondent therein and an order of attachment of cheque lying with the Reserved Bank of India had been issued for being attached and encashed, held that compulsory deposit in recognized provident fund account is exempt, from attachment in execution of decree of Civil Court, and that the attachment of amount of cheques was contrary to terms of Section 3 of the Provident Fund Act. The Court had explained that in its view the High Court was in error in holding that the money in the hands of the Reserve Bank of India had ceased to be provident fund and was liable to be attached with the observation that so long as the money remained under the control of Railway administration as provident fund, it was exempt from attachment. In view of the observations made by the Apex Court in this judgment, the *ratio decidendi* of the case is that so long as the money is with some other person, the same cannot be subjected to attachment. This judgment had been considered by the Apex Court in subsequent case titled ‘UOI V. Jyoti Chit Fund & Finance & Ors., **AIR 1976 SC 1163** and was followed with the observation that till the



dues are actually paid to the government servant, who is entitled to it on retirement or otherwise, the Govt. is a trustee for those sums and has interest in maintaining the objection in court to attachment.

11. The Apex Court has, thus, in both the cases reported as **AIR 1969 SC 762** by a bench of three judges and **AIR 1976 SC 1163** by a bench of two judges had taken the same view that until the amount is actually paid to the person, the same cannot be subjected to attachment before payment to the pensioners.

12. The judgment relied upon by the learned counsel for the petitioner in support of his case in ‘Radhey Shyam Gupta V. Punjab National Bank & Anr.’ (**AIR 2009 SC 930**) had taken a different view. However, an important point arises for this court as to whether the judgment passed by a bench of equal or more than equal strength or passed earlier in time has to be followed or the judgment passed by later bench of the co-ordinate strength.

13. The three Judge Bench of the Apex Court in a case titled ‘Sandeep Kumar Bafna Vs. State of Maharashtra & Ors.’ (**2014**) **16 SCC 623** held that the *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*. As such, the judgments contrary to the aforementioned case relied upon by the learned counsel for the petitioners are of no help, to contend that the pensionary amount cannot be subjected to attachment from the account held by the petitioner in a Bank when it has already been credited to his account from the Govt. account, besides holding that it is not a case that the pensionary income of the petitioner cannot be subjected to recovery in



consequence to recover the amount, from the petitioner who had stood as guarantor against a loan having been defaulted by the loanee.

14. In view of the authoritative judgment of the Apex Court in the case of Sandeep Kumar Bafna (*supra*), the earlier judgment who had laid the *ratio decidendi* had to be followed as a judicial discipline and the later judgment of the coordinate bench or of a less strength has to be treated as rule of *per incuriam*. The earlier judgment of three benches and two benches passed by the Apex Court in view of principle of *obiter dicta* in the considered opinion of this court is to be followed on the subject.

15. Viewed thus, it is held that the pensionary amount of the petitioner having been credited to his account in the bank, can be stated to have been paid to him and when he had received the same by credit of the amount in his account, the same can be subjected to attachment with regard to his liability as a guarantor in a loan case. Viewed thus, the petitioner has failed to make out a case on this count.

16. The next question, which falls for consideration of this Court, in regard to the contention of the learned counsel for the respondents is with regard to plea of non-maintainability of the petition that the writ jurisdiction does not extend to enforcement of private contractual rights, even if the opposite party is an authority under Article 12 of the Constitution of India. The Apex Court in ‘Kerala State Electricity Board & Anr. V. Kurien E. Kalathil & Ors.’ reported as **(2000) 6 SCC 293** and ‘State of Gujarat & Ors. V. Meghji Pethraj Shah Charitable Trust & Ors.’ reported as **(1994) 3 SCC 552** has laid down that the writ jurisdiction cannot be invoked in the cases of



contractual obligations even if the opposite party is an authority within Article 12 of the Constitution of India.

17. Para 10 of the judgment in the case of **Kurien E. Kalathil** (supra) being relevant is reproduced as below:

“10. We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.”

Para 22 of the **Meghji Pethraj Shah Charitable Trust** (supra) is reproduced as:

“22. We are unable to see any substance in the argument that the termination of arrangement without observing the



principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was as has been repeatedly urged by Shri Ramaswamy a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract.”

18. The petitioner had entered into a contract with respondent No2, while offering himself as a guarantor to the loan raised by respondent No.4, as such, there was a contractual obligation between the petitioner and respondent- J&K Bank. The Bank in default of the payment of installments by respondent no.4 to liquidate his loan had deducted the amount from petitioner who was the guarantor from his account wherein his pension was being credited with respondent no.3 and rightly so, as the petitioner as guarantor had subjected himself to the deed of guaranty, as such, the respondent Bank was well within its right to deduct the amount from petitioner’s account, in view of contractual liability.

19. In view of law laid down by the Apex Court in the cases *Radha Kissen Agarwala (supra)* and *Jyoti Chit Fund (supra)* that the amount received by a pensioner cannot be subjected to attachment and recovery, until that amount is received by the pensioner, as such it is held that there is no illegality in the action of the respondent bank in deduction of the amounts, in discharge of his contractual obligation to pay the amount in default of the



loanee/borrower, for whom petitioner had stood as guarantor from the account of the petitioner, when his pension had been credited.

20. In view of law laid down by the Apex Court in *Kurien E. Kalathil & Meghji Pethraj Shah Charitable Trust (supra)*, the writ petition is also held to be non-maintainable, for contractual obligation of petitioner, as writ jurisdiction can be invoked in contractual matters.

21. For the aforesaid reasons and discussions made hereinabove, the writ petition filed by petitioner is found to be bereft of any merit and substance and also non-maintainable. The writ petition is thus **dismissed** alongwith connected application(s).

Jammu:
24.02.2026
Raj Kumar

(M.A. Chowdhary)
Judge

