

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-28329-2018

Date of Decision: 2.11.2018

M/s Kanishka Logistics, New Delhi

...Petitioner

Versus

Punjab National Bank and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Ms. Manju Goyal, Advocate for the petitioner.

**AJAY KUMAR MITTAL, J.**

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.1 to defreeze its bank account.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is engaged in the business of trading both domestic and international. Respondent No.1 is maintaining the current account of the petitioner as is clear from the bank statements (Annexure P-1 Colly). M/s Mikem Trading through its agent, namely, Mr. Andrew had approached the petitioner and placed purchase order through e-mails (Annexure P-2 Colly). The petitioner received the cheque dated 21.6.2018 for \$ 14,800 and presented the same with respondent No.1 for clearance on 6.7.2018. The Bank after getting approvals from the drawer bank cleared the cheque into the account of the

consignment along with the invoice on 21.8.2018 and the said consignment was duly received and delivered to the purchaser through her another partnership firm M/s SSND Impex having requisite approvals for exporting the goods as is clear from the invoice, Airway Bill of freight and Partnership Deed (Annexure P-3 Colly). Vide communication dated 15.10.2018 (Annexure P-4), the husband of the petitioner was intimated by the bank that a complaint had been received qua the aforesaid cheque for forged signatures. The officials of respondent No.1 immediately freezed the account of the petitioner without giving any prior notice or seeking any explanation from the petitioner. The petitioner took the said issue with the agent at USA who had denied any information or reports about the said fraud as is clear from the whatsapp chat dated 15.10.2018 (Annexure P-5). Hence, the present writ petition.

3. After perusing the averments made in the petition and hearing learned counsel for the petitioner, we find that the petitioner has sought to raise certain disputed questions of fact which cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India.

4. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India, the Supreme Court in **State Cadre Authority and another v. K.S.Bajpal and others, 1990 (Supp) SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, 2007(4) SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, 2009(13) SCC 693** has held that wherever question of fact arises in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in **Dwarka**

**Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others,**

**AIR 2003 SC 2686**, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

5. In the present case, the facts are required to be established on various issues. Accordingly, we do not find any substance in the writ petition and the same is, hereby, dismissed. However, the petitioner is entitled to take recourse to appropriate remedy in accordance with law.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**November 2, 2018**  
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**(MANJARI NEHRU KAUL)**  
**JUDGE**