

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP (C) No. 1414/2024
CM No. 3804/2024**

ABDUL HAMID KATHOO

... Petitioner(s)

Through: -
Mr. Shuja-Ul-Haq, Advocate.
V/s

JAMMU AND KASHMIR BANK LIMITED AND ANR.

... Respondent(s)

Through: -
Mr. N. A. Dendru, Advocate.

CORAM:

**HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE.
HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.**

(ORDER)
15.09.2025

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashment of attachment/seizure of his bank account No. 0115040500100831 and further seeking direction to the respondent-bank to defreeze and allow him to operate the bank account.
2. The controversy lies in a very short compass, in that, the petitioner is stated to have stood guarantor to one Mohammad

Maqbool Want, who had raised loan from the J&K Bank in respect of his various business establishments.

3. According to the petitioner, the bank account of the borrower, Mohammad Maqbool Want, was declared as Non-Performing Asset (NPA) for his failure to repay the loan amount, therefore, in the month of October 2022, petitioner had come to know that the bank has issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].
4. Initially the action of the bank came to be challenged under Section 17 (A) of the SARFAESI Act before the Court of learned Principal and Sessions Judge, Srinagar, however, after issuance of notification by the Government of India, Ministry of Finance, the proceeding pending before the Court at Srinagar came to be transferred to Debt Recovery Tribunal (DRT), Chandigarh in terms of order dated 26.03.2022 and, the said proceedings are still pending disposal before the DRT, Chandigarh.
5. The grievance of the petitioner is that his pensionary benefits like; gratuity, leave salary, etc., had been directly credited

into the bank account maintained by the petitioner in J&K Bank, which has been freezed/attached by the bank in his capacity as guarantor for the loan amount, which was classified as NPA and, thus he is unable to operate the same for last two years.

6. According to the petitioner, the bank has absolutely no authority under law to freeze his account without resorting to other means of recovery proceedings as prescribed under law.
7. The bone of contention of the petitioner is that as per settled proposition of law, the pensionary benefits are not liable to be attached. Therefore, action of the bank is patently illegal, arbitrary and, thus prays for indulgence of the Court.
8. On the other hand respondent-bank filed objections and opposed the writ petition mainly on the ground that the petitioner has guaranteed the repayment of loan amount of the borrower, however, borrower turned defaulter and, as such, the said account of the borrower was declared Non-Performing Asset (NPA) on 29.06.2019 with an outstanding balance of Rs.4,02,96,037/-
9. It has been also submitted that the guarantor has been brought within the ambit of borrower under Section 2 (f) of the

SARFAESI Act, therefore, liability of the petitioner with respect to the loan amount of the borrower concerned is co-extensive with that of the principal debtor.

10. The respondents have also raised the point of maintainability of the writ petition in view of availability of alternative remedy under Section 17 of the SARFEASI Act before the DRT and, as such, prayed for dismissal of writ petition on this account also.

11. Heard and considered.

12. Without going into the minute details of the matter, it is suffice to note that admittedly petitioner stood guarantor in respect of loan amount raised by the borrower, namely; Mohammad Maqbool Want, in respect of his business concern, however, the bank account of the borrower was declared as NPA and now the proceedings at the behest of the borrower regarding enforcement of security interest are pending before the DRT.

13. As per the averments contained in the petition, it goes without saying that the petitioner is well aware about the proceedings pending before the DRT.

14. In this view of the matter, the preliminary issue which needs consideration is as to whether Writ Petition under Article 226 of the Constitution of India is maintainable, when proceedings under the SARFAESI Act are pending before the DRT.
15. It is well settled law that secured creditor for enforcement of security interest can legally take action directly against the guarantor without taking action against the borrower.
16. It is also no more *res integra* that the expression “any person” used in Section 17(1) of the SARFEASI Act is of wide import as it takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under the provisions of the SARFEASI Act. The Tribunals and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.
17. In the case on hand, admittedly the proceedings under the provisions of the SARFEASI Act are pending disposal before the DRT, Chandigarh and, in case writ petition is entertained, same shall amount to frustrating of the proceedings pending

before the DRT. Moreover, the liability of guarantor is co-extensive with the borrower, therefore, the guarantor is enjoined upon to raise all these pleas before the DRT in the pending proceedings and, as such, the petitioner cannot be allowed to circumvent the statutory remedy availed by the borrower.

18. We are fortified in our view by the judgment of Hon'ble Supreme Court passed in **"CELIR LLP vs. Bafna Motors (Mumbai) Pvt. Limited and Others, AIR 2023 Supreme Court 4568"**, paragraph No.105 (i) whereof reads, thus:

"The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act."

19. Said apart, propriety also demands that parties having similar cause of action should not take recourse to different remedies at their whims, particularly when all the pleas, if can be raised before one statutory forum, which is in seisin of the matter.
20. In the above background, as noted by us that the proceedings initiated at the behest of the borrower are pending before the DRT, Chandigarh, therefore, writ petition under Article 226 of the Constitution cannot be entertained. Accordingly, the

writ petition is **dismissed**, along with the connected CM(s).
Interim direction(s), if any subsisting as on date, shall stand vacated.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR
15.09.025
"Shoaib Javid"

i. Whether the Judgment is approved for reporting? Yes/No.

