115 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.211 of 2025 (O&M)
Date of Decision: 23.01.2025

SHIV KUMAR AND ANOTHER

.....Petitioners

Versus

CANARA BANK AND OTHERS

........Respondents

CORAM: **HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Akshay Chadha, Advocate
for the petitioners.

Mr. R.S. Bhatia, Advocate
for the respondent-Bank.

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ANUPINDER SINGH GREWAL, J. (Oral)

CM-380-CWP-2025

This is an application for placing on record the Cash Credit Agreement dated 26.03.2004 and the Guarantee Agreement dated 26.03.2004 in reference to the credit facilities extended to M/s Khanna Beverages; as Annexures P-16 and P-17.

For the reasons mentioned in the application, the same is allowed and Annexures P-16 and P-17 are taken on record, subject to all just exceptions.

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1. The petitioners have challenged the order dated 11.09.2023 (Annexure P-11) passed by the Debt Recovery Tribunal-I, Chandigarh, (hereinafter referred to as 'impugned DRT Order'), whereby the attachment

order dated 14.05.2015 (Annexure P-6) passed by the Recovery Officer-II, DRT-II, Chandigarh in the case titled as Canara Bank vs. M/s Pal Soft Drinks, attaching the land of the petitioners measuring 1596 kanals 7.5 marlas, has been restored.

2. Learned counsel for the petitioners submits that petitioner no.1 is father of petitioner no.2. The father of the petitioner No.1, namely, Onkar Singh took a friendly loan from his acquaintances namely Vijay Kumar, Shiv Kumar Sharma and Rajesh Agnihotri and hence he had executed a General Power of Attorney dated 26.05.2003 (hereinafter referred to as 'GPA') in their favour. However, the GPA holders availed multiple credit facilities from the respondent-Bank, by misusing the GPA, and made Onkar Singh as the guarantor in 6 of these credit facilities. The relevant details of these guarantee and loan agreements, are reproduced in the table below.

Sr. No.	Loan A/c	Details of Agreement
1.	M/s Pal Softdrinks	Loan Agreement of Rs 75 lakhs obtained by one Mahesh Agnihotri, Malti Kashyap and Vineet Kumar on 24.6.2003 and the limit of the same was increased on 26.2.2005 to Rs 1.5 crore, showing Onkar Singh as guarantor.
2.	Khanna Beverages	CCL facility availed by one Satish Kumar Khanna for Rs 25 lakhs on 26.03.2004; Guarantee Agreement dated 26.03.2004 showing Onkar Singh as guarantor through GPA holder Rajesh Agnihotri.
3.	M/s Pal Enterprises	-

4.	Kashyap Traders	Guarantee agreement dated 03.01.2004
5.	Doaba Traders	Guarantee agreement dated 19.11.2003
6.	Bhawani Enterprises	Guarantee agreement dated 26.09.2003

He further submits that the guarantee agreement(s) qua the loan of Khanna Beverages is stated to have been furnished in the year 2004, whereas, Onkar Singh had already expired on 16.11.2003. Moreover, the property which is the subject-matter of the guarantee was an HUF property and hence, it could not have been mortgaged without the consent of the Karta and the other members of the HUF including the petitioners herein. Thus, the alleged guarantee had been furnished in a fraudulent manner, after the death of Onkar Singh and, therefore, this Court should exercise its writ jurisdiction and set aside the order of attachment of land of the petitioners.

3. Learned counsel for the respondent-Bank submits that it is true, that the first guarantee qua the loan account of M/s Pal Softdrinks for an amount of Rs.75 Lakhs had been furnished by way of the GPA executed by late Onkar Singh, but it had been furnished on 24.06.2003 i.e., during the lifetime of Onkar Singh. However, it is only, the second guarantee, which was furnished on 26.2.2005 i.e., after the death of Onkar Singh by the GPA attorney holder, namely, Rajnish Agnihotri in connection with an Open Cash Credit Limit facility of Rs.25 Lakhs. He further submits that the petitioners have an alternative remedy of approaching the DRAT to challenge the order passed by the DRT, instead of approaching this Court by preferring a writ. He also submits that the petitioners have challenged the impugned DRT

order before this Court after a delay of about a year and a half as the instant petition has been filed on 07.01.2025. Furthermore, the petitioner no.1 was party in the recovery proceedings initiated in connection with the other loan accounts of Doaba Traders, Khanna Beverages and Kashyap Traders.

4. After hearing learned counsel for the parties and having perused the material on record, we are of the considered view that the instant case does not warrant any interference from this Court, as it involves disputed question of facts and writ jurisdiction under Article 226 of the Constitution ought not to be exercised in the aforenoted facts and circumstance. It is for the competent Court to determine the disputed questions of fact after examining the evidence on record.

5. Furthermore, the petitioners have the statutory remedy of filing an appeal before the DRAT to challenge the impugned order passed by the DRT.

6. It is trite, that the discretionary remedy under Article 226 of the Constitution of India must be exercised sparingly, especially when an efficacious alternate remedy is provided under the statute. Reference can be made to the judgment of the Supreme Court in the case of **South Indian Bank Ltd. & others Versus Naveen Mathew Philip & Anr., 2023 (2) R.C.R. (Civil) 771**. The relevant extract of the judgment is reproduced hereunder:

> *"27. The principles of law which emerge are that:*
>
> *xxx xxx*
>
> *27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in*

an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

xxx xxx"

7. Reliance can also be placed on the judgment of the Supreme Court in the case of **M/s Godrej Sara Lee Ltd. Versus The Excise and Taxation Officer-cum-Assessing Authority & Ors., 2023 INSC 92**, wherein it has been held that only if the controversy is a purely legal one, and does not involve disputed questions of fact, then, it should be decided by the High Court instead of dismissing the writ on the ground of an alternative remedy being available. The relevant extract of the judgment is reproduced hereunder:

"8. xxx xxx. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

8. Even otherwise, the petitioners have approached this court at a

belated stage, inasmuch as the impugned DRT Order was passed on 11.09.2023, and the petitioners had a period of 30 days to file an appeal before DRAT but instead of exercising their statutory remedy, they have approached this Court after 15 months and filed the present writ petition on 07.01.2025. It is not that they were unaware of the proceedings pertaining to loan accounts as the petitioner no.1 was also party in the recovery proceedings in connection with the loan account of Doaba Traders. Moreover, there was not even a whisper about any 'fraud' having been committed in the objections filed to the attachment order and the only ground taken therein was that the secured asset was HUF property. Furthermore, the original application(s) filed by the Bank for recovery of the outstanding amount have already been decreed and the Recovery Certificate(s) in connection with the loan account(s) have also been issued, details of which are set out hereunder.

Loan Account of	Recovery Certificate
Pal Soft drinks	11.7.2009
Pal Enterprises	16.7.2009
Khanna Beverages	10.6.2010
Kashyap Traders	06.10.2010
Doaba Traders	23.04.2014

9. It also deserves to be noticed that the loan was sanctioned in the year 2004 for about Rs.1 crore and the outstanding dues as on today, as per the calculations of the Bank are Rs.42 crores approximately.

10. Therefore, as the petition raises disputed questions of fact and the petitioners have the statutory remedy of filing appeal before DRAT, this

Court would refrain from exercising its writ jurisdiction. Consequently, the petition is dismissed. The petitioner would be at liberty to avail the alternative remedy, in accordance with law.

11. It is clarified that we are not expressing any opinion on the merits of the matter. This order shall have no bearing on adjudication by the competent Court/Tribunal.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

23.01.2025
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No