



CWP-6371-2018

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 02.04.2026

MADHU MITTAL NOW DECEASED THROUGH HER L.R.

...Petitioner

Versus

ADDL. CIVIL JUDGE (SR. DIVISION) JIND AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.K. Jain, Advocate for petitioner

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of judgment dated 28.10.2017 (Annexure P-3) and 20.12.2012 (Annexure P-1) whereby Courts below have rejected her petition under Section 7 of the Provincial Insolvency Act, 1920 (for short "1920 Act").

2. Learned counsel for the petitioner concedes that respondent No.4 has passed away, thus, petition qua respondent No.4 stands abated. The respondent No.3 was ordered to be proceeded *ex parte*.

3. The petitioner through legal representative preferred petition under Section 7 of 1920 Act seeking declaration that respondent Nos. 3 & 4 were insolvent. The Civil Court framed issues and vide judgment dated 20.12.2012 adjudicated both the issues against her. She preferred an appeal



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which came to be dismissed vide judgment dated 28.10.2017 passed by learned Additional District Judge, Jind.

4. Learned counsel for the petitioner failed to point out any procedural or illegal infirmity in the impugned orders warranting interference while exercising writ jurisdiction.

5. A Constitution Bench in *Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477* and a two judge bench of the Hon'ble Supreme Court recently in *Central Council for Research in Ayurvedic Sciences and Another Vs Bikartan Das and Others 2023 SCC Online SC 996* have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its



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extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

6. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, High Court must always bear in mind that a finding of fact recorded by the Tribunal cannot



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be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

7. In the case in hand, learned Civil Judge and Appellate Court have recorded concurrent findings. The respondent No.4 who was answering respondent, has passed away, thus, petition qua him stands abated. The petitioner was pursuing through her legal representative. She passed away even prior to filing suit. It appears to be more academic or luxury litigation than substantive.

8. In the backdrop, this Court is of the considered opinion that petition deserves to be dismissed and accordingly dismissed.

9. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

02.04.2026
SDK

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No