IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 218 of 2026
Reserved on: 10.09.2026
Decided on: 14.09.2026

Vinod Kumar & another ...Petitioners.

Versus

Kangra Central Co-operative Bank Ltd. & others ...Respondents.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1] ***Yes***

For the petitioners: Mr. Nitin Thakur, Advocate.

For the respondents: Mr. S.S.Rathore, Advocate, for respondent No.1.

Mr. Baldev Singh Negi, Additional Advocate General, for respondents No. 4 and 5.

Romesh Verma, Judge

The present petition arises out of the order as passed by the learned Senior Civil Judge, Nadaun, District Hamirpur, dated 28th March, 2026, whereby warrant of attachment was received back executed and warrant of sale was ordered to be issued to the Collector to sell the property of the Judgment Debtors (JDs) to realize the decretal amount along with up-to-date interest.

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

2. The facts as emerge in the present case are that the Kangra Central Co-operative Bank (the present Respondent No. 1) filed a civil suit for recovery of Rs. 10,99,287/- along with interest against the defendants/JDs, namely Akhil Steel Traders, Vinod Kumar, and Naresh Kumar, in the Court of the learned Senior Civil Judge, Nadaun, District Hamirpur, on 29th December, 2012.

3. The decree-holder/respondent Kangra Central Co-operative Bank filed the suit against the JDs on the ground that defendant No. 1, namely M/s Akhil Steel Traders, applied for cash credit limit, which was accordingly allowed, and a loan of Rs. 10,00,000/- was sanctioned and advanced to defendant No. 1 vide approval dated 15th June, 2009, with interest at the rate of 12.50% per annum.

4. Defendants No. 2 and 3, namely Vinod Kumar and Naresh Kumar, stood guarantors for the loan, and thus they executed a guarantee deed on 15th June, 2009. They bound themselves to repay the loan amount jointly and severally. After availing the loan facility, defendant No. 1 did not make payment as per the terms and conditions of the loan agreement. Therefore, the plaintiff Bank was constrained to issue various

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

letters and notices to the defendants. But despite making various requests, defendant No. 1 did not repay the loan amount. Therefore, the suit was instituted by the Bank stating that a sum of Rs. 10,99,287/- is due and outstanding against defendant No. 1 up to 9th November, 2012. It was prayed that defendants No. 2 and 3, being guarantors of the loan of defendant No. 1, are also jointly and severally liable to pay the loan amount.

5. Defendant No. 1, Akhil Steel Traders, was proceeded against ex-parte, and defendants No. 2 and 3, namely Vinod Kumar and Naresh Kumar, contested the suit by filing written statement in which various preliminary objections with respect to maintainability, jurisdiction, cause of action, etc., were raised. On merits, defendants No. 2 and 3 admitted that they stood as guarantors and had undertaken to repay the loan amount. However, as per the case set up by defendants No. 2 and 3/JDs, defendant No. 1/JD has sufficient movable and immovable property to repay the loan amount. According to defendants No. 2 and 3, the Bank had filed the suit in connivance with defendant No. 1 in order to give undue advantage to him.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

6. The learned Senior Civil Judge, Nadaun, District Hamirpur, H.P. framed the issues in the matter and, vide its judgment and decree dated 26th February, 2019, decreed the suit as filed by the plaintiff/Bank/decree-holder. The learned Trial Court decreed the suit against the defendants, and all the defendants were held liable to pay the loan amount of Rs. 10,99,287/- to the plaintiff-Bank along with interest at the rate of 12.50% per annum from the date of filing of the suit till the date of decree, and future interest at the rate of 9% per annum from the date of decree till realization of the entire decretal amount. The learned Trial Court held all the defendants liable to pay the loan amount jointly and severally. Though the judgment and decree was passed by the learned Trial Court on 26th February, 2019, it has been fairly conceded by the learned counsel for the JDs/petitioners that the said judgment and decree was not assailed before the Competent Court of law in appeal. Meaning thereby, the said judgment and decree as passed by the learned Senior Civil Judge, Nadaun, District Hamirpur, H.P. has attained finality.

7. The decree-holder Bank filed the execution petition for recovery of the amount in terms of the judgment and decree

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

passed by the learned Trial Court. The present petitioners/JDs filed objections to the execution as filed by the Bank. The learned Senior Civil Judge, Nadaun, District Hamirpur, H.P. vide its impugned order dated 28th March, 2026, passed the order by issuing a warrant of sale to the Collector to sell the property of the JDs to realize the decretal amount.

8. Feeling dissatisfied, the JDs/petitioners have approached this Court by filing the instant petition invoking the provisions of Article 227 of the Constitution of India.

9. It is contended by Mr. Nitin Thakur, learned counsel for the petitioners/JDs that the impugned order as passed by the learned Trial Court is erroneous and liable to be quashed and set aside. He further submits that though it is an admitted fact that the petitioners stood as guarantors against the payment of loan which was issued in favour of defendant No. 1, however, since defendant No. 1/JD has sufficient means to repay the loan amount, therefore, they are not liable to pay the amount of loan as has been held by the learned Trial Court. He further submits that after accepting the present petition, the impugned order as passed by the learned executing Court deserves to be quashed and set aside.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

10. On the other hand, Mr. Sohan Singh Rathore, learned counsel for the respondent/decree-holder, has defended the impugned order. He submits that the learned Court below has rightly passed the decree in favour of the Bank, as defendant No. 1 availed the loan of Rs. 10,00,000/- at the rate of interest of 12.50% per annum and defendants No. 2 and 3, the present petitioners, stood as guarantors for the said loan amount. Therefore, there is no infirmity either in the judgment and decree passed by the learned Trial Court or in the impugned order dated 28th March, 2026.

11. I have heard the learned counsel for the parties and have gone through the records of the case file.

12. In the present case, the respondent Bank had approached the learned trial Court for recovery of Rs. 10,99,287/- along with interest at the rate of 12.50% per annum from the date of filing of the suit till the date of decree, and future interest at the rate of 9% per annum from the date of decree till realization of the entire decretal amount. Before the learned Trial Court, defendant No. 1, Akhil Steel Traders, did not join the proceedings and consequently was proceeded against ex-parte. Defendants No. 2 and 3/JDs, while contesting the

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

proceedings, admitted that they stood as guarantors and undertook to repay the loan amount. However, as per the stand taken by them, defendant No. 1 had sufficient movable and immovable property to repay the loan amount, therefore, proceedings at the first instance should be initiated against him.

13. The learned Trial Court, vide its judgment and decree, decreed the claim in favour of the Bank by holding that the liability of the defendants is absolute and co-extensive, and they cannot absolve themselves from their liability on the excuse that defendant No. 1 has sufficient property and stock to realize the loan amount.

14. Learned counsel for the petitioners has submitted that since defendant No. 1 is the principal borrower, therefore, at the first instance, the Bank should have initiated execution proceedings against him instead of filing the execution petition against the guarantors/present petitioners.

15. This Court is not in agreement with the submission of the learned counsel for the petitioners, as it is the discretion of the decree-holder Bank to file the suit and recover the amount of loan from the defendants jointly and severally. After facing the decree and not assailing the said decree before the competent

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

Court of law, this objection as has now been taken by the JDs in the present proceedings is not sustainable in the eyes of law. Once the decree for recovery has been passed against all the defendants, and as per the findings returned by the learned Trial Court, the liability has been held to be joint and several, it is the choice and discretion of the decree-holder to initiate proceedings against any one of the said JDs/defendants. The JDs/petitioners cannot dictate the decree-holder in what manner the execution has to be executed. Since the liability is absolute and co-extensive with defendant No. 1, the objection raised in the present proceedings is not sustainable.

16. The decree-holder, Kangra Central Co-operative Bank, advanced a loan of Rs. 10,00,000/- in favour of defendant No. 1 at the rate of interest of 12.50% per annum, which admittedly is a public money. The defendants/JDs cannot be permitted to turn around and say that it is not the guarantors, but the principal borrower, who is liable to pay the entire amount of loan to the Bank. Once the decree has remained unchallenged and has attained finality against the JDs/petitioners, the objection as raised seems to be an afterthought and an attempt to wriggle out

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

of the payment of the loan for which they have stood as guarantors.

17. Learned counsel for the petitioners placed reliance on the judgment passed by the ***Hon'ble Apex Court in State Bank of India vs. Indexport Registered & others, (1992) 3 SCC 159*** to contend that the present petition deserves to be allowed and directions be issued to the Bank to recover the loan amount from defendant No. 1.

18. Learned Counsel for the respondent-Bank has relied upon the judgments viz. ***(2009) 9 SCC 478, AIR 1969 SC 297*** and ***CMPMO No. 131 of 2025.*** As per the dictum of law as laid down by the Hon'ble Apex Court, the decree holder-Bank can execute the decree against the guarantor without proceeding against the principal borrower. The guarantor's liability is co-extensive with that of the principal debtor. It is not necessary for the creditor, before proceeding against the surety, to request the principal debtor to pay, or to sue him, although solvent, unless this is expressly stipulated for. The creditor is not bound to exhaust his remedy against the principal debtor before suing the surety, and a suit may be maintained against the surety though the principal debtor has not been sued.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

19. The Hon'ble Apex Court in ***Industrial Investment Bank of India Limited versus Biswanath Jhunjhunwala***, ***(2009) 9 SCC 478***, has held as follows:

> 14. Mr. Gupta, in support of his submission, placed reliance on a judgment of this Court in Bank of Bihar Ltd. v. Damodar Prasad & Another (1969) 1 SCR 620. In that case, the court referred to a judgment in Lachhman Joharimal v. Bapu Khandu and Tukaram Khandoji (1869) 6 Bombay High Court Reports 241, in which the Division Bench of the Bombay High Court held as under:
>
> > "The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."
>
> 15. This Court, while approving the said judgment, observed that, "the very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety. In the present case the creditor is a banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down."
>
> 16. In State Bank of India v. M/s. Indexport Registered (supra), this Court held that the decree holder bank can execute the decree against the guarantor without proceeding against the principal borrower. Guarantor's liability is co- extensive with that of the principal debtor.
>
> 17. In that case, this court further observed that, "the execution of the money decree is not made dependent on first applying for execution of the mortgage decree. The choice is left entirely with the decree- holder. The question arises, whether a decree which is framed as a composite decree as a matter of law, must be executed against the mortgage property first or can a money decree, which covers whole or part of the decretal amount covering mortgage decree can be executed earlier. There is nothing in law which provides such a composite decree to be first executed only against the principal debtor.

Highcourt of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

The court further observed that "the liability of the surety is co-extensive with the principal debtor, unless it is otherwise provided by the contract".

18. The term "co-extensive" has been defined in the celebrated book of Polock & Mulla on Indian Contract and Specific Relief Act, Tenth Edition, at page 728 as under:

> "Co-extensive. - Surety's liability is co-extensive with that of the principal debtor.
>
> A surety's liability to pay the debt is not removed by reason of the creditor's omission to sure the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surely though the principal has not been sued."

19. In Chitty on Contracts, 24th Edition, Volume 2 at page 1031 paragraph 4831 it is stated as under, "Conditions precedent to liability of surety.- Prima facie the surety may be proceeded against without demand against him, and without first proceeding against the principal debtor."

20. In Halsbury's Laws of England, Fourth Edition,Vol. 20, paragraph 159 at page 87 it has been observed that

" 159….it is not necessary for the creditor, before proceeding against the surety, to request the principal debtor to pay, or to sue him, although solvent, unless this is expressly stipulated for".

20. The Hon'ble Apex Court has held that creditor is not bound to exhaust his remedy against the principal debtor before suing the surety, and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt.

21. The said principle of law has been laid down in ***The Bank of Bihar Ltd. vs. Dr. Damodar Prasad and another, AIR 1969 SC 297,*** relevant paras of the same read as under:

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

“4. Before payment the surety has no right to dictate terms to the creditor and ask him to pursue his remedies against the principal in the first instance. As Lord Eldon observed in Wright V. Simpson(1). "But the surety is a guarantee; and it is his business to see whether the principal pays, and not that of the creditor." In the absence of some special equity the surety has no fight to restrain an action against him by the creditor on the ground that the principal is solvent or that the creditor may have relief against the principal in some other proceedings.

5. Likewise where the creditor has obtained a decree against the surety and the principal, the surety has no right to restrain execution against him until the creditor has exhausted his remedies against the principal. In Lachhman Joharirmal V. Bapu Khandu and Surety Tukaram Khandoji(1) the judge of the Court of Small Causes, Ahmedabad, solicited the opinion of the 13Bombay High Court on the subject of the liability of sureties. The creditors having obtained decrees in two suits in the Court of Small Causes against the principals and sureties presented applications for the, imprisonment of the sureties before levying execution against the principals. The judge stated that the practice of his court had been to restrain a judgment creditor from recovering from a surety until he had exhausted his remedy against the principal but in his view the surety should be liable to imprisonment while the principal was at large. Couch, C.J. and Melvell, J. agreed with this opinion and observed :-

> *"The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."*

22. To the similar extent, a Coordinate Bench of this Court in ***CMPMO No. 131 of 2025,*** titled ***Anil Patial & others vs. Kangra Central Cooperative Bank,*** has held in the following manner:

> *“3. No interference can be made in the impugned order dated 11.11.2024, as it cannot be said to be either illegal or perverse. There is no error of jurisdiction also. The settled position is that the decree-holder has option to take coercive steps for execution of decree against the sureties or the principal debtor and it is not for the judgment*

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

> *debtors to dictate the terms. The judgment debtors are jointly and severally liable and thus, the decree can be executed against any of them."*

23. Since public money is involved in the present proceedings and the judgment and decree as passed by the learned Trial Court has attained finality, in all eventuality, the decree has to be satisfied. This Court does not find any infirmity, illegality, or perversity in the impugned order passed by the learned Trial Court.

24. As per Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. It has been repeatedly held by the Hon'ble Apex Court that the creditor can proceed against either the principal debtor or the surety.

25. The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the Constitution of India is very limited. The Hon'ble Apex in ***Civil Appeal No(s).13801 of 2025,*** titled as ***Shri Digant vs M/s P.D.T. Trading Co. & others,*** has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a threeJudge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

> *exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court."*

26. The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181,*** has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

> *15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.1 The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,1Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is*

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd.2 has observed:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

19. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the

HighCourt.C.H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS

> *submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."*

27. In view of the observations made here-in-above, this Court does not find any infirmity in the impugned order passed by the learned Trial Court. Consequently, the present petition, being devoid of any merit, is dismissed.

All the pending miscellaneous application(s) if any, shall also stands disposed of.

(Romesh Verma)
Judge

September 14, 2026
(Nisha)

High Court of H.P.

::: Downloaded on - 07/11/2026 19:48:45 :::CIS