

Can banks touch your pension for loan default? J&K HC allows bank to recover guarantor dues due to this reason - The Economic Times

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On February 24, 2025, the Jammu and Kashmir High Court ruled that pension is protected from attachment only until they are paid out; once the funds hit a pensioner's bank account, they can be recovered for guarantor liabilities.

This judgement came about in a case involving a retired forest department officer who acted as a guarantor for Rs 15 lakh home loan taken by two borrowers. When the borrowers defaulted on the home loan repayment, the bank deducted Rs 4.64 lakh from his pension account.

He had retired in 2018 and got Rs 35,350 monthly pension in the Rajouri, J&K branch of the bank. On October 9, 2019, two persons Smt Kumari and Mr Kumar had taken a home loan from this bank for Rs 15 lakh and he stood as guarantor for this loan. The loan was secured via a registered mortgage of leasehold rights of the land and the house constructed on this land.

However, the pensioner claims that on May 28, 2025, without any prior notice and much to his surprise, the branch head in Jammu deducted Rs 20,000 from his pension account for recovery of the loan taken by the two borrowers.

He pleaded before the Jammu and Kashmir High Court that the deduction from his pension account for the recovery of the loans obtained by the borrower is illegal, as pension of a retired government servant is exempt from such deductions even if the pension has been credited to his pension account.

His lawyer argued that the amount he owes as a guarantor cannot be deducted from his pension account as his pensionary income is protected under Section 11 of the Pensions Act, 1871. Even after he receives it, it's exempt from any attachment and recovery.

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The bank's advocate firmly challenged the plea raised in the petition, particularly regarding the maintainability of the petition and his liability as

a guarantor to pay off the loan raised by the borrower he guaranteed for.

On February 24, 2026, he lost the case in J&K High Court.

Jammu and Kashmir High Court analysis and discussion

The J&K High Court gave this judgement (2026:JKLHC-JMU:517, WP(C) No.3777/2025) on February 24, 2026.

Once pension is paid it loses the statutory protection

The bank's advocate argued before the high court that the contention raised by the pensioner's counsel regarding the exemption of pension from attachment does not hold up under Section 11 of the Pensions Act, 1871.

The bank's advocate argued that this is because pension money cannot be subjected to seizure or attachment when they are due to a pensioner, but, once the money is deposited into the pensioner's account, it can be attached.

To support his argument, the bank's advocate cited some Supreme Court judgements.

The J&K High Court said that the Supreme Court in a case titled 'Union of India V. Jyoti Chit Fund & Finance & Ors.', AIR 1976 SC 1163 on the subject, rules as follows:

- "We may state, without fear of contradiction, that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought.
- We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr. erases them. Indeed our case is an afortiori one, on the facts.
- A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues them, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention".The J&K High Court said that the aforesaid observation-ruling had been laid down by the Supreme Court on a contention raised by the petitioner-UoI, that it is impermissible in law for amounts representing provident fund contribution and pensionary benefits to be attached having due regard to Sections 3 and 4 of the Provident Funds Act, S. 11 of the

Pensions Act and Section 60(1), provisos (g) and (k) of CPC.

The J&K High Court said: "The Apex Court has, thus, in both the cases reported as AIR 1969 SC 762 by a bench of three judges and AIR 1976 SC 1163 by a bench of two judges had taken the same view that until the amount is actually paid to the person, the same cannot be subjected to attachment before payment to the pensioners."

[The pensioner entered into a contractual obligation when he signed as guarantor](#)

The J&K High Court said that he had entered into a contract with the bank, while offering himself as a guarantor for the loan raised by the two borrowers, and as such, there was a contractual obligation between him and the bank.

The bank, on default of the payment of installments by the two borrowers, to liquidate their loan had deducted the amount from him as he was the guarantor and his pension account was in the same bank. The J&K High Court said that the bank rightly deducted the amount because he as guarantor had subjected himself to the deed of guaranty, and the Bank was well within its right to deduct the amount from petitioner's account, in view of contractual liability.

[The J&K High Court also cited the law laid down by the Supreme Court in the case Radha Kissen Agarwala and Jyoti Chit Fund where it was held that the amount received by a pensioner cannot be subjected to attachment and recovery, until that amount is received by the petitioner.](#)

Thus the J&K High Court held that there is no illegality in the action of the bank in deduction of the amounts, in discharge of his contractual obligation to pay the amount in default of the loanee/borrower, for whom he had stood as guarantor, from the account of the petitioner, when his pension had been credited.

Judgement:

- In view of law laid down by the Apex Court in Kurien E. Kalathil & Meghji Pethraj Shah Charitable Trust cases (supra), the writ petition is also held to be non-maintainable, for contractual obligation of petitioner, as writ jurisdiction can be invoked in contractual matters.
- For the aforesaid reasons and discussions made hereinabove, the writ petition filed by petitioner is found to be bereft of any merit and substance and also non-maintainable. The writ petition is thus dismissed alongwith connected application(s)."
