

Manager, Icici Bank Ltd. Vs. Prakash Kaur and ors.

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Court : Supreme Court of India

Decided On : Feb-26-2007

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Judge : AR. Lakshmanan and; Altamas Kabir, JJ.

Acts : Banking Regulations Act; Prevention of Corruption Act - Sections 13; Indian Penal Code (IPC) - Sections 120B, 166, 167, 212, 217, 218, 221, 400, 403, 406, 409, 417, 418, 419, 420, 421, 422, 424, 466, 467, 468, 469, 511 and 571

Appeal No. : Criminal Appeal No. 267 of 2007 (Arising out of SLP (Crl.) No. 15 of 2007)

Appellant : Manager, Icici Bank Ltd.

Respondent : Prakash Kaur and ors.

Advocate for Def. : Manjeet Chawla and ; Javed Mahmud Rao, Advs.

Advocate for Pet/Ap. : Harish N. Salve and; Mukul Rohatgi, Sr. Advs.,; P.S. Shroff

Disposition : Appeal allowed

Prior history : From the Judgment/Order dated 7.12.2006 of the High Court of Judicature at Allahabad in Crl. M.P. No. 11210/2006

Judgement :

AR. Lakshmanan, J.

1. I had the privilege of perusing the judgment proposed by my learned Brother - Hon'ble Mr. Justice Altamas Kabir. While respectfully concurring with the conclusion arrived by the learned Judge, I would like to add the following few paragraphs: -

1.1 Regarding the role of Recovery Agents - use of abusive language - due process of law RBI guidelines.

FACTORS:

. The issue of Banks employing alternate means of recovery other than by due process of law i.e., either through Courts, Tribunals, Adalats or Commissions is an issue that has to be viewed from two angles (1) from the angle of the common man and (2) from the angle of the bank.

1.2 REASONS:

. First of all, the entrance of the multi national banks into the country has spread the culture of Credit Cards, Loans on an unimaginable level where rather than the rich, it is the middle class, the lower middle class and the lower class who are at the receiving end of the bonanzas promised by the Banks.

. Inadequate information on the Credit Card application, Loan Applications, Advertisements or even while meeting the bankers in person in respect of the lending rates and hidden charges, leads to this class of people being lured into the buying of the Credit Cards or taking of the home loan or education loan without knowing the ramifications of non-payment and default.

. The first mistake here is most definitely on the part of the bank who does not believe in educating the masses regarding the promises. Once the credit card or loan is taken and there appears a default, then the witch-hunt begins.

. Now the bank is the aggressor and the public is the victim. The first step to recovery of the money due is through the so called RECOVERY/ COLLECTION AGENTS. A very dignified term used for paid recovery agents who are individual and independent contractors hired by the Banks to trace the defaulters and to both physically, mentally and emotionally torture and force them into submitting their dues.

. A man's self respect, stature in society are all immaterial to the agent who is only primed at recovery. This is the modernized version of Shylock's pound of flesh. No explanation is given regarding the interest charge and the bank takes cover under the guise of the holder of the card or loan having signed the agreement whose fine print is never read or explained to the owner.

. When a harassed man approaches the Court or the police station he is not armed with a recording phone and finds it difficult to give evidence of the abuse he has suffered. Here the bank gets away with everything. Young and Old members of the family threatened on streets, institutions and also at home at godforsaken hours by these agents who have the full support of their contractor bank. The stance taken by the bank in any suit alleging such incidents is that no such agent has been appointed by them or their agents do not misbehave in the manner aforesaid and if found guilty the agents have to bear the cross and the bank gets away scot free.

. Using of the abusive language for recovery is the norm of the day for most nationalized or multi national bank or non-nationalized bank. Though some are smart enough to record the abuse and proceed to establish the same through Court of Law, most of them are unfortunate not to have recourse to it. Such people form the majority and such litigations are pending in large volumes before the Civil and Consumer Courts. Again the banks escape liability since these agents are not salaried employees of the bank and hence not directly liable for anything.

. Taking it from the angle of the common man the inflow of software money and high salaries has resulted in uncontrolled expenditure. Rather than utility it is a fashion to carry a card for it makes a statement depending on the type of card one carries.

. To maintain one's image one pays the price of utilizing the card without realizing that even a single day's delay in payment results in more than 100 to 200 rupees being charged as default and penalty charges, which if accumulated over a month, results in the charges exceeding the actual payment due.

. As for loans, when litigation is commenced by the customer against the bank or an institution, then they refuse to divulge the true statement of account stating that it will be produced in court. This gives ample scope for manipulation.

1.3 SUGGESTIONS

. Chronic defaulters should mean a default of a maximum of three months if intermittent payments have been made.

. It is mandatory that the banks be held vicariously liable for such acts of agents. These agents have to be identified as registered agents of the bank and should be bought directly under the purview of the RBI.

. It may be useful that in view of the enormous amount of litigation pending and being filed against the banks that the recovery agents be made employees of the bank and the bank be held liable directly for all actions of such employees.

. Also every statement sent by the bank should disclose clearly the rate of interest and the default interest: and penalty charges separately calculated and added to the amount pending and due by the customer.

. At the very first month of default, the card should automatically be terminated by the bank to prevent further use/misuse.

. At the time of issuance of card itself, the issuance letter should contain every single charge being made, explained in simple terms and the penalty the customer will bear for such non-payment.

. These agents should be held responsible for every background check done on the person to whom the card is issued and the defaulter should be made liable along with the agent. This would ensure that the agent does not source illegal or fraudulent customer.

. This is dealt with elaborately in the RBI guidelines issued on 21.11.2005 but which still remains only on paper and is not being followed.

2. HIRE PURCHASE:

2.1 FACTORS:

Very many banks and more importantly banks like ICICI have extended liberal credit facilities for purchase of vehicles whether two wheelers or four wheelers, more the number the targets are achieved. This results in a certain amount of default cases. The default can be two-fold - (1) genuine and (2) fraudulent. Both, in the case of genuine and fraudulent the method usually adopted by these institutions is to engage thug/hooligan/gangster for recovery of the two wheelers or four wheelers. Many times even notice is not given to them. They seize the vehicles even in public places deliberately to cause embarrassment. There is no codification till date. This requires immediate attention. In all the cases of hire purchase, advance cheques for a period of 36 months or 48 months or 60 months are obtained and since there is no proper collection process, they not only seize the vehicles but also continue to present the cheques merely to harass the customers. A recent incident has taken place when the Recovery Agent had gone and threatened a school going child for the money due by the father.

Unless we have an effective supervisory system the abuse will continue.

2.2 SUGGESTION

Most of the non-banking financial institutions adopt; the arbitration route for the purpose of getting a commissioner of the Court appointed for seizing the vehicles.

The most important aspect would be a broad guideline for fixing the targets, whether they be for lending or for recovery. This would result in a proper balance between the extreme differences of working conditions between the Multinational Commercial Banks and Nationalized and Non-nationalized Banks who are doing the very same credit business with dignity.

3. Agency systems to be abolished

3.1 FACTORS

Though there are voices raised stating that the agency system should be abolished, this has to be examined from the view of the bank for whom this system has proved to be extremely productive in view of chronic and regular defaulters and customers who have a premeditated intention of cheating the bank. Such people are identified easily by the agents and produced physically before the bank who resort to all means including the local police help to force such customers to repay their dues.

3.2 REASON

The delay in the Courts and the in-effective and corrupt police structure enables the bank to seek the help of such agencies which proves to be cost effective and less cumbersome.

3.3 SUGGESTION

- . Abolition of the system is not the answer but effective control over the agency by the respective banks is essential.
- . Even though, the Reserve Bank of India Guidelines permit the use of an Independent Agency, no presented qualification or licence is granted.
- . If there could be a guideline only licensed recovery agents would be employed and misuse of the agents as against the borrowers can be eradicated.
- . License also should be granted after the respective agents get through in a course conducted by the banks.
- . In accordance with the RBI Guidelines, in any proven cases the license of the agent should be cancelled with penal consequences on them.
- . This could be the best alternative if the banks do not come forward to employ their own personnel and depute them for recovery of outstandings.

4. RBI Guidelines

. The widely published and circulated guidelines dated 21.11.2005 has constituted a working group on regulatory mechanisms and for fair trade practices.

. It came into effect as of 30th November, 2005 and covers a wide area pertaining to the rights of the customers and right to privacy, confidentiality, practice of debt collections, Redressal of grievances and monitoring systems to be implemented by the banks.

. Pursuant to this certain knowledgeable persons/executives aggrieved by the agencies behavior took recourse through the Ombudsman.

. Not many are aware of this forum and the banks continue to be safe.

5. Banking Regulations Act

. Banking Regulations Act does not, in any way, provide the details of the conduct of the bank business.

. It only contemplates the registration of a bank, incorporation of a bank and thereafter puts the bank under the control of RBI.

. While there are guidelines both for lending and recovery which contemplates that no use of force or abuse is used in recovery proceedings, in the absence of an effective overseeing body, these abuses continues.

. Since every bank should hold a license issued to carry on the banking business in India by the RBI in accordance with the conditions imposed by the RBI, if and when both nationalized and MNB's violate any of the rules and regulations consistently over a period of time, then strictures ought to be imposed on such digressing banks to curb their high handed activities and to make them answerable to the general public.

. Only this would reinstate the confidence of the masses in the banking system who are already burdened with the population of over 60 years of age having; lost tremendously on the lowering of the interest rates.

. The banking procedures should be people friendly at the same time, strict in its enforcement and educative enough to guide the public on the benefits of prudent banking and savings and at the same time, enlighten them on the pitfalls of borrowing or taking credit from institutions for various purposes, way beyond their means.

CONCLUSION

On an overall assessment of the system presently existing in India, the Multi National Banks score over the nationalized banks in terms of connectivity and ease in functioning, since they are highly automated and efficient. The staff too is well trained and well paid also. The disadvantage here is that the more the pay, the greater the pressure. Every facility is provided but work is extracted to the maximum irrespective of the age or personal circumstances. In a nationalized bank, since there is no fear of immediate removal, the attitude of the staff is tolerant. No effort is made to go a little more to help the masses. Burden is shifted easily at the lower level. The middle management and higher management are under tremendous pressure, since they are to achieve targets on par with the Multi National Banks. Though there is job security and comfort in pension, there is no answerability. This leads to a recalcitrant attitude and apathy.

As a conclusion, one can state that though efficiency is necessary, it should not be attained under pressure and this situation would only improve if answerability is made the prime criteria in both the sectors.

7. ADDITIONAL INPUTS

Considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery of the dues.

8. While the fraudulent defaulters can be dealt with by taking the Police help for such action, it is only when law is taken into the hands of the so called recovery agents, who are appointed on contract basis, the issue gets aggravated. A

separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.

9. Yet another suggestion would be that of loans whether they are Personal Loans or Credit Cards or Housing Loan with less than Rs. 10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat should be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between the Banks and Borrowers.

10. If the Agency System is inescapable, then the Agency must be coupled with a license issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the Agency System is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to rule of law.

11. While performance of the banks are always co-related with reference to its growth, its assets utilization and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the over all balance in the working of all these institutions.

12. Whether it is a bank, which concentrate on higher segment of banking or it is a bank which concentrate upon middle class, lower middle class and such other segment of the Indian Public who look to and requires the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks profit and growth ratio alone.

13. Keeping in mind the social responsibility, it is absolutely necessary to appoint a Special Committee who will look into the disparity in working conditions, at least upto the managerial level and make such recommendations to the RBI and Union

of India for all remedial actions.

14. In conclusion, we say that we are governed by a rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ goondas to take possession by force.

Altamas Kabir, J.

1. Leave granted.

2. This appeal has been filed by the Manager, I.C.I.C.I. Bank Ltd. against the order dated 7th December, 2006, passed by the Allahabad High Court in Criminal Miscellaneous Petition No. 11210/2006 disposing of the petition with a direction upon the S.S.P. Allahabad, to ensure the registration of a case on the basis of Annexure VII to the Writ Petition and its investigation by a competent police officer.

3. Before advertng to the subject-matter of the writ petition, it may be pointed out that in the writ petition, the writ petitioner has chosen to implead as respondents, not only the Union of India and other police authorities of Uttar Pradesh but also the President/Chairman/Managing Director of the I.C.I.C.I. Bank, the General Manager, Loans, I.C.I.C.I. Bank, Branch Sardar Patel Marg, Civil Lines, Allahabad and M/s. Kartik Associates, Banaras Automobiles, Kodopur, Ram Nagar, Varanasi, through its authorised Goonda Officers and Goonda Employees and institutions created against the law for doing work and persons of the institutes, Criminals to do work for I.C.I.C.I. Bank.

4. The subject matter of the writ petition relates to a loan taken by the writ petitioner from the I.C.I.C.I. Bank, Allahabad Branch for purchase of a truck, it appears that the writ petitioner defaulted in payment of the instalments and in terms of the agreement entered into between the writ petitioner and the Bank, the writ petitioner's truck was taken possession of by the bank authorities by use of force on 13th July, 2006. It also appears that the writ petitioner requested the Chief Manager (Loans), I.C.I.C.I. Bank, Sardar Patel Marg, Civil Lines, Allahabad, for release of the truck which was alleged to have been forcibly taken possession of by M/s. Kartik Associates, acting as the agents of the Bank. The writ petitioner

appears to have also written to the said agents on 25th July, 2006, requesting them to provide details of the instructions given to them to seize the petitioner's truck.

5. Since the truck was not returned to the writ petitioner, she caused a legal notice to be served on M/s. Kartik Associates but the same was returned unserved as having been refused.

The writ petitioner contended that the Bank and its officials had systematically conspired to cheat the writ petitioner by advancing the loan for purchase of the truck and accordingly wrote to the police authorities on 3rd/4thSeptember, 2006, requesting them to register the First information Report of the alleged offences punishable under Sections 120B, 400/ 403/ 406/ 409/ 417/ 418/ 419/ 420/ 421/ 422/ 424/ 466/ 467/ 468/ 469/ 571 and 511 IPC. It was also urged that since no steps had been taken by the police authorities on the basis of the application dated 3th/4thSeptember, 2006, the respondent Nos. 1, 2, 5, 6, 7 & 8, being the Union of India and other officers of the U.P. Police, had committed offences punishable under Sections 166/ 167/ 212/ 217/ 218/ 221/ 120B IPC and Section 13 of the Prevention of Corruption Act.

6. On the basis of the aforesaid allegations, the writ petitioner, inter-alia, prayed for a direction upon the respondent Nos. 1,2,4, 5,67&8 to register a First information Report in Civil Lines Police Station, Allahabad, against the respondent Nos. 9 to 13 and during the period of investigation, to save the losses of the writ petitioner by recovering the truck along with all the documents relating to the truck and to hand, over the same to the writ petitioner. The writ petitioner also prayed for a writ of mandamus to direct the respondent Nos. 1 and 3 to cancel the licence of I.C.I.C.I. Bank and for other ancillary reliefs.

7. On the basis of the aforesaid writ application, the Division Bench of the Allahabad High Court while disposing of the writ petition passed the following order:

The relief sought in this Writ Petition is for issuance of a direction for Registration of the case against the Respondents.

Heard learned Counsel for the petitioner and the learned AGA for the State and perused the record.

The contention for the learned Counsel for the petitioner is that a perusal of Application dated 03/09/06 (Annexure VII) to the Writ Petition discloses commission of a cognizable offence. It was obligatory on the part of the police to have registered the case and to proceed with the investigation but it was not done. The petitioner is a lady and she has approached this Court for the relief sought therein and in support of his contention he has relied on Ramesh Kumari v. State (N.C.T. of Delhi) and Ors., reported in : 2006 CriLJ1622 wherein the Apex Court was pleased to issue direction for registration of the case.

We have perused the application dated 03.09.2006 which shows the alleged commission of cognizable offence. Consequently we direct the SSP Allahabad to ensure the registration of a case on the basis of Annexure-VII to the Writ Petition and its investigation by a competent police officer.

The Writ Petition stands disposed off accordingly.

8. Appearing for the appellant, Mr. Harish Salve, learned senior advocate with Mr. Mukul Rohatgi, learned senior advocate, submitted that the disputes between the parties, if any, were entirely of a civil nature relating to the instalments payable by the writ petitioner on the loan taken by her from the Bank and accounting of all payments actually made and there was no element of criminal intent in the entire transaction. Mr. Salve submitted that while the writ petition had been filed with the intention of exerting pressure on the Bank and its authorities to release the truck, the High Court should have also looked into the pleadings and the frame of the writ petition before passing the impugned order dated 7th December, 2006. A glance at the pleadings would make it quite clear that the dispute involved was of a purely civil nature and did not warrant any direction as has been given.

9. However, while make his submissions, Mr. Salve also conveyed the Bank's willingness to compromise the matter by foregoing the interest which was payable on the outstanding dues which amounted to Rs. 1,62,917/-. Mr. Salve also submitted that in the event the writ petitioner had any doubts regarding the

payments made by her and credited to her account, she could sit with the officers of the Sank along with her agent and verify the accounts and in the event it was found that any payment made by her had not been credited to her account, she would be entitled to receive credit for the same.

10. Mr. Salve submitted that if the writ petitioner paid an initial sum of Rs. 50,000/- (Rupees Fifty thousand) only, the truck could be returned to her and upon final accounting the balance principal amount found payable by her could be paid off in suitable instalments. On behalf of the writ petitioner/respondent, it was contended that the amount said to be due towards principal was highly inflated since according to the writ petitioner she had defaulted in making payment of only one instalment.

11. Be that as it may, we are inclined to accept Mr. Salve's suggestion and we accordingly direct that upon deposit of a sum of Rs. 50,000/- (Rupees Fifty thousand) only, the Bank shall forthwith release to the writ petitioner or her agent the truck bearing registration No. UP-78-AN-1951 which had been seized from the writ petitioner's possession. The writ petitioner assisted by her agent, will sit with the Bank officials for the purpose of reconciling the accounts and in the event it is found that the writ petitioner had not been given credit for certain payments made by her, such payments are to be taken into account and the balance principal amount will then be paid by the writ petitioner-respondent to the Bank in six equal monthly instalments, the last instalment being for any broken amount, if any. The writ petitioner-respondent undertakes not to encumber or dispose of the truck till the final accounting is completed and all dues are cleared in case of default in payment of subsequent instalments, if any, the Bank will be entitled to re-possess the vehicle in accordance with law.

The Bank shall forego the interest said to be payable by the writ petitioner and the writ petitioner will also not be entitled to make any claim on account of any damage and wear and tear that may have been caused to the writ petitioner's vehicle while in the custody of the Bank and its officials.

The appeal is accordingly allowed and the order impugned in the appeal is set aside, if any First information Report has already been registered in terms of the

impugned order, the same shall also stand quashed along with the investigation commenced thereupon.

12. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics.

There shall be no order as to costs.

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