

ICICI BANK

v.

SHANTI DEVI SHARMA AND ORS.
(Criminal Appeal No. 900 Of 2008)

MAY 15, 2008

**[TARUN CHATTERJEE AND DALVEER BHANDARI,
JJ.]**

Banks/Banking: Recovery of loans or seizure of vehicles can only be done through legal means— Lenders/Banks not to resort to use of muscle power for recovery of loans and persistently bothering borrower at odd hours – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Security Interest (Enforcement) Rules, 2002 – RBI Guidelines on Fair Practices Code for Lenders dated 5.5.2003 – Guideline (v)(c) – Guidelines on Engagements of Recovery Agents dated 24.4.2008.

Prosecution case was that son of respondent committed suicide as a result of harassment and humiliation caused to him by the appellants bank's recovery agents. The respondent filed a writ petition seeking for directions to the Commissioner of Police to take action against the appellant-bank. High Court ordered the Police to file reports as to the status of the investigation against the bank. The High Court later reviewed the two status reports that were filed by the Police. It found them unsatisfactory and accordingly, directed the Investigating Officer to conclude the investigation into the matter as expeditiously as possible and take necessary action against those found guilty of abetting the deceased to commit suicide. In addition, the High Court stated the proximate cause of death of the deceased that led him to commit suicide was on account of humiliation caused by the Bank people from where loan was taken by him; and the modus-operandi employed by

A the banks for realization of their loan amount and for recovering the possession of the vehicle against which loans are given was not legal.

B The appellant bank filed applications for impleadment as well as for clarification/deletion/modification under s.482 Cr.P.C. According to the appellant bank, the observations made by the High Court were unjustified and unnecessary for deciding the case.

C In an order dated 11.8.2006, the High Court declined to expunge the impugned observations on the ground that they were made consciously, however clarified the matter by stating that any observation made against appellant Bank would not influence or affect the proceedings, if any, taken against the said bank or its employees.
D Appellant-Bank filed the present appeal.

Disposing of the appeal, the Court

E HELD: 1. Reference to the complaint shows that its contents contain allegations and not facts. Moreover, the investigation was ongoing. Thus, it should have been understood that the High Court was referring to alleged facts. The High Court could have been more careful to note that the facts that it discussed were alleged. Recognizing as much, the High court clarified that its observations were not to influence or affect the proceedings. This
F Court is reiterating the same. The observations would have no bearing on the ongoing investigation. Given this clarification, it cannot be said that the appellant bank has been substantially aggrieved. Nor expunging the impugned observations would have much of an effect. Under either scenario, having the observations expunged
G or having them clarified, no one can rely on the observations. Nevertheless, it is appropriate to remind financial institutions that they are bound by law. The recovery of loans or seizure of vehicles can only be done through
H legal means. [Paras 8, 9 and 10] [979-A-E]

2. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Security Interest (Enforcement) Rules, 2002 (SIER) framed thereunder provide some of the procedures by which security interests may be recovered. In addition to SARFAESI and SIER, the Reserve Bank of India (RBI) has promulgated Guidelines on the subject. The RBI Guidelines on Fair Practices Code for Lenders dated 5.5.2003 provides at (v)(c) that: "In the matter of recovery of loans, the lenders should not resort to undue harassment *viz.* persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans, etc." A more comprehensive version of these Guidelines was recently released on April 24, 2008. The Guidelines expressly reference the 5.5.2003 Guidelines at (i)(x) with regard to the methods by which recovery agents collect on security interests. In addition, the April 24, 2008 Guidelines further referred paragraph 6 of the "Code of Bank's Commitment to Customers" pertaining to collection of dues. [Paras 11,12] [979-A-H; 980-A]

3. RBI has expressed its concern about the number of litigations filed against the banks in the recent past for engaging recovery agents who have purportedly violated the law. In the letter accompanying its April 24th, 2008 Guidelines on Engagement of Recovery Agents, RBI stated: "In view of the rise in the number of disputes and litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse publicity would result in serious reputational risk for the banking sector as a whole." RBI has taken this issue seriously, as evidenced by the penalty that banks could face if they fail to comply with the Guidelines. [Para 13] [981-E-G]

4. It is appropriate to remind the banks and other financial institutions that we live in a civilized country and are governed by the rule of law. Looking to the gravity of the above allegations, the matter should be investigated

- A as expeditiously as possible and, in any event, it must be concluded within a period of three months and, thereafter, the concerned Deputy Commissioner of Police is directed to submit the report of the investigation in the High Court. In the facts and circumstances of this case the appellant is
- B directed to pay costs of this litigation to the respondents which is quantified as Rs.25000/-. [Paras 14-16] [982-D-G]

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- C From the final Judgment and Orders dated 13.07 2006 and 11.08.2006 of the High Court of Delhi at New Delhi in WP (Crl.) No. 576/2006 and Crl M.A. No. 8093-94/2006 in WP (Crl) No. 576 of 2006 respectively

- D U.U. Lalit, Manu Nair and Mark D'Souza (for M/s. Suresh A Shroff & Co.) for the Appellant.

B.B. Singh, D.S. Mahra and Ashok K. Mahajan for the Respondents.

The Judgment of the Court was delivered by

- E **DALVEER BHANDARI, J.** 1. Leave granted.

- F 2. This appeal is directed against the order dated 13th July, 2006 passed by the High Court of Delhi in Writ Petition (Criminal) No. 576 of 2006 and order dated 11th August, 2006 passed in Crl. M. A. Nos. 8093-94/2006 in W.P. (Crl.) No. 576 of 2006.

- G 3. The question that arises in this case in narrow compass: Should part of the impugned judgment be expunged so that it may not adversely influence on an ongoing criminal investigation? The respondent filed a criminal writ petition number 576 of 2006 with the Delhi High Court. Vide this writ petition, the respondents sought a writ of mandamus that would direct the Commissioner of Police to take action against the appellant bank. Respondent no.1 alleged that her son committed suicide as a result of the manner in which the bank's recovery
- H agents had repossessed her son's motorcycle. In the first infor-

mation report (F.I.R.) dated 29.11.2005, the respondent alleged that on 16th October, 2005 at about 1.00 p.m., two recovery agents (referred to as "goons") forcibly entered her son's bedroom and started harassing and humiliating him for the loan payments that were overdue on his two wheeler and on his personal loan.

4. According to respondent no. 1, they repossessed the vehicle taken in the presence of his friends who ridiculed him for having lost the motorcycle. It is further mentioned in the FIR that the deceased had used his motorcycle to get vegetables for his small restaurant. It is also alleged that the deceased had to carry the vegetables on his back in the absence of his motorcycle. Upon finding the deceased carrying vegetables on his back, members of the neighborhood allegedly made snide comments. The deceased finally broke down before his wife and allegedly stated that he had never faced such a humiliation and disgrace in his entire life. On that very day, while his wife was washing clothes, the deceased went inside the small inner room and hung himself to death. We reiterate that this version of the events is found in the FIR and is thus an allegation at this time.

5. To ascertain the veracity of these assertions, the High Court ordered the Police to file reports as to the status of the investigation against the bank. The High Court later reviewed the two status reports that were filed by the Police. It found them unsatisfactory and accordingly, the High Court directed the Investigating Officer to:

"conclude the investigation into the matter as expeditiously as possible and take necessary action against those who *may* be found guilty of abetting the deceased to commit suicide."

In addition, the High Court stated that:

"Para 1: "... the vehicle for which the loan was taken was repossessed by the musclemen employed by ICICI Bank.

Para 3: "...the proximate cause of death of the deceased

A that led him to commit suicide was on account of humiliation caused by the Bank people from where loan was taken by him.”

B Para 4: “The modus-operandi employed by the banks like ICICI for realization of their loan amount and for recovering the possession of the vehicle against which loans are given is extra legal and by no stretch of imagination they can be permitted to employ musclemen and goons for recovery of their dues even from a defaulting party.”

C 6. The appellant bank claimed that it was aggrieved by the observations made by the High Court in paragraphs 1, 3 & 4 of the impugned order. The bank asked the High Court to clarify or delete paras 1, 3 and 4. It did so by way of an application for impleadment as well as an application for clarification/deletion/modification under section 482 (saving of inherent power of High Court) of the Criminal Code of Procedure, 1973. According to the appellant bank, the observations made by the High Court were unjustified and unnecessary for deciding the case.

E 7. In an order dated 11.8.2006, the High Court declined to expunge the impugned observations because it had made them “... consciously and there are no reasons to expunge the same.” Nevertheless, the High Court clarified the matter by stating as under:

F “However, it is clarified that any observation made against ICICI Bank in the order passed by this Court on 13.07.2006 shall not influence or affect the proceedings, if any, taken against the said bank or its employees.”

G 8. Given that the investigation had not been completed, the High Court could have prefaced its observations by stating that the facts were alleged. It did, however, note that “... perusal of the *complaint* would reveal that the proximate cause of death ... was on account of humiliation caused by the Bank people ...

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." Reference to the "complaint" implies that its contents contain allegations, not facts. Moreover, the investigation was ongoing. Thus, it should have been understood that the High Court was referring to alleged facts. That said, the court could have been more careful to note that the facts that it discussed were alleged. Recognizing as much, the court clarified that its observations were not to influence or affect the proceedings.

9. We reiterate the same. They will have no bearing on the ongoing investigation. Given this clarification, we do not feel that the appellant bank has been substantially aggrieved. Nor do we believe that expunging the impugned observations would have much of an effect. Under either scenario, having the observations expunged or having them clarified, no one can rely on the observations.

10. As mentioned, the investigation is ongoing. Neither the High Court's order nor the observations made herein are to influence the investigation, save the time period in which it must be completed. Nevertheless, it is appropriate to remind financial institutions that they are bound by law. The recovery of loans or seizure of vehicles can only be done through legal means.

11. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") and the Security Interest (Enforcement) Rules, 2002 ("SIER") framed thereunder provide some of the procedures by which security interests may be recovered. In addition to SARFAESI and SIER, the Reserve Bank of India ("RBI") has promulgated Guidelines on the subject. The RBI Guidelines on Fair Practices Code for Lenders dated 5.5.2003 provides at (v)(c) that: "In the matter of recovery of loans, the lenders should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans, etc."

12. A more comprehensive version of these Guidelines was recently released on April 24, 2008. The Guidelines expressly reference the 5.5.2003 Guidelines at (i)(x) with regard

A to the methods by which recovery agents collect on security interests. In addition, the April 24, 2008 Guidelines further referred paragraph 6 of the "Code of Bank's Commitment to Customers" (BCSBI Code) pertaining to collection of dues. The BCSBI Code at para 6 inter alia provides:

B "All the members of the staff or any person authorized to represent our bank in collection or/and security repossession would follow the guidelines set out below:

C 1. You would be contacted ordinarily at the place of your choice and in the absence of any specified place at the place of your residence and if unavailable at your residence, at the place of business/occupation.

D 2. Identity and authority to represent would be made known to you at the first instance.

E 3. Your privacy would be respected.

F 4. Interaction with you would be in a civil manner.

G 5. Normally our representatives will contact you between 0700 hours and 1900 hrs, unless the special circumstances of your business or occupation require otherwise.

H 6. Your requests to avoid calls at a particular time or at a particular place would be honored as far as possible.

I 7. Time and number of calls and contents of conversation would be documented.

J 8. All assistance would be given to resolve disputes or differences regarding dues in a mutually acceptable and in an orderly manner.

K 9. During visits to your place for dues collection, decency and decorum would be maintained.

L 10. Inappropriate occasions such as bereavement in the

family or such other calamitous occasions would be avoided for making calls/visits to collect dues.

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As noted above, this Code as well as others has been incorporated into the April 24, 2008 Guidelines:

“(ix) A reference is invited to (a) Circular DBOD. Leg.No.BC.104/ 09.07.007 /2002-03 dated May 5, 2003 regarding Guidelines on Fair Practices Code for Lenders (b) Circular DBOD.No.BP. 40/ 21.04.158/ 2006-07 dated November 3, 2006 regarding outsourcing of financial services and (c) Master Circular DBOD.FSD.BC.17/ 24.01.011/2007-08 dated July 2, 2007 on Credit Card Operations. Further, a reference is also invited to paragraph 6 of the ‘Code of Bank’s Commitment to Customers’ (BCSBI Code) pertaining to collection of dues. *Banks are advised to strictly adhere to the guidelines / code mentioned above during the loan recovery process.*”

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[emphasis supplied].

13. RBI has expressed its concern about the number of litigations filed against the banks in the recent past for engaging recovery agents who have purportedly violated the law. In the letter accompanying its April 24th, 2008 Guidelines on Engagement of Recovery Agents, RBI stated: “In view of the rise in the number of disputes and litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse publicity would result in serious reputational risk for the banking sector as a whole.” RBI has taken this issue seriously, as evidenced by the penalty that banks could face if they fail to comply with the Guidelines. The relevant portion of the Guidelines formulated by RBI is set out as under:

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“3. Banks, as principals, are responsible for the actions of their agents. Hence, they should ensure that their agents engaged for recovery of their dues should strictly adhere to the above guidelines and instructions, including the BCSBI Code, while engaged in the process of recovery of dues.

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A 4. Complaints received by Reserve Bank regarding
violation of the above guidelines and adoption of abusive
practices followed by banks' recovery agents would be
viewed seriously. *Reserve Bank may consider imposing
B a ban on a bank from engaging recovery agents in a
particular area, either jurisdictional or functional, for a
limited period. In case of persistent breach of above
guidelines, Reserve Bank may consider extending the
period of ban or the area of ban. Similar supervisory
C action could be attracted when the High Courts or the
Supreme Court pass strictures or impose penalties
against any bank or its Directors/ Officers/ agents with
regard to policy, practice and procedure related to the
recovery process.*

D 5. It is expected that banks would, in the normal course
ensure that their employees or agents also adhere to the
above guidelines during the loan recovery process."

E 14. We deem it appropriate to remind the banks and other
financial institutions that we live in a civilized country and are
governed by the rule of law.

F 15. Looking to the gravity of the above allegations, we
expect that the matter will be investigated as expeditiously as
possible and, in any event, it must be concluded within a period
of three months and, thereafter, the concerned Deputy Com-
missioner of Police is directed to submit the report of the inves-
tigation in the High Court.

G 16. In the facts and circumstances of this case we direct the
appellant to pay costs of this litigation to the respondents which
is quantified as Rs.25000/-. The costs be paid within three weeks.
We direct that the matter be listed before the High Court after the
report of the Deputy Commissioner of Police is filed.

17. This appeal is accordingly disposed of.

D.G.

Appeal disposed of

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