

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8598 of 2009

ORDER:

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No representation on behalf of the petitioner. Hence, heard learned Standing counsel appearing for the respondent banks and perused the record.

The present writ petition came to be filed seeking issuance of writ of mandamus directing the respondents and their agents not to resort to any illegal and unconstitutional methods for recovery of alleged arrears.

The averments in the affidavit filed in support of the writ petition would show that the petitioner has been doing business in assembling and service of computer systems. It is stated that the respondent banks approached the petitioner with sweet words along with attractive schemes and induced the petitioner to take their credit cards. Believing the words, the petitioner took the cards and started utilizing them for doing his business activities. While taking credit cards, the respondents are alleged to have told him that there will be no interest for a period of 40 days and even after 40 days interest at bank rate will be levied. It is stated that though the petitioner paid substantial amounts, still huge amounts are shown as due. It is stated that the respondent banks started sending anti-social elements to the house of the petitioner, who started threatening the petitioner and his family members and without following the due process of law trying to recover the amount by illegal methods. Challenging the action of the respondent banks the present writ petition came to be filed.

It is averred that the procedure adopted by the respondent banks is totally illegal and contrary to the ratio laid down by the Apex Court in ***ICICI Bank v. Prakash Kaur***. It is stated that the action of the respondent banks in taking steps to recover the arrears by engaging hired gundas or anti-social elements is against to the principles of natural justice.

Per contra, the learned counsel for the respondent banks would submit that the allegations made in the affidavit filed in support of the writ petition are all false. The affidavit is silent as to the date, time and also as to how the agents/recovery boys tried to extract money from the petitioner. It is stated that

the affidavit filed by the petitioner is vague and no relief as sought for can be awarded on the basis of an affidavit which do not contain any details.

A perusal of the affidavit, does not anywhere indicate the date as to when the credit cards are used. It is to be noted that since the averments in the affidavit are silent as to how and in what manner the claim against the State Bank of India is maintainable, the writ petition itself cannot be entertained on the ground of maintainability. Infact, the card numbers of the said banks, withdrawal of money basing on the said cards are also not mentioned in the affidavit. In view of the above, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed. However, it is always open to the respondent banks to recover the money from the petitioner if any due, by following due process of law.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.09.2015

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