IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15695 of 2018
Decided on 27.09.2018

Harinder Singh

Petitioner

Versus

IndusInd Bank Ltd., Mumbai and others

Respondents

* * *

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Satinder Kaur, Advocate
for the petitioner.

Mr. Amarjit Singh Virk, Advocate
for the respondents No.1 and 2.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking direction to IndusInd Bank Ltd. not to send recovery agents and their muscle-men who are stopping the hypothecated vehicle i.e. Tip-Trailer of the petitioner for illegal seizure of the vehicle.

2. The petitioner is the borrower of the loan. IndusInd Bank Ltd., Mumbai; Branch Manager, IndusInd Bank, Moga and the Regional Director, Reserve Bank of India, Sector 17, Chandigarh have been arrayed as respondents No.1 to 3 respectively, in the writ petition.

3. The petitioner got financed one Tip-Trailer, Ashok Leyland 4019, IL 3300 MM, bearing registration No. PB29-X-1241 from respondent No.2 amounting to ₹19,17,997/-. The vehicle was

hypothecated. The loan amount was to be repaid in 60 equal monthly installments (EMI's) of ₹45,700 each starting from June, 2016. There was a default in payment of installments from December, 2017. It has been pleaded that the bank initiated arbitration proceedings and there was an *ex-parte* award of November, 2017. The grievance raised in the present writ petition is that the respondent-bank is sending the recovery agents and their muscle-men for illegal seizure of the vehicle which is sole source of livelihood of the petitioner. Notice of motion was issued. In pursuance thereto, learned counsel for the respondent-bank appeared and contended that the respondent-bank would be making recovery of the dues only in accordance with law.

4. In view of the statement made by learned counsel for the respondent-bank, the writ petition is disposed of with a direction that the respondent-bank would proceed to recover their due amount strictly in accordance with law.

5. Before parting with the matter, it would be appropriate to mention the decision of the Supreme Court in ***ICICI Bank vs. Shanti Devi Sharma and others 2008(7)SCC 532.*** The Supreme Court referred to the guidelines issued by Reserve Bank of India and held that for recovery of the loan, the lenders should not resort to undue harassment by use of muscle power for recovery. The relevant portion of the judgment is extracted below:

> *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 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:

"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:

> *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.*
>
> *2. Identity and authority to represent would be made known to you at the first instance.*
>
> *3. Your privacy would be respected.*
>
> *4. Interaction with you would be in a civil manner.*
>
> *5. Normally our representatives will contact you between 0700 hours and 1900 hrs, unless the special circumstances of your business or occupation require otherwise.*
>
> *6. Your requests to avoid calls at a particular time or at a particular place would be honored as far as possible.*
>
> *7. Time and number of calls and contents of*

conversation would be documented.

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

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

10. Inappropriate occasions such as bereavement in the family or such other calamitous occasions would be avoided for making calls/visits to collect dues.

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." [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:

"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.*
>
> *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 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 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.*
>
> *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."*
>
> *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.*

6. In view of decision of the Apex Court, we are giving a serious reminder to those, who indulge in such activities, to refrain from doing such acts in future.

7. The writ petition is accordingly, disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 27, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No