

*** HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

+ WRIT PETITION No.8723 of 2024

% Date: 03.04.2024

Between:

Medisetty Krishnaveni.

... Petitioner

AND

State Bank of India,
Rep. by its Chairman & Managing Director,
Mumbai, Maharastra,
and others.

... Respondents

! Counsel for the Petitioner : Sri M. Janardhan Rao

^ Counsel for the Respondents : ----

> HEAD NOTE:

? Cases referred

1. (2007) 2 SCC 711
2. (2008) 7 SCC 532

THE HON'BLE SRI JUSTICE C. V. BHASKAR REDDY**WRIT PETITION No.8723 of 2024****ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking the following relief:

“...to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of Respondent No.3 in harassing the petitioner through loan recovery agents by sending them to the petitioner's house without permission and harassing, humiliating her in front of neighbours without following the guidelines of Reserve Bank of India by following Fair Practices Code for Transparency and Fairness as illegal, arbitrary, unconstitutional and violation of Article 14 and 21 of Constitution of India and consequently direct the 3rd respondent not to send any loan recovery agents to the petitioner's house without permission contrary to RBI Directions for purpose of alleged recovery of loan installments of the petitioner pending before the 3rd respondent in the interest of justice....”

2. It is the case of petitioner that she has availed car loan from the respondent No.3-bank vide Loan A/c.No.37443787307 on 29.12.2017 for a sum of Rs.35,50,000/-. It is further case of the petitioner that ever since she obtained loan, she has been regularly paying the instalments in terms of the agreement and only during the COVID-19 pandemic period, the instalments were irregular. During the COVID-19 pandemic period, the Reserve Bank of India (for short 'RBI') has imposed the Moratorium with regard to payment of loan amounts by postponing the same and as such she was unable to pay the amounts and subsequently as per the schedule, she has been complying with the terms and conditions of the loan

agreement. It is also the case of the petitioner that the respondent No.3 without following the procedure, declared her account as NPA on 25.11.2023 and calculated the outstanding as Rs.11,74,173.53 paise as on 21.03.2024. It is further case of the petitioner that respondent No.3 has issued a notice dated 26.03.2024 for seizure of vehicle on the ground that EMI of Rs.57,387/- for the month of February, 2024 due on 27.02.2024 was not remitted/paid resulting overdue of loan account and therefore, to regularise the loan account, respondent No.3 demanded to pay Rs.1,42,858/-. It is also case of the petitioner that pursuant to the said notice dated 26.03.2024, the respondent No.3 without following the guidelines of RBI, has been sending the loan recovery agents to her house and harassing to pay the amounts due as per the calculation of respondents.

3. The grievance of the petitioner is that the respondents are entitled to recover loan amount in terms of the loan agreement by following the procedure established under law and they are not having any right to recover the loan amount by using force.

4. The issues raised in this writ petition are no longer *res integra* as the Hon'ble Supreme Court in ***ICICI Bank Ltd. vs. Prakash Kaur and others***¹, while dealing with the similar issues where the banks

¹ (2007) 2 SCC 711

engaged the services of recovery/collection agents to recover the loans, observed as follows:

“16. 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 recognised 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.”

5. Aggressive recovery tactics adopted by the agents of Banks/ Financial Institutions lead to the landmark judgment in **ICICI Bank vs. Shanti Devi Sharma and others**², where the Hon’ble Supreme Court directed the Banks/Financial Institutions to strictly follow the guidelines issued by the Reserve Bank of India.

6. In the above referred judgments, the Hon’ble Supreme Court condemned the procedure adopted by the Banks/Financial Institutions in employing recovery agents who are acting as middlemen for securing possession of vehicles/secured assets in cases where the borrower commits default. It was observed that Banks/ Financial Institutions instead of taking recourse to follow the procedure recognized by law for securing the possession of vehicles/ secured assets in cases where the borrower commits default in

² (2008) 7 SCC 532

repayment of loan/loan account is declared as NPA, are resorting to strong-arm tactics. The Hon'ble Supreme Court delineated the guidelines issued by the Reserve Bank of India time and again on the fair conduct by lenders, with reference to usage of services of recovery agents. It also stated that the banks should be reminded of the rule of law and strict action must be taken by the RBI in case of breach of such guidelines.

7. It is apt and appropriate to extract latest guidelines issued by the Reserve Bank of India on 12.08.2022 with regard to outsourcing of Financial Services –Responsibilities of regulated entities employing Recovery Agents, which reads as follows:

"RBI/2022-23/108

DOR.ORG.REC.65/21.04.158/2022-23

August 12, 2022

Madam/ Sir,

Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents

The Reserve Bank of India has from time to time advised regulated entities (REs) that the ultimate responsibility for their outsourced activities vests with them and they are, therefore, responsible for the actions of their service providers including Recovery Agents (hereafter referred to as 'agents').

2. It has been observed that the agents employed by REs have been deviating from the extant instructions governing the outsourcing of financial services. In view of concerns arising from the activities of these agents, it is advised that the REs shall strictly ensure that they or their agents do not resort to intimidation or harassment of any kind, either verbal or physical, against any person in their debt collection efforts, including acts intended to humiliate publicly or intrude upon the privacy of the debtors' family members, referees and friends, sending inappropriate messages either on mobile or through social media, making threatening and/or anonymous calls, persistently calling the borrower

and/or calling the borrower before 8:00 a.m. and after 7:00 p.m. for recovery of overdue loans, making false and misleading representations, etc.

3. The instructions contained in para 2 above shall supplement and be read in conjunction with the existing guidelines/directions issued by the Reserve Bank of India, as amended from time to time, including those tabulated in Annex.

4. Any violation in this regard by REs will be viewed seriously.

Applicability

5. This circular shall apply to the following REs:

(a) All Commercial Banks (including Local Area Banks, Regional Rural Banks, and Small Finance Banks) excluding Payments Banks;

(b) All All-India Financial Institutions (viz. Exim Bank, NABARD, NHB, SIDBI, and NaBFID);

(c) All Non-Banking Financial Companies including Housing Finance Companies;

(d) All Primary (Urban) Co-operative Banks, State Co-operative Banks, and District Central Co-operative Banks; and

(e) All Asset Reconstruction Companies.

6. This circular shall not apply to microfinance loans covered under 'Master Direction – Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022', dated March 14, 2022.

Yours faithfully,

(Sunil T. S. Nair)
Chief General Manager”

8. For the aforesaid reasons and as the procedure adopted by the respondent No.3 for recovery of loan amount from the petitioner, amounts to violation of the rights guaranteed under Articles 14 and 21 of the Constitution of India, this Court deems it appropriate to direct the respondents, to ensure that the agents engaged by them for recovery of the loan amounts, shall strictly follow the guidelines

and instructions issued by the Reserve Bank of India and also the judgments of the Hon'ble Supreme Court in **ICICI Bank Ltd. vs. Prakash Kaur's** case (1 supra) and **ICICI Bank vs. Shanti Devi Sharma's** case (2 supra).

9. With the above direction, this Writ Petition is disposed of.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

C.V. BHASKAR REDDY, J

Date: 03.04.2024

Note: L.R copy to be marked: YES/NO
SCS