



Legality and Prudence in Financial Institutions

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Abstract

Taking loans for the purpose of personal and financial needs is the need of the hour for every individual. Circumstantially situations can be unjustifiable in taking loans which put the loan takers in dire straits. The evidence of farmers sacrificing their lives for loan repayment is spiking at alarming levels in our country every now and then. Sometimes climate changes, uneven rainfall distribution pattern has roiled the crop projection picture which keeps their calculations out of gear. But the legal consequences tend to remain stagnant and still even after he sacrifices his life for the mishaps for non repayment. It is necessary to understand that necessities in life will not conceal the consequences of thereafter. This article is based on the experience that I encountered with my legal internship at a financial institution. I witnessed situations where people were in dire straits when they took out loans and I felt so sentimental when I saw events where they were heart broken when they couldn't repay the loan.

We know that Loan is to "lend a thing to another". This can be either gratuitous or a reward, either in the form of "money" "kind" or an "advance which carries interest" containing any condition of repayment with interest.

Repayment of loan

There was an incident in Kerala that shook my attention where the controversies circling the death of a 22-year-old college student who had committed suicide in the pretext of failure to loan repayment had snowballed into a political discourse all across the state. The whole saga had invited mounting criticisms and waved strong ripples of discontent among the public admonishing bank officials citing non-extension of time and relaxation towards loan repayment, provided such instances could have been averted and life saved. The scenario upholding the sentiments and emotions of the families teamed up the crowd travailing on the death of the helpless daughter.

Theoretical Evolution of the idea

The Reserve Bank of India does impose interest rates by keeping in mind the amount of advance, the purpose and period of loan, status and place of the borrower.

The repercussions on the death of the helpless girl were tantamount to turning the pulse of



society acrimonious, exuberating political manifestation squarely blaming the bank without paying heed to the sentiments of the family under the chokeholds of financial distress during the debilitating pandemic. It was reported that the family took a loan of 10 Lakh to fulfill their dreams of constructing a house for which they had to borrow the sanctioned amount from the bank.

For example, If the customer has already taken a loan from the same bank where he has undertaken his previous transaction to meet his obligations, the bank can determine the creditworthiness of the borrower by checking his past transaction in loan matters. A prudent bank official must study the character of a customer by identifying his position, reputation, ability, competence, personal experiences and consequences to meet the loan.

The deceased student father who was an expatriate being jobless in the wake of COVID. The family pleaded for an extension for relaxation on loan repayment, but eventually the bank authorities refused to extend the timeline.

Legal standpoint

Legally encountering this dilemma, the declaration of attachment notice was accompanied only as a statutory formality and a recovery measure under the SARFAESI Act 2002, which collectively takes control over the security pledged by the defaulted borrower against the loan to recover the dues and sell the assets without the intervention of the court of law. The humiliation and the mental agony had instigated the youth to commit suicide, which is lamentable.

Anyone who wishes to avail a Loan must be meticulous, pragmatic, and apply their reasonable foresight to mete out the legal consequences and their detrimental impact before and after taking the loan. Merely taking a loan from a financial institution to fulfill an instantaneous purpose without application of legal wisdom or consciousness can put the borrowers into a languishing valley of dilemmas. An unfazed and a casual approach in taking loan for the sake of time is never a logical standpoint

Farmers suicide

Another instance is where farmers are substantially or spatially dependent on the crop pattern and yield results for progressive succession in agriculture for a year. They can be eventually affected when heavy rain causes an unprecedented impact on crop losses due to climate change which keeps their calculations out of gear and force them to commit suicide. Recently the Bombay High court delivered a verdict stating that “A demand of loan by a bank official or the employees for the repayment of a particular loan is not abetment to suicide”. Before initiating the petition against the recovery agents for abetment under **Section 306 IPC** it is necessary that the essence of abetment is fulfilled.

If the defaulter commits suicide on account of facing threat ,harassment and defamation by a bank official either personally or via online platforms then the jurisprudential aspect of

abetment under the Indian Penal Code should be well understood, as the procedure to invoke a petition for abetment against the bank official should eventually include the elements of intentional instigation which aid a person to do a certain act and the involvement of an active participation should propel the defaulter to end the life which subjects the bank officials to face the legal consequences.

When we genuinely count on the debilitating pandemic which generated a catastrophe on job losses, financial constraints, Deprivation on economic and social mobilities, the poor were forced to take loans to make their ends meet.

The plight of the defaulted borrower receiving continued demands, recurring reminders, sale notices or other formalities inflicts psychological depression, anxiety, agony, mental pressures etc. which in turn create an intrinsic feeling to do the helpless act but committing suicide is a just a narrow escape from realities but the entire legal procedures remain absolute and consistent until all the formalities are met by the borrower. Under the Securitization and Asset Reconstruction of Financial Assets and Enforcement of Security Interest 2002 the issuance of sale notice shall be preceded by the bank towards the defaulting borrower under Section 13, rule 8, 9, 13, subsection 5(a), 5(A). After the issuance of the sale notice the bank shall proceed with the demand notice under section 13(2) for a time period of 60 days by stating the scheduled property, its value to be served, accrued value under section 13 (4) of the SAREASI Act.

What is the legal point evolved here?

The legal procedure that begins against the debtor is not just out of a blue it is a process that results when the preliminary legal procedures are an absolute failure and noncompliance results in the advancements of legal notices to the borrower through a cautionary alarm to set a timeline boundary to repay the installment before the due date with the legal and overdue interest of the sanctioned loan.

In (*Satish Chandra Ratanlal Shah vs State of Gujarat*)¹ the failure to repay a loan is not a criminal offense unless there is a fraudulent intent. The Reserve Bank of India had issued guidelines which relaxes and provides flexible timelines to repay the defaulted loan amount to the borrower, but if the bank believes that the borrowers have willfully /intentionally / diligently tends to avoid the cautionary intimations the bank gets the legal rights to initiate actions against the defaulter.

Incident in Delhi

It was reported that in Delhi a man who took 8 lakhs from a bank jumped off from the third floor of the building with his family due to mental depression and anxiety with recurring calls, legal

and demand notices for loan repayment. Similarly in Pune A 22-year-old women died of suicide when the executives of the finance company harassed them for the circulation of the morphed photos in social media for the failure of loan repayment which was not yet received. With augmenting suicidal tendencies reported on the borrowers with inability to meet the legal requirements, plummeting complaints against the creditors for abuse and harassment towards the borrowers was rampant.

What decision did the court evolve here ?

To answer this, the court came to a conclusion that if a recovery agent or a bank employee demands the defaulter intimating him through calls, messages, personal confrontation or sending the legal procedures including sale or demand notices, fixing attachment notice in the conspicuous part of the premises is nothing but the duty and obligation of the Bank official which is a legal function that does not amount to instigation of the borrower to end his life forever. Discharging banks official functions, duties and responsibilities is a systematic procedure and the officials cannot be convicted under Section 306 of the Indian Penal Code. The performance of duties / Responsibilities by a bank official is recognized to be a part and parcel of the employment or function of the Bank which does not constitute any criminal intention to aid, assist or to commit suicide. A bank has the right to enforce the recovery efforts through a personal contract, sending advances, reminders before the due date and post it or schedule a personal meeting with the borrowers to enforce and mitigate the reasons for delay in repayment is acceptable but the bank do have the right to enforce the security by enforcing the right through set off, right of general lien and right of private sale.

Being prudent and responsible is the only take away

Under Section 13(3A) of the SARFAESI Act, it is necessary to understand that the Recovery measures initiated by bank authorities is a mandatory procedure (*ITC Ltd vs Blue Coast Hotel Ltd & Ors*)² and noncompliance attracts penal consequences. The progressive actions and litany of procedures taken by the bank authorities cannot be pried upon the sentiments of those failing to repay loans. One who is responsible for taking loans must have allegiance to repay it without any fail. There is no count on exhibiting sentiments for the drawbacks on failure to loan repayment, so one must be Acquiescing on the legal and statutory procedures initiated by the financial institutions and the Court of law.

Keywords

1. Acrimonious -typically of speech or discussion) angry and bitter.



- 2.unfazed - Not disconcerted or perturbed.
3. Allegiance -loyalty or commitment to a superior or to a group or cause.
- 4.Acquiescing -accept something reluctantly but without protest.
5. Plummeting -fall or drop straight down at high speed.
- 6.Admonish -advise or urge something urgently