

Advocates lives miserable

By Edrich Miranda

Spent about one hour forty five minutes, today and one hour approximately last Monday, discussing various cases with an advocate, over wholly irrelevant immaterial and banal issues Its frustrating and exasperating when a person who has completed LLB and enrolled at the bar cannot understand the rudiments of law and what is agonizing is she persistently went on , why this? How this? But this? If this? If's and buts never ending. She says the opposite party a bank committed an offence by depositing her cheques at a bank located in Gujarat, even though she lives in Mumbai; and she insist a criminal case be filed against the bank.

To the best of my knowledge, intelligence and wisdom, I don't find any scope of filing any case against the bank, on that count; because the bank is right they can deposit the cheque anywhere in India wherever they have branches or where their registered head office or otherwise is, save if an explicit bar isn't in the recitals of the agreement, which is a contract, or a statutory bar or bar by case law or a bar operative by some law.

Then she went on to suggest, filing of a criminal case to prevent the recovery agents from visiting her house in respect of the defaulted EMI's; and the loan which is declared NPA. Advised her, if she wants to prevent bank's recovery agents from visiting her house the proper forum would be a Civil Court, with a suit for injunction simplex; but she went on and on saying, I want a criminal case to be filed against the bank its officials etc, prohibiting them from visiting her house using physical force etc. Again I took pains to try and make her understand, common law criminal jurisprudence, prevalent and practiced in India; I went to the extent of defining offence, which are basically of two types, offence of commission and offence of omission, An offence of commission is committed or deemed to be committed when an act, deed or thing is done in breach of a statute, in the present case where does the question of the bank committing an offense arise? Then she tells me she is practicing independently; but is associated with a senior advocate practicing exclusively at the Supreme Court, from who she usually takes opinion when in doubt, I requested she give me the phone number of the advocate, so that I speak to him; else she request him to speak to me, which she promptly declined, there is only one plausible reason I feel she is lying, and if her senior has genuinely give her such advice, I can only say "**God forbid such a situation**", the profession is going astray. Its O.K. she said this to me; but she shouldn't say such things before a client, one shall cut a sorry figure not just for oneself; but for others associated with the profession.