Loan defaulters have no right to be represented by lawyer in 'in-house' proceedings of banks: SC

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The Supreme Court has held that a person has no "right" to be represented by a lawyer in "in-house" proceedings initiated by banks or financial institutions to declare him willful defaulters for non-payment of dues.

A bench comprising Justices R F Nariman and Vineet Saran was dealing with the question whether a person is entitled to be represented by a lawyer of his choice in the process undertaken by banks to declare him a "wilful defaulter" under a circular issued by the Reserve Bank of India (RBI).

"We are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in...the Revised Circular dated July 01, 2015, as it is clear that the events of wilful default as mentioned...would only relate to the individual facts of each case.

"What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available," the top court said in its verdict delivered on last Wednesday.

It said that the question whether a default was "intentional, deliberate, and calculated" was the question of fact which can be dealt by the borrower or the lender and the assistance of lawyer was not needed.

The apex court allowed the appeal of State Bank of India against the Delhi High Court order which had held that the firm, Jah Developers Pvt. Ltd., can be represented by lawyers in the in-house proceeding of the lending bank to declare it a willful defaulter.

Setting aside the high court order, the apex court ordered that the bank must give to the borrower the copy of the order of the first in-house committee which conducted the proceedings to declare the firm a willful defaulter.

"The borrower can then represent against such order within a period of 15 days to the Review Committee...The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower, the apex court said.

The lending bank had contended that the defaulting borrower does not need the assistance of lawyers in the proceedings as no complex legal questions are decided in declaring a person a willful defaulter.