

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

AS.No. 337 of 1994 ()

**AGAINST THE ORDER/JUDGMENT IN OS 304/1991 of SUB COURT, PALAKKAD
DATED 22-09-1993**

APPELLANTS/DEFENDANTS 1 & 2:

- 1. ELIZABETH ALICE OOMMEN, RESIDING AT ZENGIBERS ESTATE,
PADAGIRI POST, PALAKKAD DISTRICT.**
- 2. THOMAS P. KOSHI RESIDING AT
POLACHIRAKKAL HOUSE, MAVELIKARA.**

**BY ADVS.SRI.G.SRIKUMAR
M KRISHNAKUMAR**

RESPONDENTS/PLAINTIFF & 3RD DEFENDANT:

- 1. SYNDICATE BANK, REP. BY ITS MANAGER,
PADAGIRI BRANCH, PALAKKAD DISTRICT.**
- 2. OOMMEN P.KOSHI,
POLACHIRAKKAL HOUSE, MAVELIKARA.**

**BY ADVS. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR**

**THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 17-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

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A.S.No.337 of 1994

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Dated this the 17th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are defendants 1 and 2 in O.S.No.304 of 1991 on the file of the Court of the Subordinate Judge of Palakkad. The first respondent is the plaintiff and the second respondent is the third defendant therein. The suit instituted by the first respondent bank for realisation of the sum of Rs.1,31,997/- with interest and costs from the defendants was decreed after trial and the plaintiff bank was held entitled to realise the sum of Rs.1,31,997/- with future interest at 12% per annum on the principal sum of Rs.50,000/- from the date of suit till realisation from the defendants personally and by sale of the hypotheca. In this appeal, the appellants challenge the decree and judgment passed by the court below in so far as it awards interest in excess of 6% per annum on the principal sum of Rs.50,000/-.

2. The appellants have now filed I.A.No.568 of 2015 under Order XXIII rule 3 of the Code of Civil Procedure praying that the appeal may be dismissed as settled out of court. In the affidavit

filed in support of the application by the appellant No.2 it is averred that the first appellant has paid to the plaintiff bank and the plaintiff bank has received the sum of Rs.1,00,000/- towards full and final settlement of the entire amount due from the appellants, that the plaintiff bank has accepted the payment and closed the loan account and therefore, as the claim of the bank has been satisfied, the suit may be dismissed as settled out of court. In the light of the aforesaid development, we are of the opinion that this appeal can be disposed of as settled out of court.

We accordingly dispose of the appeal as settled out of court and record that the first respondent bank has no subsisting claim in O.S.No.304 of 1991 on the file of the Court of the Subordinate Judge of Palakkad.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANIL K.NARENDRAN
JUDGE