

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WA.No. 1643 of 2015

JUDGMENT DATED 29-10-2014 IN WP(C) 27159/2013
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APPELLANT(S)/PETITIONERS:

- 1. SULAIMAN KUNJU, AGED 88 YEARS,
S/O.ISMAIL KUNJU, THACHANAZIKOM, KARIKUZHI,
MAYYANADU P.O., KOLLAM.**
- 2. SHAM NAZIR, AGED 51 YEARS,
S/O.SULAIMAN KUNJU, THACHANAZIKOM, KARIKUZHI,
MAYYANADU P.O., KOLLAM.**

BY ADV. SRI.S.D.ASOKAN

RESPONDENT(S)/RESPONDENT:

**THE SECRETARY, UMayANALLOOR SERVICE CO-OPERATIVE BANK,
UMAYANALLOOR P.O., KOLLAM, PIN - 691 589.**

BY ADV. SRI.K.SUBASH CHANDRA BOSE

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
24-11-2015 ALONG WITH WA.1644/2015 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 1643, 1644, 1645 &
1661 of 2015

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Dated this, the 24th day of November, 2015

J U D G M E N T

Shaffique, J.

These appeals have been filed by persons who were under obligation to pay certain amounts to the Umayanalloor Service Co-operative Bank.

2. Loans were availed by the appellants and when there had been default in the payment, Bank had taken proceedings under the Co-operative Societies Act. Orders were passed directing payment of the amount with interest. Aggrieved by the same, appellants preferred appeal before the Co-operative Tribunal, which came to be dismissed. Two writ petitions were filed by the appellants challenging the orders passed by the Co-operative Tribunal and two writ petitions were filed by the Bank challenging the reduction of interest claimed by the Bank. Learned Single Judge after evaluating the contentions urged on either side allowed the writ petitions filed by the Bank and

dismissed the writ petitions filed by the debtors.

3. Learned counsel for the appellants submits that learned Single Judge had not appreciated the entire factual circumstances involved in the matter and should have interfered with the award passed and the learned Single Judge has also committed error in granting enhanced rate of interest in the writ petitions filed by the Bank.

4. Heard the learned counsel for the appellants and the learned counsel appearing for the Bank.

5. Having regard to the materials made available on record and having perused the orders passed by the competent authorities as well as the learned Single Judge, we do not think that any error had been committed by the learned Single Judge in disposing of the above writ petitions.

6. As far as the claim of the Bank is concerned, Bank is entitled to recover the amount at the contractual rate of interest and therefore learned Single Judge was justified in directing payment of the amount with interest at 13% per annum, it being a commercial transaction. Coming to the claim raised by the

W.A. Nos.1643, 1644, 1645 &
1661 of 2015

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appellants in their writ petitions, it is evident that the authorities below had considered the respective claims based on questions of fact, which cannot be re appreciated by this Court under Article 226 of the Constitution of India. Therefore, learned Single Judge was justified in rejecting the claim of the appellants.

7. Having said so, learned counsel for the appellants seeks time to pay the amount as directed by the authorities below. Taking into consideration the said request, we grant the appellants six months time to pay the entire amount which shall be paid by the appellants in six equal successive monthly instalments. If there is default in payment of any one of the instalments, it shall be open for the Bank to take appropriate proceedings in accordance with law.

With the above observations, the writ appeals are dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp24/11/2015

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PS to Judge