IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 1099 of 2015 (J)

PETITIONER :

ARUNODHAYAM KHADI PRODUCERS
INDUSTRIAL CO-OPERATIVE SOCIETY LTD
NO.K.V.IND(Q) 155, CHAVARA POST, KOLLAM,
REPRESENTED BY ITS PRESIDENT V.SUMANGALA PILLAI,
W/O.RAJENDRAN PILLAI,AGED 63 YEARS, OF NEELAGIRI,
KULANGARABHAGHOM, CHAVARA POST, KOLLAM.

BY ADV. SRI.R.KISHORE

RESPONDENT(S):
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1. **KERALA KHADI GRAMA VYAVASAYA BOARD,**
   VANCHIYOOR P.O., THIRUVANANTHAPURAM,
   REPRESENTED BY ITS SECRETARY.

2. **PROJECT OFFICER,**
   DISTRICT KHADI AND INDUSTRIES OFFICE, KOLLAM.

3. **DISTRICT COLLECTOR, COLLECTORATE, KOLLAM.**

4. **TAHSILDAR,**
   TALUK OFFICE, KARUNAGAPPALLY, PIN: 690 518.

5. **VILLAGE OFFICER,**
   VILLAGE OFFICE, CHAVARA.

R1 & R2 BY ADV. SRI.TOM K.THOMAS, SC
R3 TO R5 BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 1099 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: THE TRUE COPY OF THE ORDER DATED 4/3/1982 PASSED BY THE 1ST RESPONDENT BOARD IN PROCEEDINGS NO.KB.96/82/K4.

P2: THE TRUE COPY OF THE ORDER DATED 26/10/1983 PASSED BY THE 1ST RESPONDENT BOARD IN PROCEEDING NO.KB.96/81/K4.

P3: THE TRUE COPY OF THE ORDER DATED 02/01/1984 PASSED BY THE 1ST RESPONDENT BOARD IN PROCEEDING NO.KB.96/81/K4.

P4: THE TRUE COPY OF THE ORDER DATED 22/8/1990 PASSED BY THE 1ST RESPONDENT BOARD IN PROCEEDING NO.KB.10438/90/K2.

P5: THE TRUE COPY OF THE ORDER DATED 27/6/1991 PASSED BY THE 1ST RESPONDENT BOARD IN PROCEEDING NO.KB.6578/91/K2.

P6: TRUE COPY OF THE NOTICE DATED 25/03/2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

P7: THE TRUE COPY OF THE SALE NOTICE DATED 28/2/2013 ISSUED BY THE 4TH RESPONDENT.

P8: TRUE COPY OF THE LETTER DATED 21/8/2013 SUBMITTED BY THE PETITIOENR TO THE 1ST RESPONDENT

P9: THE TRUE COPY OF THE APPLICATION DATED 21/8/2013 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT

P10: THE TRUE COPY OF THE SALE NOTICE DATED 19/3/2014 ISSUED BY THE 4TH RESPONDENT

P11: THE TRUE COPY OF THE JUDGMENT DATED 11/12/2014 PASSED BY THIS HONOURABLE COURT IN WPC - 8812/2014 IN THE FILE OF THIS HONOURABLE COURT.

P12: TRUE COPY OF THE LETTER DATED 31/12/2014 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT

P13: TRUE COPY OF THE NOTICE DATED 7/01/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER

P14: TRUE COPY OF THE EXTRACT FROM PATTERNS OF ASSISTANCE FOR KHADI AND VILLAGE INDUSTRIES PUBLISHED FROM KHADI AND VILLAGE INDUSTRIES COMMISSION, MUMBAI.

P15: COPY OF THE JUDGMENT DATED 04/10/2005 PASSED BY THIS HONOURABLE COURT IN CRL.APPEAL NO.672/1996 IN THE FILE OF THIS HONOURABLE COURT

WP(C).NO.1099/2015

P16: COPY OF THE LETTER DATED 18/04/2015 ISSUED BY THE PRINCIPAL SECRETARY, GOVT OF KERALA TO THE PETITIONER.

P17: COPY OF THE ORDER DATED 27/06/1991 PASSED BY THE 1ST RESPONDENT BOARD IN ITS PROCEEDING NO.KB.6578/91/K2

RESPONDENT(S)' EXHIBITS

R1(A): COPY OF THE STATEMENT OF LOAN DISBURSEMENT AND REPAYMENT.

R1(B): COPY OF THE MINUTES OF THE MEETING HELD ON 22/09/2012

R1(C): COPY OF THE CALCULATION STATEMENT FOR THE PURPOSE OF AVAILING OTS.

R1(D): COPY OF THE MEMORANDUM REGARDING MORTGAGE BY DEPOSIT OF TITLE DEEDS DATED 28/10/1990

R1(E): COPY OF THE REPRESENTATION DATED 20/01/2012

R1(F): COPY OF THE REPRESENTATION DATED 25/06/2012

R1(G): COPY OF THE REPRESENTATION DATED 26/07/2012

R1(H): COPY OF THE REPRESENTATION DATED 27/01/2014

R1(I): COPY OF THE REPRESENTATION SUBMITTED BY THE MEMBERS OF THE BOARD OF THE PETITIONER SOCIETY TO THE DISTRICT COLLECTOR, KOLLAM.

R1(J): COPY OF THE MEMORANDUM REGARDING MORTGAGE BY DEPOSIT OF TITLE DEEDS DATED 04/03/1982

R1(K): COPY OF THE MEMORANDUM REGARDING MORTGAGE BY DEPOSIT OF TITLE DEED DATED 29/11/1984.

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 1099 of 2015
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Dated this the 30th day of September, 2015

JUDGMENT

The petitioner is a registered Co-operative Society, that had availed loans from the 1st respondent Board, during various periods from 04.03.1982 onwards. Exts.P1 to P5 are produced by the petitioner as orders of the 1st respondent Board sanctioning various loans to the petitioner Society. It is seen from Exts.P1 to P5 orders that the loans were essentially of two kinds, namely Khadi loans and Gramasilpa loans and the Khadi loans were granted free of interest, whereas there was a nominal interest in respect of the Gramasilpa loans. The said orders also indicate that if there was a delay in repayment of the loan amounts, the respondent Board would be entitled to demand penal interest from the petitioner Society. The facts in the writ petition would disclose that, pursuant to the orders passed by the 1st respondent Board, the petitioner executed formal agreements with the respondent Board, the terms of which accorded with the orders passed by the Board, and contained signatures of the office bearers and other authorised signatories of the petitioner Society. Pursuant to a dispute, that arose between the petitioner Society and the respondent Board with regard to amounts that remained to be paid to the respondent Board, revenue recovery steps were initiated by the respondent

Board to recover dues from the petitioner Society. The essence of the dispute between the parties was whether interest could be demanded on delayed repayment of the loan amounts, over and above the penal interest, for which there was an express provision in the Board orders as well as in the agreements entered into between the parties. While the dispute subsisted between the parties, by Ext.P6 notice, the 1st respondent Board intimated the petitioner Society of the dues position and offered the petitioner Society an option of availing a One Time Settlement on waiver of the penal interest due, on condition that the other amounts due to the respondent Board were paid in lump-sum. While the petitioner Society offered to pay the balance outstanding amounts, after excluding the interest in respect of the Khadi loans, in lump-sum the 1st respondent Board did not agree to the said proposal of the petitioner Society and proceeded to continue with the recovery steps and issued Ext.P10 sale notice bringing the properties of the petitioner Society to sale. The petitioner, therefore, approached this Court through WP(C) No.8812 of 2014, which was disposed by this Court by Ext.P11 judgment, permitting the petitioner to avail the benefit of OTS scheme and making it clear that the respondent Board should give credit to all the amounts paid by the petitioner till date. It would appear that pursuant to Ext.P11 judgment, when the petitioner approached the 1st respondent Board for settlement, the respondent Board refused to accept payment based on the computation that was put forward by the petitioner Society. On the contrary, it issued Ext.P13 notice dated 07.01.2015 directing the petitioner to make a payment of Rs.30,30,723/- in lump-sum, as a condition for settling the liability due to the respondent Board. In the present writ petition, the petitioner impugns Ext.P13 notice, as also the recovery steps taken by the respondent Board for realisation of the said amount.

2. The writ petition was admitted and thereafter, by an interim order dated 30.03.2015, this Court permitted the petitioner to effect a payment of Rs.10,00,000/- as a condition for stay of recovery proceedings, making it clear that the entitlement of the petitioner to claim the benefit of the OTS scheme would be decided at the time of hearing. In the meanwhile, a counter affidavit was filed on behalf of the respondent Board, wherein it produced as Ext.R1(c), a computation statement showing the outstanding amounts from the petitioner to be Rs.52,18,211/-. It is apparent from the said computation statement that the respondent

Board has reckoned the principle amounts due under both the loans, the interest component, even in respect of the Khadi loan and the penal interest that was due in respect of both categories of loans. In a reply affidavit, that has been filed by the petitioner, to the counter affidavit of the respondent Board, it is clarified with reference to Exts.P14, P16 and P17 documents that the Khadi loan and Gramasilpa loan are two distinct categories of loans and, while the former loan is granted interest free, the latter is granted on payment of interest. It is the contention of the petitioner that, if the interest portion of the Khadi loan is excluded, and the penal interest component of both the loans waived by the 1st respondent, in accordance with the OTS scheme that was offered to the petitioner Society, then the payments already made by the petitioner would be more than sufficient to wipe out the liability due to the respondent Board.

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondent Board.

4. On a consideration of the facts and circumstances of

the case and the submissions made across the bar, I find that it is not in dispute that the 1st respondent Board offered to settle the dispute under the OTS scheme by waiving the penal interest, that accrued in respect of both categories of loans, subject to the condition that the petitioner Society paid the other outstanding amounts in lump-sum. The issue between the parties is only with regard to whether or not the interest amounts demanded in respect of the Khadi loans can be said to be legal when viewed in the backdrop of the scheme under which the said loan was sanctioned, and the terms of the agreement entered into between the parties. A perusal of Exts.P14, P16 and P17 documents, produced by the petitioner Society, would clearly indicate that, as per the scheme, under which the Khadi loans were sanctioned to the petitioner Society, the loans were to be interest free. As a matter of fact, in the various agreements that were entered into between the parties in respect of the Khadi loans, all with the exception of one agreement, indicate that the loans were to be interest free. No doubt, the agreements contemplate that, if there is a delay in the repayment of the loans, the loan amounts, together with applicable interest as also penal interest at specified rate would be recoverable from the petitioner Society. On a reading of the said clauses in the agreement, together with the scheme under which the loans were sanctioned to the petitioner Society, it is evident that on a delayed repayment of the loan amounts advanced to the petitioner Society, the respondent Board was entitled to recover only the principle amounts of loans outstanding, together with penal interest at the rate stipulated in the respective agreements. It is against the backdrop of this contractual understanding that the terms of the OTS scheme, offered by the respondent Board to the petitioner Society in Ext.P6 communication, have to be viewed. When so viewed, I find force in the contention of the petitioner that the insistence by the 1st respondent on interest, other than penal interest, on delayed payments of Khadi loans, cannot be justified. A reading of the scheme under which the loans were sanctioned would clearly indicate that an insistence of payment of interest on the delayed repayment of the Khadi loans would militate against the express provisions of the scheme, as also the understanding between the parties as evidenced by the agreements entered into between them, both of which clearly indicate that the Khadi loans were advanced free of interest.

5. It is seen from the pleadings that the petitioner has, as on 31.03.2015, paid an amount of Rs.16,58,471/- towards its liability to the 1st respondent. There is no computation produced by the 1st respondent Board which would show the petitioners liability under the OTS Scheme by reckoning only the principle amounts outstanding in respect of the Khadi loans advanced to the petitioner Society. Under the said circumstances, I dispose the writ petition with the following directions:

(i) The 1st respondent Board shall compute the dues of the petitioner Society, by excluding the interest component in respect of Khadi loans and the penal interest component in respect of both the loans and after giving credit to the payments thus far made by the petitioner Society. The statement showing the said computation, together with applicable collection charges, shall then be forwarded to the petitioner for the purposes of enabling the petitioner to make payments of any balance amount that remains be paid to the 1st respondent Board. The said statement shall be intimated to the petitioner, within a period of one month from the date of receipt of a copy of this judgment.

(ii) On receipt of such intimation from the 1st respondent Board, the petitioner shall effect payment of any balance amount due to the 1st respondent Board, within three weeks thereafter. On settlement of the dues as above, the respondent Board shall handover the documents of the petitioner Society, that were taken by the respondent Board as security for the loan amounts advanced to the petitioner, forthwith.

(iii) The dispute between the parties shall thereafter be treated as settled in terms of the OTS scheme, that was offered by the respondent Board to the petitioner through Ext.P6 communication.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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