

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 4141 of 2015 (P)

PETITIONER(S) :

- 1. P.J. DEVASIACHAN, AGED 46 YEARS,
PROPRIETOR, MARIAN ALUMINIUM COMPANY,
MINI INDUSTRIAL ESTATE, KATTAPPANA P.O,
IDUKKI DISTRICT.**
- 2. BIJUMON P.V.,
S/O.VARGHESE, PROPRIETOR,
P.V.B. INDUSTRIES, MINI INDUSTRIAL ESTATE,
KATTAPPANA P.O., IDUKKI DISTRICT.**

BY ADV. SRI.M.C.JOHN

RESPONDENT(S) :

- 1. THE MANAGING DIRECTOR,
IDUKKI DISTRICT, MINI INDUSTRIAL ESTATE (SERVICE)
CO-OPERATIVE SOCIETY LTD., DISTRICT INDUSTRIAL CENTRE,
CHERUTHONI, IDUKKI.**
- 2. THE REGISTRAR(SECRETARY TO INDUSTRIES DEPARTMENT)
MINI INDUSTRIAL ESTATE (SERVICE) CO-OPERATIVE SOCIETIES,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.**
- 3. THE DISTRICT COLLECTOR,
IDUKKI-685 001.**
- 4. THE SPECIAL DEPUTY TAHSILDAR (RR),
UDUMBANCHOLA TALUK, IDUKKI-685 001.**

**R1 BY ADVS. SRI.SURIN GEORGE IPE
SRI.M.V.BIPIN**

R2 TO R4 BY GOVERNMENT PLEADER SRI.SHYSON.P.MANGUZHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE AGREEMENT DATED 07.12.2012 EXECUTED
BETWEEN THE 1ST PETITIONER AND THE 1ST RESPONDENT.**

**EXHIBIT P2: TRUE COPY OF LATEST DEMAND NOTICE NO.B/32/2002
DATED 30.04.2013 ISSUED TO THE 1ST PETITIONER.**

**EXHIBIT P3: TRUE COPY OF DEMAND NOTICE NO.B-96/2013 DATED 10.09.2013
ISSUED TO THE 2ND PETITIONER.**

EXHIBIT P4: TRUE COPY OF REPRESENTATION DATED 01.08.2012.

**EXHIBIT P5: TRUE COPY OF REPLY NO.B/32/2012 DATED 22.08.2012 ISSUED BY
1ST RESPONDENT.**

EXHIBIT P6: TRUE COPY OF THE NOTICE NO.B/32/2002 DATED 08.01.2015.

**EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 14.01.2015
SUBMITTED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.**

**EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 09.04.2007 IN
W.P.(C).NO.4050/07.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
=====

W.P.(C). No. 4141 of 2015
=====

Dated this the 26th day of March, 2015

JUDGMENT

The petitioners, who were allotted sheds in an industrial unit, under a hire purchase agreement entered into with the 1st respondent, are aggrieved by the demand now made against them, pursuant to a breach committed by them of the contractual terms entered into between them and the respondent. In the writ petition, the petitioners refer to Ext.P8 judgment, that was passed in the case of persons, similarly situated as the petitioners, where this Court, while holding the defaulters liable to repay the amounts availed from the respondent Society, granted a limited relief by way of reduction of the interest rate, at which they had to effect the repayment of the borrowed amount. The prayer of the petitioners in this writ petition, therefore, is that a similar relief be given to the petitioners also, as was extended to others in Ext.P8 judgment.

2. I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the 1st respondent and also the learned Government Pleader appearing for respondents 3 and 4.

3. On a consideration of the facts and circumstances of the

case and the submissions made across the bar, I find that the 1st respondent had extended financial benefits to the petitioners by borrowing amounts from State Co-operative Banks. It is stated by the learned standing counsel for the respondent bank that, the amounts borrowed from the State Co-operative Banks were liable to be repaid with an interest @ 12.5% per annum. In the agreement entered into between the 1st respondent and the petitioners, the rate of interest stipulated in respect of the amounts borrowed is 14.5%. Over and above that, there is a clause which indicates that on default, the petitioners would be liable to pay a penal interest @ 2%. Resultantly, on a default committed by the petitioners, the petitioners became liable to pay interest @ 16.5% to the 1st respondent. In Ext.P8 judgment, a relief in the rate of interest, that was insisted from persons similarly situated as the petitioners, is what was granted by this Court. Applying the same yardstick to the facts of the present case, I feel that the penal interest need not be insisted upon in the case of the petitioners, more so when others, similarly placed as the petitioners, were already extended such a benefit through Ext.P8 judgment of this Court, which was accepted by the respondent society.

Resultantly, I dispose the writ petition, making it clear that, while effecting the repayment, pursuant to the demand made by the 1st respondent Society, the petitioners need pay interest only @ 14.5% as against @ 16.5% stipulated in the contract. Save for this limited relief in respect of the penal interest payable, this Court does not propose to alter the terms of the contract between the parties. The petitioners are directed to make the payment, at the reduced rate of interest referred to above, in five equal and successive monthly installments commencing from 10.04.2015. It is made clear that, if the petitioners default in effecting payments as aforesaid, then they will lose the benefit of this judgment, and the 1st respondent will be free to proceed against them with the recovery steps, from the stage at which they presently stand, for recovery of the amounts due to them as per the contract.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE