IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 5636 of 2015 (D)

PETITIONER(S):
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1. AUGUSTINE JOSEPH P.A,
   S/O. LATE P.J.AUGUSTINE, PUNNATHARA HOUSE,
   PANAMBUKAD, VALLARPADAM P.O.,
   ERNAKULAM DISTRICT, KOCHI, PIN-682 504.

2. ROSY T.X., W/O. AUGUSTINE JOSEPH P.A.,
   PUNNATHARA HOUSE, PANAMBUKAD,
   VALLARPADAM P.O., ERNAKULAM DISTRICT,
   KOCHI, PIN-682 504.

BY ADVS.SRI.LEGY ABRAHAM
SRI.ABE RAJAN

RESPONDENT(S):
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1. UNION BANK OF INDIA, MARINE DRIVE BRANCH,
   HIGH COURT JUNCTION, ERNAKULAM-682 031,
   REPRESENTED BY ITS CHIEF MANAGER.

2. THE CHIEF MANAGER, NODAL REGIONAL OFFICE,
   UNION BANK OF INDIA, UNION BANK BHAVAN,
   CC 38/542, M.G.ROAD, KOCHI, PIN-682 035.

3. THE GENERAL MANAGER & CHIEF VIGILANCE OFFICER,
   UNION BANK OF INDIA, UNION BANK BHAVAN, 239,
   VIDHAN BHAVAN MARG, NARIMAN POINT,
   MUMBAI, PIN-400 021.

4. THE BANKING OMBUDSMAN,
   (KERALA, UNION TERRITORY OF LAKSHADWEEP & MAHE),
   RESERVE BANK OF INDIA, THIRUVANANTHAPURAM-695 033.

R1 TO R3 BY ADV. SRI.A.S.P.KURUP, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 5636 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 : TRUE COPY OF APPLICATION DTD.9.7.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P2 : TRUE COPY OF APPLICATION DTD.11.7.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P3 : TRUE COPY OF APPLICATION DTD.12.7.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P4 : TRUE COPY OF APPLICATION DTD.23.9.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P5 : TRUE COPY OF LETTER NO.ADV/330/13 DTD.22.11.2013 ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER.

P6 : TRUE COPY OF DECISION OF THE FOURTH RESPONDENT NO.OBO(T) 6066/22272/2013-14 DTD.17.12.2013.

P7 : TRUE COPY OF HOUSING LOAN AGREEMENT EXECUTED BY THE PETITIONERS DTD.28.4.2008.

P8 : TRUE COPY OF THE DEMAND PROMISSORY NOTE SIGNED BY THE PETITIONERS DTD.28.4.2008.

P9 : TRUE COPY OF LETTER OF SANCTION DTD.28.4.2008.

P10 : TRUE COPY OF INSTRUCTION CIRCULAR NO.9269 DTD.10.5.2012 OF THE 3RD RESPONDENT.

P11 : TRUE COPY OF APPLICATION DTD.12.8.2014 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT BANK.

P12 : TRUE COPY OF STATEMENT OF ACCOUNT (LAST PAGE) UPTO THE DATE OF 10.2.2015 ISSUED BY THE 1ST RESPONDENT BANK.

P13 : TRUE COPY OF LOAN POSITION CERTIFICATE UPTO THE DATE OF 11.2.2015 ISSUED BY THE 1ST RESPONDENT BANK.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 5636 of 2015

Dated this the 19th day of November,2015

J U D G M E N T

The petitioners have availed housing loan from the 1st respondent bank. They have approached the Banking Ombusman with a complaint against the respondent bank. The petitioners have approached this Court with the following reliefs:

i) issue a writ of certiorari or any other appropriate writ, direction or order to call for all records leading to Ext.P6 and to quash the same.

ii) issue a writ of mandamus or appropriate order or direction, directing the first respondent, Bank to grant the benefit of new interest rates being offered by the third respondent, General Manager and allow petitioner to switch from BPLR (Benchmark Prime Lending Rate) to BR Base Rate) immediately and with effect from the date of Ext.P10 instruction Circular i.e., 10.5.2012; and also direct to grant benefit of new interest rates if any arising in future;

iii) issue a writ of mandamus or appropriate order or direction, directing the first respondent to adjust the excess interest amount paid by the petitioners to the principal loan amount;

2. The grievance of the petitioners is that though the petitioners are entitled for interest rate now offered by the bank, the bank is not allowing the petitioners to switch over to new

interest rate applicable. The Ombdusman as per Ext.P6 order rejected the 1st petitioner's complaint noting that the bank has advised the petitioner to avail Base Rate of interest @ 10.25 % on submission of option form and requisite documents. It appears that the Bank have demanded certain documents to switch over to base rate and the petitioners did not produce any documents.

3. The stand of the bank is that fixed rate is applicable only for loans availed for a period, less than 5 years. The petitioner has availed a loan for 15 years and therefore, fixed rate cannot be granted. The learned Counsel for the petitioners submit that they may be given fixed rate for 5 years and thereafter, the rate applicable for term loan. It is to be noted that the bank is acting as per norms. The bank clearly states as per norms, the fixed rate is given to persons, who have availed loan facility up to 5 years. Therefore, the petitioners cannot be granted such benefit. However as pointed out by the bank that, if the petitioners want to switch over to base rate, they can switch over to base rate on submitting necessary documents. If the

petitioners want to switch over to base rate, the petitioners are free to approach the bank with necessary documents and bank shall consider the same in accordance with norms.

The writ petition is disposed of as above.

Sd/
A.MUHAMED MUSTAQUE,
JUDGE

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//True copy//

P.A. To judge