IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 23447 of 2015 (E)

PETITIONER:

THE KOOROPPADA SERVICE CO-OPERATIVE BANK NO.3965,
REPRESENTED BY ITS SECRETARY, KOOROPPADA,
KOTTAYAM DISTRICT - 686 502.

BY ADVS.SMT.DEEPTHY.S.NATH
SMT.SARITHA THOMAS
SRI.SAJEEVAN KURUKKUTTIYULLATHIL

RESPONDENT:

SHANTHI ABRAHAM, W/O.M.C.CHACKO,
MADAPPADU VEEDU, PUTHKUZHI,
PAMBADI P.O., KOTTAYAM DISTRICT - 686 502.

BY ADVS. SRI.ELVIN PETER P.J.
SRI.K.R.GANESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015 ALONG WITH WPC. 24760/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 23447 of 2015 (E)

PETITIONER'S EXHIBITS:

EXT. P1 - TRUE COPY OF THE AWARD DATED 23.10.2014 IN ARBITRATION CASE NO.119/2014 BEFORE THE CO-OPERATIVE ARBITRATOR AT KOTTAYAM ALONG WITH ENGLISH TRANSLATION.

EXT. P2 - TRUE COPY OF THE ORDER DATED 31.03.2015 IN APPEAL NO. 8/2015 ON THE FILES OF THE CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXT. P3 - MANGALYA CASH CERTIFICATE SUB-RULES

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.23447 & 24760 of 2015

Dated this the 4th day of December, 2015

COMMON JUDGMENT

What rate of interest the petitioner Bank is required to pay on the Mangalya Cash Certificate Deposit Scheme—whether the contracted rate or the subsequently altered rate?

2. This question has knocked at the doors of this Court many times earlier and stood answered as many times. It, however, refuses to die down. A few Benches of the learned Single Judge and a learned Division Bench have uniformly, unfailingly held that the interest at the contracted rate alone should be paid.

3. To his credit, Mr.Alex M.Scaria, the learned counsel appearing for the petitioner on record, has made commendable efforts to convince the Court that the issue requires a re-look—he almost succeeded.

4. In both the writ petitions the petitioner is common: a Co-operative Bank. It has assailed identical judgments of the Kerala Co-operative Tribunal, Thiruvananthapuram, in these two writ petitions involving two depositors, whose claim for payment of interest at the contracted rate is the subject matter. Because in both the writ petitions the same petitioner raised identical questions of law and fact, this Court has proposed to dispose of the writ petitions together through a common judgment. However, for the sake of convenience and ease of reference, the facts as pleaded in W.P.(C)No. 24760/2015 have been taken as the basis for narrative purpose.

5. The facts in brief are that the first respondent deposited Rs.4,780/- on 26.07.1993 under Mangalya Cash Certificate Deposit Scheme, which has a gestation period of twenty years carrying interest at 15.5% per annum with quarterly rests. The deposit matured on 26.07.2013.

6. The maturity value of the deposit being Rs.1,00,000/- the petitioner demanded the amount. The petitioner Bank, however, offered to pay the first respondent an amount of Rs.64,880/-. The reason for offering to pay the reduced amount is said to be that in the course of time, while the deposit had been subsisting, the petitioner Bank reduced the rate of interest to 8% per annum from 18.05.2005.

7. Aggrieved, the first respondent filed A.R.C.No. 117/2014 and invited Exhibit P1 award, through which the Arbitration Court has upheld the first respondent's claim, thereby directing the petitioner to pay the entire maturity value of the deposit, i.e., Rs,1,00,000/-. This time the petitioner Bank, aggrieved, filed a statutory appeal before the Co-operative Tribunal but could not succeed, as the appeal was dismissed through Exhibit P2 judgment.

8. Under those circumstances, the petitioner Bank approached this Court. In the above factual background, the

learned counsel for the petitioner Bank has strenuously contended that Clause 11 of the Mangalya Cash Certificate Deposit Sub Rules empowers the petitioner Bank to alter the rates of interest unilaterally, as per the periodic directions of the Registrar of Co-operative Societies.

9. The learned counsel has also contended that the Registrar of Co-operative Societies, through Exhibit P4 circular dated 22.02.2003, altered the rates of interest, so the Co-operative Banks were compelled to act in tune with the directives. Drawing my attention to item No.5 of the circular, the learned counsel would contend that from 2003 onwards the first respondent's deposit carried 8% interest since it is a deposit beyond three years with Primary Agricultural Co-operative Society.

10. In support of his submission that the petitioner Bank is entitled to alter unilaterally the rates of interest provided there is a contract to the said effect, the learned counsel has placed reliance on **Benode Behary Roy v. The**

General Assurance Society Ltd.[1].

11. The learned counsel, in the alternative, has submitted that the first respondent, apart from being a depositor, is also a member of the petitioner Bank. In elaboration, he has submitted that the issue of altering the rates of interest was put to vote in the General Body meeting held way back in 2005. By implication, the first respondent is deemed to have consented to the alteration of the rates of interest.

12. The learned counsel has also contended that since there is, at least, deemed consent from the first respondent, she is estopped from questioning the altered rate of interest, as has been mandated through Exhibit P4 circular and implemented by the resolution of the General Body meeting held in 2005.

13. Per contra, the learned counsel for the first respondent has submitted that the petitioner Bank cannot

1 AIR (37) 1950 Calcutta 232

be permitted to alter the rates of interest unilaterally, especially to the depositor's prejudice. According to him, invariably under such circumstances, as are present in this case, the principles of natural justice have to be read into them. In support of his submissions, the learned counsel has placed reliance on **Gorkha Security Services v. Government (NCT of Delhi) and Others**[2].

14. The learned counsel has also drawn my attention to Exhibit P4 circular said to have been issued by the Registrar to hammer home his point that the altered rates of interest mentioned in the said circular shall be applicable only to the deposits accepted or renewed on or after 22.02.2003. In other words, since the first respondent deposited the amount much earlier in point of time and there was no occasion for its renewal till its maturity, the question of the petitioner Bank applying Exhibit P4 circular does not arise.

2 (2014) 9 SCC 105

15. Trying to repel the contention of learned counsel for the petitioner that the judgment in Benode Behary Roy (supra) squarely covers the issue, the learned counsel has further contended that the circumstances contemplated in the said judgment are not present here. In elaboration, he has also submitted that the Hon'ble Supreme **Court in Build India Construction System v. Union of India**[3], having accepted the ratio of Benode Behary Roy (supra), has further cautioned that any such provision in the contract to the prejudice of the depositor shall be examined with care, lest it should result in a misdirected righteousness in the name of sanctity of contract. Eventually the learned counsel has placed reliance on **Paravur S.N.V.Regional Co-operative Bank Ltd. v. Kerala Co-operative Ombudsman & Ors.**[4] to contend that the terms of contract cannot be, under any circumstances, altered unilaterally.

3 (2002) 5 SCC 537

4 2014 (1) KLJ 1

16. In reply, the learned counsel for the petitioner Bank has submitted that it is impermissible for the first respondent to contend that the rates of interest had been altered unilaterally. In that regard, he has brought to my notice Exhibit P5 notice said to have been issued to all the depositors, including the petitioner, concerning the variation in the rates of interest.

17. When faced with a specific query from this Court, the learned counsel has further submitted that the petitioner Bank has no specific proof to establish that notice has been served on the first respondent. He has nevertheless submitted that as per the practice prevalent at that point of time, the petitioner Bank did send notice through certificate of posting. It is evident from Exhibit P6 containing the names of the depositors with a postal seal on it.

18. Heard the learned counsel for the petitioner and the learned counsel for the first respondent, as well as the learned Government Pleader, apart from perusing the record.

19. As has rightly been contended by the learned counsel for the first respondent, the issue in question has already been determined by this Court conclusively in Paravur S.N.V.Regional Co-operative Bank Ltd. (supra). To be fair to the learned counsel for the petitioner, I must admit that the issue of the impact of Exhibit P4 circular and also Exhibit P3 Sub Rules, however, have not fallen for consideration. In that context, I am required to observe that the judgment rendered by the learned Division Bench is sub silentio as regards those two aspects.

20. In Benode Behary Roy (supra), a learned Single Judge of the High Court of Calcutta, having examined the precedential position obtained till then, especially with reference to various judgments of the Privy Council and Federal Court, has held as follows:

> "[T]he more fundamental question is what is the contract between the parties. If the contract is that the very Bye-laws under which gratuity can be claimed and paid are subject to alterations or additions at any time then such a question resolves itself, in my opinion, into one of true construction of the agreement or contract of service. There is nothing in the

> judgment repugnant to the law of contract to have as one of the express terms of the contract itself that it will be alterable at the instance of one party alone. If one contracting party gives to the other contracting party the right to alter the terms of the contract between them the Court is not justified to . . . [take a different stand].

21. Indeed, Build India Construction System (supra) rendered by the Hon'ble Supreme Court has affirmed the proposition of law as contained in Benode Behary Roy (supra). Their Lordships have, however, served a word of caution holding that it is necessary for the court to examine with care, the terms and true construction of such contract; lest there is the risk or danger of misdirected righteousness in the name of sanctity of contract. The fact, at any rate, remains that the ratio of Benode Behary Roy (supra) has received the judicial imprimatur of the Highest Court of the land.

22. The next question to be addressed is whether the said proposition of law, as propounded by Benode Behary Roy (supra) and as approved by Build India Construction System (supra), has any application to the facts of the present case. Indeed, the learned counsel for the petitioner

has Exhibit P4 as his sheet anchor. Exhibit P4 circular did alter the rates of interest that are payable by the petitioner Bank on all deposits including, by implication, the Mangalya Cash Certificate Deposit Scheme, for 8% was prescribed as the maximum rate of interest on all deposits of the duration of three years and above.

23. As has rightly been contended by the learned counsel for the first respondent, there is a caveat added to the circular that the altered rates of interest shall apply to all the deposits accepted or renewed only after 22.02.2003. There is no gainsaying the fact that the first respondent's deposit pertains to the earlier period and he did not have any renewal either till its maturity in 2013. Thus, without fear of contradiction, I hold that Exhibit P4 circular has no application to the first respondent's deposit.

24. The learned counsel for the petitioner has feebly resisted by submitting that when Exhibit P4 circular is read with Exhibit P3 Sub Rules, the inevitable conclusion is that

the petitioner Bank is entitled to alter the rates of interest. I refer to the said plea only to be rejected. A careful scrutiny of Exhibit P3 Sub Rules does not in any manner indicate that the scope of Exhibit P4 circular could be expanded thereby disregarding the safeguard contained in the circular that it would be only prospective.

25. As regards the plea that the petitioner has been served with Exhibit P5 notice, in the absence of any proof, it cannot be held that there was any prior intimation to the first respondent.

26. First, there can be no presumption of service of notice even in terms of the General Clauses Act unless the notice has been sent through registered post with acknowledgement due. Second, in the face of the limitation imposed in Exhibit P4 circular if one were to assume that the first respondent had been intimated about the change of rate of interest, it would not still bind her because it ultimately amounted to unilateral alteration of rates of

interest. What is demanded under the contract, if at all, is the consent of both the parties and not the intimation of unilateral decision from one to the other.

27. It is the specific contention of the learned counsel for the petitioner that soon after the maturity of the deposit, the petitioner Bank offered Rs.64,880/- to the first respondent taking into account the altered rate of interest, but she refused to receive the amount. According to him, the petitioner could not be mulcted with higher rate of interest after the maturity of the deposit merely because the depositor refused to receive the amount. I do find sufficient force in the submission of the learned counsel for the petitioner.

28. It has not been seriously disputed by the learned counsel for the first respondent that the petitioner had offered the amount but the first respondent refused.

29. To adjust the equities, in both the writ petitions, this Court directs that the first respondent's deposit should

carry the contractual rate of interest till its maturity. In other words, the petitioner is liable to pay the maturity value of Rs.1,00,000/- to the first respondent. As regards the interest from the date of maturity till the actual payment, the amount that had been offered by the petitioner Bank, i.e. Rs.64,880/- shall carry simple interest of 6%; whereas the balance amount, which was disputed and retained by the petitioner Bank, should carry interest at the rate of 8%, which is said to be the maximum permissible rate of interest on deposits. Accordingly, Exhibit P2 awards in both the writ petitions stand modified to the extent indicated above.

In the facts and circumstances, the writ petition is disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'