IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 27785 of 2013 (W)

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PETITIONERS:

1. KERALA STATE CO-OPERATIVE BANK LTD.
CO-BANK TOWERS, PALAYAM
THIRUVANANTHAPURAM REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE MANAGER
STATE CO-OPERATIVE BANK LTD., R.M.APARTMENTS
TALAP KANNUR-2.

BY ADVS.SRI.K.RAVIKUMAR
SRI.GEORGE POONTHOTTAM, SC, KERALA STATE
CO.OP BANK LTD.

RESPONDENTS:

1. KERALA CO-OPERATIVE OMBUDSMAN
T.C.28/995(2) 1ST FLOOR, KAITHAMUKKU
THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY 695001.

2. MAHENDRAN
K.V.SHEELA SADAN, KADAMBUR P.O, KANNUR DISTRICT 670001

R2 BY ADV. SRI.P.U.SHAILAJAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 27785 of 2013 (W)
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APPENDIX

PETITIONERS' EXHIBITS
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EXT.P1 - TRUE COPY OF SANCTION ORDER DT.23-05-2005 ISSUED BY THE 3RD RESPONDENT

EXT.P2 - TRUE COPY OF PRONOTE DT.31-05-2005

EXT.P3 - TRUE COPY OF LOAN AGREEMENT DT.31-05-2005

EXT.P4 - TRUE COPY OF LETTER DT.31-01-2008 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT

EXT.P5 - TRUE COPY OF LETTER DT.23-11-2011 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P6 - TRUE COPY OF COMPLAINT NO.79/2011 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.

EXT.P7 - TRUE COPY OF REPORT SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P8 - TRUE COPY OF ORDER DT.MARCH 2013 PASSED BY THE 1ST RESPONDENT.

RESPONDENT' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

**P.V.ASHA, J.**

**..........................................**

**W.P.(C) No.27785 of 2013**

**..........................................**

**Dated this the 2nd day of July, 2015**

**JUDGMENT**

The Kerala State Co-operative Bank Ltd. ('Bank' for brevity) has filed this writ petition challenging Ext.P8 order passed by the Ombudsman by which the enhancement effected in the rate of interest towards housing loan availed by the 2nd respondent initially from 7% to 9% and thereafter to 13% per annum was found to be deficiency of service and the Bank was directed to honour its own commitments to pay the EMI as agreed, at the time of availing loan.

2. The 2nd respondent availed a housing loan for a sum of Rs.4,00,000/- from the petitioner Bank, on the basis of his application dated 26.4.2005. As per Ext.P1 proceedings dated 23.5.2005, the Bank sanctioned the loan in favour of the 2nd respondent for construction of house in 14.14 cents in Sy.No.109/8B of Kadamboor Village in Kannur District. The loan was repayable in 180 monthly instalments with interest at the rate of 7.75% per annum. Ext.P1 letter sanctioning the loan,

provides for the conditions stipulated for grant of housing loan. Clause 9 reads as follows:

> *"9. The loan with interest should be repaid in 180 monthly instalments interest at the rate of 7.75% p.a will be charged on the loan. Penal interest will be charged on the monthly instalment in arrears at the rate of 2 or at such other rate as may be fixed by the Bank from time to time."*

Clause 12, provided that the Bank shall have the discretion to modify the terms and conditions imposed or to add additional terms and conditions that may be considered necessary to protect its interest. Ext.P3 is the agreement executed between the first respondent and the Bank. Article 2 under this agreement relate to loans, interests, etc. Article 2.2 deals with interest. Article 2.2(a) provides that rate of interest applicable to the said loan and the concessional rate of interest as on the date of execution of the agreement shall be as stated in the schedule. Article 2.2 reads as follows:

> *2.2 Interest*
>
> *(a) The rate of interest applicable to the said loan and the concessional rate of interest as at the date of execution of this agreement is as stated in the Schedule.*
>
> *Provided that in an event KSCB reduces*

*or increases the interest rate prior to the disbursement of the full loan the applicable rate of interest shall be varied on weighted average basis with reference to the loan amounts disbursed/to be disbursed.*

*(b) The borrower shall reimburse or pay to KSCB such amount as may have been paid or payable by KSCB to the Central or State Government on account of any tax levied on interest (and/or other charges including the PEMII) on the loan by the Central or State Government. The reimbursement or payment shall be made by the borrower as and when called upon to do so by KSCB.*

3. In this context it is pertinent to note that Article 1(e) provides that the expression "Rate of Interest" means the rate of interest referred to in Article 2.2 of the agreement. Article 2.3 deals with the computation of interest. Article 2.4 provides for details of disbursement. Article 2.5 deals with the mode of disbursement and Article 2.6 provides for Amortisation. Article 2.6(a) provides that subject to Article 2.2 the borrower will amortise as stipulated in the schedule subject however that in the event of delay or advancement of disbursement for any reason whatsoever, the date of commencement of EMI shall be the first day of the month following the month in which the disbursement

of the loan will have been completed and consequently the due date of payment of first EMI shall in such a case be the last day of the said following month. Article 2.6(c) provides that the Bank shall have the right at any time or from time time to review and reschedule the repayment terms of the loan or of the outstanding amount thereof in such manner and to such extent as the Bank may in its discretion decided. It is further provided that in such event the borrower shall repay the loan or the outstanding amount thereof as per the revised schedule as may be determined by the KSCB in its sole discretion and communicated to the borrower by KSCB in writing. The schedule provides for the loan account, the amount of loan, interest under Article 2.2, amortize under Article 2.6, name and address of the borrower etc.

4. Subsequent to the disbursement of the loan in full, the Bank by Ext.P4 letter dated 31.1.2008 informed the 2$^{nd}$ respondent that the Board of Directors have reviewed the scheme under which the loan was granted and decided to enhance the rate of interest provided to the scheme to 8% for loan up to Rs.50,000/- and 9% thereafter invoking clause 9 of the sanction

intimation and agreement. Accordingly in respect of the loan availed by the 2nd respondent, the interest was revised at the rate of 9% with effect from 1.2.2008. Thereafter by another letter-Ext.P5, the interest was enhanced to 13% with effect from 2.11.2011. The reason stated in Ext.P4 for enhancement of rate was that loan of rural housing was provided under refinance scheme of NABARD. Since NABARD stopped refinance, the Bank had to revise the rate of interest, as it cannot involve high cost deposit resources for the remaining loan period sustaining heavy loss.

5. The 2nd respondent thereupon approached the Ombudsman with Ext.P6 petition alleging deficiency in service in demanding interest at the enhanced rate. In that petition he prayed for a direction to the Bank to withdraw the unlawful decision to enhance the rate of interest existing on the rural housing loans to 13% from 9% and to render justice. The Bank submitted Ext.P7 report before the Ombudsman, explaining that the rate was revised on account of the withdrawal of the support from NABARD as per its circular dated 6.6.2001.

6. The Ombudsman after considering the complaint as well

as the report of the Bank-Ext.P7, found that the loan was sanctioned as per Ext.P1 letter dated 23.5.2005, which was repayable along with interest at the rate of 7.75% per annum. The loan was availed after executing a bilateral agreement between the Bank and borrower. The Ombudsman after verification of the terms and conditions of loan and the sanction order dated 23.5.2005 was not satisfied of the explanation furnished by the Bank and found that there was no stipulation with regard to enhancement of interest rate if NABARD withdraw the rural housing scheme in future. It was also found that there was no stipulation in the sanction order that the loan was provided under the rural housing scheme of NABARD. Under the above circumstances, the Ombudsman found that the respondent Bank was bound to honour its own commitments under the agreement and directed EMI as agreed at the time of availing the loan. This writ petition is filed as against the order passed by the Ombudsman under the above circumstances.

7. The petitioner says that it is empowered to enhance the rate of interest in terms of Ext.P1 sanction order as well as Ext.P2 agreement. According to the Bank, clause Nos.9 and 12 of Ext.P1

sanction order enables it to modify the rate of interest. It is stated that under clause 12 the Bank has the discretion to modify the terms and conditions also in order to protect the interest of the Bank. It is further stated that under Article 2.6 (c) of Ext.P3, it can reschedule the terms of repayment of the loan and Exts.P4 and P5 letters revising the rate of interest were issued in terms of the aforesaid provisions in the letter Ext.P1 as well as agreement Ext.P3.

8. The 2nd respondent has filed a counter affidavit refuting the contentions of the petitioner Bank. According to the 2nd respondent, the loan was availed on condition that the interest is payable only at the rate of 7.75% and there was no provision for enhancement of rate of interest. It is also stated that he was not given any intimation regarding revision of interest depending upon the financial assistance rendered by the NABARD. According to him the only provision regarding interest under Ext.P1 letter as well as Ext.P3 agreement was that the interest was not liable to be revised.

9. I heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

10. The learned counsel for the petitioner relying on the judgment in ***Syndicate Bank Vs. R.Veeranna and Others*** *[2003 (2) SCC 15]* contended that there is nothing illegal in revising the rate of interest. The learned counsel for the petitioner also raised a contention that the first respondent Ombudsman ought not have entertained a complaint relating to revision of interest. According to him, the 2nd respondent ought to have invoked his remedies under section 69 of Co-operative Societies Act, instead of approaching the Ombudsman.

11. On the other hand the learned counsel for the 2nd respondent, relying on the Division Bench judgment of this Court reported in ***Paravur S.N. V. Regional Co-operative Bank Ltd. Vs. Kerala Co-operative Ombudsman and others*** *[2013 KHC 3679],* contended that the Ombudsman had every jurisdiction to entertain the claim regarding the rate of interest. In the said case, this Court was considering an issue as to reduction of interest under a fixed deposit scheme. It was held that complaints on the basis of rate of interest could be entertained by Ombudsman under section 2(c) read with section 7(e) of Co-operative Ombudsman Scheme, 2010. In that case, it was held

that the Bank cannot unilaterally change the terms of the contract and modify the rate of interest. Therefore in the light of the aforesaid judgment, the contention regarding want of jurisdiction cannot be accepted.

12. Having regard to the rival contentions on revision of rate of interest, it is necessary to have a look at the provisions contained in Ext.P1 letter of sanction as well as Ext.P3 agreement. As already found earlier, clause 9 of Ext.P1 only provides that interest payable towards repayment of the loan is 7.75%. Further provision provided therein is regarding penal interest at the rate of 2. Exts.P4 and P5 letters of Bank, revising the rate of interest refers to clause 9 of Ext.P1 letter. But clause 9 does not provide for any modification of interest as contended by the petitioner. Regarding the modification on discretion, provided under clause 12, it is clear that there is no specific provision with respect to rate of interest. Coming to the provisions contained in the agreement Ext.P3, it can be seen that 'interest' is separately dealt with under Article 2.2 under a separate head. Interest is defined also under Article 1(e) as “the rate of interest referred to in Article 2.2 of the agreement”.

Article 2.2 only provides for the rate of interest applicable to the said loan as on the date of execution of the agreement. Proviso under Article 2.2(a) is to the effect that in the event the Bank reduces or increases the interest rate prior to the disbursement of the full loan, the applicable rate of interest shall be varied on weighted average basis with reference to the loan amount disbursed/to be disbursed. From the proviso, it is clear that the revision of rate of interest is permissible only if there is a reduction or enhancement by the Bank prior to disbursement of the full loan. In this case, it is an admitted fact that the enhancement is effected after disbursement of the entire loan amount. Regarding the contention under Article 2.6(c) which is given under separate head as amortisation, relied on by the conunsel for the petitioner, it is to be noted that the rate provided is for review and rescheduling repayment terms of the loan or the outstanding amount thereof at the discretion of the Bank. But in this provision nothing is stated regarding interest. At the same time Article 2.7(b) refers to interest, on delay in payment. Therefore on an overall examination of the documents Ext.P1 as well as Ext.P3, it can be seen that wherever Bank intended to have provisions regarding interest/enhancement reduction or addition, specific provisions have been provided for the same. Therefore I am unable to accept the contentions raised by the petitioner.

Even going by the factual circumstances arising in this case, it can be seen that the 2nd respondent has availed a loan of Rs.4,00,000/- alone. It is as against the balance amount remaining in his account that the Bank has enhanced the rate of interest. Under the above circumstances, I do not find any reason to interfere with the order of the Ombudsman under Article 226 of the Constitution of India.

Hence the writ petition fails and is dismissed.

Sd/-

**P.V.ASHA,**
**JUDGE.**

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