IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 28186 of 2014 (W)

PETITIONERS:

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1. SAJANA SULAIMAN, AGED 45 YEARS
   W/O.SAKEER HUSSAIN, TC 8/2172(1), 'MANNATHU'
   BAPUJI NAGAR, MEDICAL COLLEGE P.O.
   THIRUVANANTHAPURAM-695 011.

2. M.K.SAKEER HUSSAIN, AGED 49 YEARS
   TC 8/2172(1), MANNATHU, BAPUJI NAGAR
   MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011

   BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS:

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1. THE MANAGER, SPECIAL BANKING BRANCH
   SPECIAL PERSONNEL BANKING BRANCH (4360)
   STATE BANK OF INDIA, THIRUVANANTHAPURAM-695 001.

2. THE CHIEF MANAGER
   SPECIAL PERSONNEL BANKING BRANCH (4360)
   STATE BANK OF INDIA, THIRUVANANTHAPURAM-695 001.

3. THE ASSISTANT GENERAL MANAGER
   STATE BANK OF INDIA, RACPC, LMS COMPOUND
   THIRUVANANTHAPURAM-695 033.

   R1-R3 BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
   R1-R3 BY ADV. SMT.S.AMBILY
   R BY SMT.T.V.ASWATHY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28186 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1.TRUE PHOTOCOPY OF THE LOAN AGREEMENT DATED 1/9/2005 EXECUTED BY THE 1ST RESPONDENT AND PETITIONERS.

EXT.P2.TRUE PHOTOCOPY OF THE STATEMENT OF ACCOUNTS ISSUED BY THE 1ST RESPONDENT

EXT.P3.TRUE PHOTOCOPY OF THE COMPLAINT DATED 26/09/2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT BANK

EXT.P4.TRUE PHOTOCOPY OF THE REMINDER LETTER DATED 21/6/2013 SUBMITTED TO THE 1ST RESPONDENT

EXT.P5.TRUE PHOTOCOPY OF THE 2ND REMINDER (3RD REQUISTION LETTER DATED 10/10/2013).

EXT.P6. A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE ASSISTANT GENERAL MANAGER RACPC, THIRUVANANTHAPURAM DATED 25/10/2013 ACCOMPANIED BY A STATEMENT 27/1/2012 TO 30/09/2013.

EXT.P7.THE STATEMENT OF ACCOUNT FROM 31.3.2013 TO 25.10.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P8.TRUE PHOTOCOPY OF THE ADVOCATE NOTICE DATED 15/5/2014.

EXT.P9.TRUE PHOTOCOPY OF THE STATEMENT OF ACCOUNT ROUGHLY PREPARED BY THE PETITIOENRS SHOWING THE EXCESS RATE OF INTEREST COLLECTED BY THE BANK.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

SCL.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No. 28186 of 2014

Dated this the 26th day of February, 2015.

JUDGMENT

Petitioners have approached this Court with the following prayers:

> "i. To issue an appropriate writ or order directing the respondents 1 and 2 to refund the excess amount of interest collected from the petitioners for the period from 8.11.2008 to till date after reducing the amount of Rs.65,441/- already adjusted by Ext.P6 order towards the Term Loan Account No.30016824439.
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> ii. To issue an appropriate writ or order directing the respondents 1 and 2 to regularize the Term Loan Account No.30016824439 of the petitioners by fixing the future rate of interest at the rate of 7.5% in compliance of the terms and conditions of the Ext.P1."

2. The learned counsel for the petitioners points out that the petitioners are liable to satisfy interest only at the rate of 7.5% as per Ext.P1, whereas the respondent Bank is realizing the interest at a higher rate. However, on pointing out the discrepancy, they passed Ext.P6 order dated

25.10.2013, so as to cause refund of the excess interest of Rs.65,441/- charged on the petitioners upto 30.9.2012. The same course is being followed and repeated, by virtue of which irreparable loss and hardships are being caused to the petitioners and hence the writ petition.

3. The respondent Bank has filed a statement, paragraph 7 of which reads as follows:

> "The averments in para No.6 of the statement that the bank has refunded an amount of Rs.65,441/- (Rupees Sixty five thousand four hundred and forty one only) on 29.10.2013 by Ext.P6 is correct. The statement that the bank will calculate and refund the amount immediately on obtaining conformation prove the fact that the respondents are collecting the interest at the rate of 12.5% on the loan availed by us, which they are not liable to collect. But our loan account are liable to be regularized at the rate of 7.5% interest, taking appropriate measures by the Respondent."

4. From the above, it is clear that the actual rate of interest sought to be realized from the petitioners is conceded as 7.5%. The learned counsel for the Bank however submits that, the mistake is only because of the particular system, whereby the factual data input has been made in such a

manner, taking the entire accounts together and in the case of the petitioners, steps are being taken to refund the excess. It is also stated from the part of the respondent Bank that the petitioners need to pay interest only @ 7.5% and the Bank is taking earnest efforts to rectify the defect.

In the above circumstances, no further orders are necessary and the writ petition stands closed, making it clear that the petitioners are liable to satisfy interest only at the rate of 7.5%. The mistake if at all any in the system shall be corrected, at the earliest, at any rate, within 'two months'. If any excess amount comes to be collected from the petitioners in the meanwhile, the same shall be refunded or set off and the future collection shall by only at the rate of 7.5%.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Scl.

The judgment dated 26.02.2015 in W.P.(C) No.28186/2014 is modified by replacing the existing paragraph 3 of the judgment with the following paragraph, vide order dated 25.03.2015:

3. The respondent Bank has filed a statement, paragraph 7 of which reads as follows:

"It is also stated that the bank is bound by the terms and conditions in the arrangement letter. Hence the bank will refund the excess amount charged beyond 7.5% at periodic intervals".

Sd/-
Registrar (Judicial)