IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

Writ Petition No. 949/2019

Smt. Rekha w/o Vilas sing Chungale,
Aged 57 years, Occ. Service,
R/o. Rajat Sankul, Wing-2, Flat No. 305,
near Ganesh Peth Bust Stand, Nagpur,
Dist. Nagpur – 440018.

.... **PETITIONER**

// **VERSUS** //

1. Special Recovery Officer,
   Nagpur District Central Cooperative Bank Ltd.,
   having its office at Nagpur District Central
   Cooperative Bank Ltd., Ruikar Road,
   Gandhisagar, Nagpur.

2. State Bank of India,
   through its Branch Manager, Kalmeshwar,
   Tah – Kalmeshwar, Dist. Nagpur.

3. Nagpur District Central Cooperative Bank Ltd.,
   through its Manager, having its office at
   Nagpur District Central Cooperative Bank Ltd.,
   Ruikar Road, Gandhisagar, Nagpur.

.... **RESPONDENTS**

Shri S. N. Nandeshwar, Advocate for petitioner.
Shri M. B. Agasti, Advocate for respondent Nos. 1 & 3.
Shri M. Anilkumar, Advocate for respondent No. 2.

CORAM: R. K. DESHPANDE AND
VINAY JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT :- 25.06.2019
DATE OF PRONOUNCING THE JUDGMENT :- 04.07.2019

JUDGMENT (PER VINAY JOSHI, J.)

Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The petitioner – borrower has challenged the action of respondent No. 1 – Special Recovery Officer, Nagpur District Central Cooperative Bank Ltd., of claiming the dues of over draft account along with entire interest. The petitioner has availed the over draft facility to the tune of Rs. 5,00,000/- from the respondent No. 3 – Nagpur District Central Cooperative Bank Ltd. The petitioner is working as Extension Officer (Education) in Panchayat Samiti, Kamtee and therefore, her salary was being paid through respondent No. 3 – Bank. The respondent No. 3 – Bank came in financial crisis owing to mismanagement which resulted into the action taken by the Reserve Bank of India in terms of Sections 5(b) of the Banking Regulation Act and accordingly, the transactions of respondent No. 3 – Bank were frozen. Resultantly, the monthly loan installment which was being deducted from the petitioner's salary account through the respondent No. 3 – Bank, was discontinued.

3. The functioning of respondent No. 3 – Bank was stopped during the period from June 2014 to February 2016. The petitioner's loan account became N.P.A. Therefore, respondent No. 3 – Bank initiated the proceedings under Section 101of the Maharashtra Co-operative Societies Act. After concluding the proceedings, the recovery certificate in terms of Section 101(1) of the said Act was came to be issued.

4. Since the respondent No. 3 – Bank's transactions were frozen at the instance of the action taken by the Reserve Bank of India, the petitioner's salary account was transferred to the respondent No. 2 - State Bank of India. After obtaining recovery certificate, the respondent No. 1 issued directions to the respondent No. 2 - State Bank to freeze the petitioner's salary account in toto.

5. According to the petitioner, her monthly EMI was deducted from salary account by Block Development Officer (BDO). However, the said amount was not credited into the loan account for the period from Jun – 2014 to February 2016 therefore, she is not liable to pay interest on said amount. The petitioner would contend that the action of respondent No. 2 - Bank of freezing her salary account is arbitrary and against the provisions of law.

6. It is not in dispute that the Reserve Bank of India had canceled the licence of respondent No. 3 – Bank and issued directions to stop carrying on banking business. The respondents have not disputed that the EMI from petitioner's salary was being deducted during the period when the respondent No. 3 – Bank was non-functional. The respondent No. 1 in its reply/affidavit stated that the said EMI amount has been deducted by BDO from the petitioner's salary account but had not remitted into the loan account. It reveals that during the period from June 2014 to February 2016, bank had not shown any credit of the EMI which was deducted from the salary account, but the interest on said amount has been charged at once when the Bank was made functional. It is apparent rather undisputed that the EMI from the petitioner's salary was regularly deducted, however, interest on the same was charged for her no fault.

7. The petitioner would contend that since Bank was not functioning during said period, she is not liable to pay interest. The respondent Nos. 1 and 3 admit that the Bank was not functioning during said period, however, it is contended that there was no difficulty for petitioner in depositing EMI in the Bank. We do not accept the said contention of Respondent simply because the Bank was non-functional

during said period. The amount of EMI was deducted from petitioner's salary therefore, it would be irrational to direct the petitioner to pay interest on said amount. In the circumstances, it would be appropriate to direct the respondent No. 1 and respondent No. 3 to readjust the petitioner's loan account with directions to not to charge the interest for the period from July 2014 to February 2016, on the EMI amount which would have been otherwise regularly deposited. It is brought to our notice that the petitioner is about to retire on 30.06.2019, therefore there is no purpose in attaching, even permissible part of petitioner's salary account. In view of that, we partly allow the writ petition and direct respondent Nos. 1 and 3 to readjust the loan account with a direction for not to charge the interest for the period from July 2014 to February 2016 on the EMI amount which would have been otherwise regularly deposited in the Bank. We further direct respondent No. 3 to defreeze the petitioner's salary account, if it is already not defreeze in terms of interim order passed by this Court.

8. Rule is made absolute in above terms. No order as to costs.

(Judge) **(Judge)**

Gohane.