

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 23.02.2011*

+ **RSA No. No. 41/2002 & CM No. 125/2002 (stay)**

M/S BAT BRO ENGINEERING AND GENERAL
MANUFAACTURING COMPANY Appellant
Through: Mr. Prakash Gautam, Advocate.

Versus

THE CENTRAL BOARD OF TRUSTEES & ANR Respondents.
Through: Ms. Manju Prasad, Advocate.

AND

RSA No. No. 44/2002 & CM No. 130/2002 (stay)

M/S BAT BRO ENGINEERING AND GENERAL
MANUFAACTURING COMPANY Appellant
Through: Mr. Prakash Gautam, Advocate.

Versus

THE CENTRAL BOARD OF TRUSTEES & ANR Respondents.
Through: Ms. Manju Prasad, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 19.01.2002 which had endorsed the findings of the trial Judge (although for different reasons) dated 24.03.2001 whereby the suit

filed by the plaintiff (M/s Bat Bro Engineering and General Manufacturing Company) seeking a declaration to the effect that it is not liable to pay damages as demanded by defendant No. 2 in terms of its order dated 22.08.1984 be declared null and void was dismissed.

2 It is relevant to state that the plaintiff had filed two suits against the two penalties of Rs.1,06,569. 71 paise and Rs.20,063.55 paise which had been imposed upon him vide orders of even date dated 22.08.1984 of the Provident Fund Commissioner and which were subsequently the subject matter of challenge by way of these two separate suits. Both the suits had been dismissed. The impugned judgment had consolidated the two suits and returned a finding of the same date.

3 Plaintiff was engaged in the manufacturing of telephone and auto cables. He was facing acute financial crisis and labour disputes were the cause of it. He could not pay his contribution of the Employees' Contribution of their provident fund in time; this was because of financial crunch. Penalty of Rs.1,06,569.71 paise as also another amount of Rs.20,063.55 paise had been levied upon the plaintiff; contention was that these penalties which were in the nature of damages were excessive and for reasons being beyond the control of the plaintiff, were liable to be set aside.

4 In the written statement, the defendants had objected to the maintainability of the suits; it was further contented that the order imposing penalty was in terms of the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act of 1952').

5 Five issues had been framed. They read as follows:-

- 1. Whether this court has no jurisdiction in view of the provisions of Section 7 (a) (4) of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952?*
- 2. Whether the suit is bad for misjoinder of parties?*
- 3. Whether the plaintiff has faced heavy recession in the trade and thus suffered losses, if so to what effect?*
- 4. Whether the plaintiff is entitled for the relief claimed?*
- 5. Relief.*

6 The trial court while disposing of issue No. 1 was of the view that a Civil Court had no jurisdiction to try a suit of this nature; jurisdiction of the Civil Court is barred. It was further of the view that even if it is assumed that the plaintiff was suffering from a financial crunch, he could not get over his liability of contributing to the Employees' Provident Fund; suit was dismissed.

7 The first appellate court had modified the findings of the trial judge qua issue No. 1. The appellate court was of the view that the jurisdiction of the Civil Court is not barred. The amendment to Sections 7 (d) & 7 (e) the said Act of 1952 whereby a provision for appeal had been provided against the order of the Provident Fund Commissioner had come into effect only in the year 1989; there being no provision for filing an appeal earlier against an order passed under Section 14 (B), the Civil Court had the jurisdiction to entertain the suit of such a nature. It had further modified the findings of the trial Judge on issue No. 3. The appellate Court was of the view that the plaintiff had failed to show that he was suffering from financial losses, balance-sheet was the crucial document which would have reflected the accounts of the company but the same had not been filed by the plaintiff; documents which had only evidenced labour disputes with the company were not by

themselves sufficient to establish the financial crisis of the company. Appeal had thus endorsed the findings of the trial judge thereby dismissing the suit.

8 This is a second appeal. The substantial questions of law have been formulated at pages 7 & 8 in the body of the appeal. They inter-alia read as follows:-

“1. Whether the first appellate court can reverse the findings of the trial court below when there was no counter objection or challenge on behalf of the opposite party before the trial Court?

2. Whether the first appellate Court can go beyond the scope of appeal as filed by the aggrieved party when there is no counter appeal on behalf of the opposite party?

3. Whether the first appellate Court is justified in reopening the finding on the issues given by the trial court especially when there was not challenge of objection to the same before the appellate court?

4. Whether the first appellate court is right and justified in giving its findings on the issues which were not raised by the appellant in his appeal petition and when there was no occasion for the Ld. Appellate Judge to disturb the findings of the trial court?

5. Whether the appellate Court is justified in not appreciating the judgments referred by the appellant for deciding the quantum of damages being the major issue before the appellate court?

6. Whether the first appellate court is justified in reopening the whole case and deciding it again especially when it was required to give its findings on the legal questions as raised before the appellate Court and to remand the case back to the trial court for deciding it afresh to the extent it was challenged in view of principles laid down by the appellate court?”

9 No such substantial question of law has arisen. It is in fact necessary to clarify that the appellate court which is dealing with an appeal under Section 96 of the Code of Civil Procedure (hereinafter referred to as the ‘Code’) is duty bound to reexamine

and reappreciate the evidence both oral and documentary and arrive at its own independent conclusion. The first appellate court is the last fact finding Court. The findings reversing the judgment of the trial Court on issues No. 1 & 3 suffers from no infirmity on this count. Learned counsel for the appellant has failed to show as to where the first appellate Court has gone wrong in arriving at the aforementioned conclusion. It had rightly appreciated that the balance-sheet of the company not having been filed by the plaintiff company, the financial crisis of the company could not be established. The finding on the jurisdiction of the Court to entertain this suit is obviously not challenged.

10 The provisions of Section 14 (B) of the said Act of 1952 are even otherwise mandatory. The relevant extract reads as follows:-

“14 B. Power to recover damages.- Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or sub-section 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme”

This provision gives power to the Provident Fund Commissioner to recover damages from such a defaulting employer and it may do so by way of penalty such damages which shall not exceed the amount of arrears as may be specified in the Scheme.

11 In the instant case, the damages which had been imposed upon the company are only to the extent of 25%; such a levy in no manner can be said to be harsh. The order under Section 14(B) of the said Act of 1952 clearly states that the dues for November, 1976 were deposited within the grace period of five days; no damage was levied for that period. However, the dues for December, 1977 were paid late and thus became liable for damages; in interest of justice, damages were levied @ 25% per annum up to March, 1979. This was well within the domain of the Provident Fund Commissioner. Even in the body of the plaint apart from one bald averment in para 7 that this demand is arbitrary and has been made in a mechanical way, there was no other substance to substantiate this submission. The prayer clause only challenges the actual levy on the ground of mala-fides; it states that the plaintiff is not liable to pay this amount. The levy of 25% damages can in no manner be said to be excessive as Section 14 (B) in fact empowers the Regional Provident Fund Commissioner to recover from an employer by way of penalty; such damages which do not exceed the amount of arrears. Only 25% has been levied of the actual arrears due from the plaintiff.

12 No substantial question of law has arisen. Appeals as also pending applications are dismissed in limine.

INDERMEET KAUR, J.

FEBRUARY 23, 2011

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