

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

% *Judgment pronounced on: January 02, 2014*

+ **CM(M) 1379/2012, C.M. Nos.21171/2012 & 7294/2013**

EMPLOYEE PROVIDENT FUND ORGANIZATION & ANR

..... Petitioners

Through Mr.Dev P.Bhardwaj, Adv. with
Ms.Anubha Bhardwaj, Adv.

versus

SEWA INTERNATIONAL FASHIONS & ANR Respondents

Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Darpan Wadhwa, Mr.Rajiv
Shukla & Ms.Sneha Mukherjee,
Advs. for R-1.
Ms.Deepika, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 28th September, 2012 passed by the Employees Provident Fund Appellate Tribunal allowing the application of the Respondent No.1 under Order 6 Rule 17 CPC.

2. Brief facts of the case are that pursuant to an inspection conducted at the branch office of respondent No.1 at 5, Furniture Block, Kirti Nagar, New Delhi, on complaints filed by Respondent No.2 with the petitioner, it was revealed that though 938 employees were found working therein, only 20 of them were extended PF benefits. A show cause notice was issued to the respondent No.1 in relation to PF Dues of 938 employees found working in

the factory premises, and subsequently an enquiry under Section 7A of the EPF & MP Act was initiated for determination/assessment of the PF dues. It was observed by the petitioner that in the proceedings under Section 7A of the Act, the respondent no.1 had not co-operated with the proceedings and adopted delaying tactics to thwart the proceedings.

3. Respondent No. 1 filed a writ petition impugning show cause notices issued by the petitioner dated 6th August, 2003 and 29th August, 2003 and also sought stay of proceedings under Section 7A of the EPF & MP Act which was declined and subsequently at a later stage vide order dated 21st February, 2007 the writ petition was dismissed with cost of ₹1 Lac since the respondent no. 1 had filed false affidavit and did not disclose true facts therein.

4. Meanwhile vide order dated 23rd February, 2005, the petitioner held that respondent no. 1 was liable to pay EPF dues to the tune of about ₹2,49,56,417/- pertaining to its employees from the date of their joining till 22nd September, 1997. An appeal under Section 7 I of the EPF & MP Act was filed by the respondent no.1 against the said order.

5. The respondent No. 1 filed an LPA against the order dated 21st February, 2007, wherein the Division Bench of this High Court disposed of the same with a direction to the respondent No.1 to deposit Rs. 1 crore with the Employees Provident Fund Appellate Tribunal and with direction to pursue the appeal so filed by respondent No.1.

6. Pursuant to the reply filed in the said appeal by the petitioners, the respondent no.1 filed an application under Order 6 Rule 17 CPC seeking amendment of the appeal proposing to bring on record the developments that

took place subsequently, which according to the respondent No.1 were necessary for proper adjudication of the appeal.

7. By way of the said amendments the respondent No.1 proposed to insert paragraph Nos.5A, 5B, 5C, 5D and 5E in the appeal to provide details of facts as to the business operations of the 5 brothers in the family and their business relationship pursuant to a family settlement that came into effect in the year 1991 whereby division of business and property took place between the brothers. It was stated that the said brothers after the division run distinct and separate entities and use the word “sewa” the name of their mother in their business in the title of the company. Further amendment was also sought to insert a paragraph after paragraph 6 to insert the fact that one Shri Rambir Dayal had filed an affidavit dated 3rd January 2005 in opposition to the writ petition filed by the petitioner and later on he passed the order of determination of dues as a quasi-judicial authority, which is contested by the respondent No.1. Further the grounds of appeal were sought to be amended, firstly, that order dated 23rd February, 2005 be declared nullity since it had been passed by Shri Rambir Singh who had opposed the Writ Petition by filing an affidavit and other grounds that aimed at questioning the legality and validity of the order dated 23rd February, 2005. Considering the amendments sought to be relevant and necessary for adjudication of the dispute in appeal, the application was allowed vide order dated 28th September, 2012.

8. Aggrieved by the same, the petitioner has filed the present petition contending that the respondent No.1 by way of the said amendments has tried to build a new case altogether particularly when the facts were clearly in the knowledge of the respondent No.1 before filing of the original

memorandum of appeal. It is contended that the proposed facts is an attempt to introduce new case altogether and would change the entire cause of action of the proceedings under Section 7A of the EPF & MP Act. It is contended that the impugned order is arbitrary, perverse and contrary to provisions of law and therefore liable to be set aside.

9. It is the admitted position that the respondent No.1 earlier during the proceedings for determination/assessment of PF dues under Section 7-A of the Employees' Provident Fund and Misc. Provision Act, the respondent No.1 took the plea that other establishments were also functioning at the premises, and all of them were independent establishment working as fabricators. After six months of raid/inspection, on 19th March, 1997, the respondent No.1 informed the petitioner that six other establishments were also working in the same premises and all of them were set up on 1st September, 1996, just 6 days before the raid/inspection. The enforcement officer of petitioner in his report stated that they were artificially created from retrospective date i.e. 1st September, 1996 and the units were not in existence on 7th September, 1996 when the inspection at the premises was done. Similarly, the then Assistant Provident Fund Commissioner, in his report dated 24th June, 1999 stated that these units were simply a paper arrangement.

10. While disposing of LPA No.196/2007, the Division Bench of this Court has noticed that respondent No.1 in view of order passed on 23rd March, 2007 has deposited ` 1 crore which is approximately about 50% of the amount demanded by the petition. The said order dated 12th February, 2008 is reproduced:

“We are informed that the aforesaid orders/directions have been complied with and an amount of Rs.1 crore has since been deposited with the Employees Provident Fund Appellant Tribunal. We are also informed that there is no dispute with regard to the fact that the aforesaid Rs.1 crore which is deposited is approximately about 50% of the amount which was required to be deposited by the appellant. Since approximately 50% of the amount demanded has since been deposited by the appellant, therefore, we are of the considered opinion that the appeal should be heard in accordance with law and as expeditiously as possible. We make it clear that the Employees Provident Fund Appellant Tribunal would not insist on making any further pre-deposit for hearing the appeal and the appeal shall be heard in terms of the previous orders passed by us in this case. We also make it clear that the appeal shall be heard on the basis of the facts and on its merits without the Tribunal being influenced by any observation made by this Court or by the learned Single Judge in any manner.”

11. While passing the order dated 12th February, 2008, it was made clear that the appeal shall be heard on the basis of facts and on its merits without being influenced by any observation.

12. In view of earlier plea taken by the respondent No.1 as mentioned in para 9 of this order to the effect that other establishments were also functioning at the premises and all of them were independent establishments working as fabricators and was set up on 1st September, 1996, Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of the respondent No.1 has submitted that in order to elaborate pleas already taken, his client has filed an application under Order VI Rule 17 CPC for amendment of appeal which is supposed to be decided in accordance with law. At this stage, merit or demerit is not relevant even if the respondent No.1 has a weak case. Mr.Sethi, learned Senior counsel has also stated that by order dated 23rd

March, 2007, the respondent No.1 has already deposited ₹1 crore. The petitioners have every right to challenge the amendment allowed by the Tribunal, however, the respondent No.1 is entitled to contest the matter as per remedy available. In any case, if after hearing the appeal is decided against the respondent No.1, the petitioner would be entitled to recover the remaining amount demanded by the petitioner for the purposes of employees.

13. Mr.Sethi has referred paras 2 to 5 of the impugned order which discusses the entire gamut of the dispute with regard to amendment sought. The said paras are reproduced hereunder:

“2. The appellant proposed to amend the appeal by inserting paragraph 5A, 5B, 5C, 5D and 5E in the appeal. The appellant proposed to provide the detailed facts as to the business operations of 5 brothers of the family and their business relationship. It is stated that the appellant partnership firm consisting of three brothers namely S/Shri Prem Pal Verma, Narender Pal Verma and Avinash Verma’. Another brother, Shri Avtar Chand Verma owned and controlled the company “Sewa for his Pvt. Ltd. company on account of facts that the name of their mother was “Sewa Devi”. Some of the other companies belonging to the partners in the appellant firm and the group of the company under the control of Shri Arvind Chand Verma also use the name “Sewa” for their business. However, the group are separate and distinct. It is also stated that Shri Manak Verma, who is fifth brother of this family is also into his separate business, which also use his name of their mother. However, the partnership firm and the company are two separate and distinct entities. The facts proposed to be incorporated by way of amendment relate to the family business of the appellant and his brothers and use of the word “Sewa” the name of their mother in their business in the title of their company. The appellant also proposed to insert the new facts in the appeal to the effect that in the year 1991 a family settlement took place whereby, division of business and property took place between Prem Pal Verma,

Narender Kumar Verma, and their elder brother Mr.Arvind Chand Verma. Pursuant to the said division, the business and property located at 5, Furniture Block, Kirti Nagar was divided into three portions. The rear portion of the premises fell into the share and came into the exclusive occupation of Shri Avtar Chand Verma, the elder brother who is running the Pvt. Ltd. Company Act, 1956. It is also stated that M/s. Sewa International Fashion, the appellant establishment and M/s. Sewa International Fashion (P) Ltd. are two different establishments. All the facts proposed to be inserted by the appellant are new facts and said to necessary for adjudication of the appeal. The respondent No.1 & 2 has opposed the proposed amendments. It is however not stated by the respondent how and in what manner the proposed amendments would adversely affect or changes the nature of this case. The respondent no.3 in their reply has stated that the proposed amendment amounts to incorporation of new facts. I am of the considered view that the this new facts proposed to be inserted in the appeal are relevant and necessary for adjudication of disputed in appeal therefore the amendments proposed vide new paragraphs 5A, 5B, 5C, 5D and 5E are allowed.

3. The appellant further proposed to insert amendment after paragraph 6 of the appeal. In the new paragraphs it is proposed to insert the facts that Shri Rambir Dayal had filed an affidavit dated 03.01.2005 in opposition to the Writ Petition filed by the appellant before the Hon'ble High court of Delhi and later on he decide and passed the order of determination of dues as quasi-judicial authority, which he cannot do as a Independent Authority. These amendments are not opposed substantially except a mere denial/opposition. The respondent no.3 has also opted not to oppose the proposed amendments of insertion of paras 6.30A, 6.30B and 6.30C. Therefore I allow the proposed amendments.

4. The appellant also proposed to amend the grounds taken in the appeal. The first ground proposed to be added the Order dated 23-02-2005 be declared nullity since it had been passed by Shri Rambir Singh who had opposed the Writ Petition by filing an

affidavit. The proposed amendments, viz., A1 and A2 are taken on record.

5. It is proposed to insert additional ground vide paragraphs AS, AT, AU, AV, AX, AY, AZ, AAA, AAB, AAC, AAD, AAE, AAF, AAG, AAH, AAI, AAJ, AAK, AAL, AAM, AAN to assail the impugned order. These proposed grounds are aimed at question the legality and validity of the impugned Order passed by the respondent Commissioner. I consider that the proposed amendments are considered necessary secure the proper administration of justice and are necessary to decide the real dispute.”

14. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

i. In *Waryam Singh and Another vs. Amarnath and Anr.*, AIR 1954 SC 215, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in “**Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee**”, AIR 1951 CAL 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

ii. In *Mohammed Yusuf vs. Faij Mohammad and Ors.*, 2009 (1) SCALE 71, Supreme Court held; “The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

iii. In *State of West Bengal and Ors. vs. Samar Kumar Sarkar*, JT 2009 (11) SC 258 Supreme Court held; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the

territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”

iv. In ***Bathutmal Raichand Oswal vs. Laxmibai R. Tarta***, AIR 1975 SC 1297 the Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

v. In ***Laxmikant Revchand Bhojwani and Anr. vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives***, JT 1995(7) SC 400, Apex Court observed; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

15. Learned counsel for the petitioner has argued that by virtue of amendment order passed in favour of respondent No.1, who wants to change his entire case in order to get rid of its liabilities towards 913 employees.

These are not subsequent developments but in the garb of the amendment, the respondent No.1 wanted to introduce altogether a new case and if the said impugned order is sustained, it would cause grave irreparable injustice to the poor workers who are being deprived of social security under the Employees Provident Fund and MP Act by the respondent No.1. Counsel for the petitioner has also referred few decisions in support of his submissions wherein various Courts have rejected the amendment application.

16. It is settled law that while considering the application for amendment, normally the merit of the case is not to be examined. A party may have a weak case on merit. However, if the amendments are necessary in order to decide the real controversy between the parties, then the prayer of amendment application cannot be rejected.

17. There is no dispute between the parties that the pending appeal is to be determined as per its own merit. The petitioners are entitled to give its reply to the amendments by filing of reply/counter-affidavit. By virtue of amendment, nothing has been decided on merit. No doubt, a party cannot be permitted to introduce altogether a new case and amendments should not be allowed if it would cause injustice to the other side. As mentioned in earlier para of this order which is admitted by the petitioners who themselves have mentioned in the list of dates between 1997-1997 at page No.5 admittedly about the plea raised by the respondent No.1 during the pendency of proceedings that six other establishments were also working in the same premises and all of them were set up on 1st September, 1996. Therefore, if the comprehensive details of the said establishments are given by the respondent No.1, the Tribunal who is hearing the appeal, no doubt, would

consider the case of both sides including the objections to the amendment allowed.

18. This Court while disposing of LPA has also directed the respondent No.1 to deposit Rs.1 crore in order to strike the balance of the parties at this stage. Under these circumstances, the petitioner is entitled to raise all its objections in the reply-counter affidavit which shall be considered in accordance with law and the appeal would be decided as per its own merit.

19. Therefore, the impugned order does not call for any interference. The present petition is disposed of with the direction that the petitioner is allowed to file the reply-counter affidavit within four weeks. The petitioner would also be entitled to raise all its objections and the same would be considered at the time of disposal of appeal.

20. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 02, 2014