

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4449 of 2014

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Sandip Kumar Bhagat son of Late Ram Babu, Partner
M/s Shahusons Resident of 282, Bekapur, Munger,
P.S. Kotwali Munger, District- Munger.

..... Petitioner

Versus

1. The Employees Provident Fund Organization, 'R' Block, Patna through the Commissioner.
2. The Regional Provident Fund Commissioner-II-cum-Recovery Officer, Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur
3. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur
4. The Assistant Accounts Officer, Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur
5. The Recovery Officer, Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur
6. The Enforcement Officer, Munger, Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur

..... Respondents

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Appearance :

For the Petitioner/s: Mr. Ajit Kumar Singh, Adv.

For the Respondent/s: Mr. Rajiv Verma, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

6. 24-07-2015 Heard learned counsel for the

petitioner and Sri Rajiv Verma, learned senior
counsel, who has appeared on behalf of
respondent/Employees Provident Fund
Organisation.

The petitioner, invoking writ
jurisdiction of this Court, has prayed for
quashing of an order contained in letter no.

SRO/BGP/BR/2577/PRC/16/06/919 dated 05-02-2014 (**Annexure - 9**), which is a warrant of arrest issued against the petitioner, which was issued by the Regional Provident Fund Commissioner II-cum-Recovery Officer, Bhagalpur. It appears that warrant of arrest has been issued by the Recovery Officer, in view of non-deposit of provident fund dues by the petitioner to the tune of **Rs. 22,23,070/-** (twenty two lacs twenty three thousand & seventy). Earlier, the petitioner had approached this Court by filing a writ petition for quashing of letter dated 24-01-2006 issued by the Assistant Provident Fund Commissioner, Bhagalpur and also for quashing of earlier warrant of arrest issued against the petitioner. The authority under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') had determined the liability. Vide C.W.J.C. No. 1752 of 2006, a Bench of this Court by order dated 10-10-2006 dismissed the writ petition, in view of the fact that there was provision of appeal under Section 7-I of the Act. At that very time, a plea was taken that Tribunal was non-functional. After noticing

this fact, a Bench of this Court, while dismissing the writ petition, observed as follows:-

"Considering the facts and circumstances of this case, it is quite apparent that a provision of appeal is there in the aforesaid Act by way of Section 7 I, but the learned counsel for the petitioner submits that the said Tribunal is not functioning. However, the Tribunal is there and the office is working and hence an appeal can be filed before the Tribunal and as such petitioner has got an appropriate alternative remedy. However, if the Presiding Officer of the Tribunal is not there and the appeal is not taken up due to absence of the Presiding Officer, it would be always open to the petitioner to move this court for appropriate relief.

In the said circumstances, this writ petition is dismissed with a liberty to the petitioner to file an appeal before the Tribunal in accordance with law and with another liberty that if the appeal is not taken up due to absence of the Presiding Officer, he may move this court for appropriate relief."

On perusal of the earlier order, it is evident that the petitioner was granted two liberties. Firstly, he was granted liberty to file an appeal before the Tribunal and another liberty was that if the appeal is not taken up due to absence of Presiding Officer, he may move before this Court for appropriate relief. It was further clarified that if the appeal is not



taken up due to absence of Presiding officer, it would be always open to the petitioner to move this Court for appropriate relief. The petitioner after issuance of warrant of arrest, as contained in **Annexure - 9** to the writ petition, directly approached this Court without making any prayer as to whether he was dissatisfied with the order of the Tribunal or not. Even, order of the Tribunal was not brought on record. Subsequently, in this case, a supplementary affidavit was filed by the petitioner and alongwith the supplementary affidavit, the petitioner has brought on record the order dated 21-08-2007 passed by the Employees Provident Fund Appellate Tribunal, Camp Hearing at Kolkata in ATA No. 684(3) of 2006, which has been brought on record as **Annexure - 11**. On perusal of the order of the appellate authority, it is evident that the appeal stood dismissed due to non-prosecution long back on 21-08-2007.

Learned counsel for the petitioner submits that the petitioner was vigorously pursuing the appeal, but the appeal was transferred from Delhi to Kolkata without

intimation to the petitioner and as such, he was not aware regarding the pendency of the appeal, however; it has not been disputed that appeal stood dismissed due to non-prosecution long back in the year 2007.

Once, this Court, in the writ petition filed by the petitioner itself, while dismissing the same had granted liberty to the petitioner to file an appeal and in case of non-disposal of the appeal at the earliest, liberty was granted to the petitioner to approach this Court, the Court is of the opinion that there was no reason for the petitioner to approach this Court in the year 2014 i.e. too after the issuance of warrant of arrest. Since **Annexure - 9** has been issued by the Recovery Officer, due to non-deposit of the provident fund amount by the petitioner, pursuant to the order passed under Section 7-A of the Act, the warrant of arrest may not be interfered with by this Court. If so advised, the petitioner may avail appropriate remedy.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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