

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.597 OF 2014

Mr. George Mathews, age about
60 years. Oc. Nil, residing at 68,
Vrindavan Society, Pashan Road,
Pune-411 008.

.. Petitioner.

V/s

Recovery Officer and Asstt. Provident
Fund Commissioner, Regional
Office, Cantonment Board
Building, Golibar Maidan,
Pune-411 001

.. Respondent.

Mr. Rajaram B. Deshmukh, for Petitioner.
Ms. Shehnaz Bharucha, for Respondent.

Coram : Smt. R.P SondurBaldota, J.

Date : 25th March, 2015

P.C. :

1. This petition challenges the notice dated 13th November, 2013, by which Recovery Officer & Assistant Provident Fund Commissioner, Pune in exercise of powers under Section 8-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952

calling upon the petitioner to appear before him to show cause as to why he should not be arrested and committed to the civil prison in execution of the recovery certificate, being Notice of Demand dated 18th January, 2010. Admittedly, this notice of demand is not challenged. The notice of demand was issued to the petitioner to pay the amount of Rs.75,07,997/- towards the damages on account of default committed by the petitioner in payment of provident fund contribution. There is no dispute that there was infact default on the part of the petitioner in depositing the provident fund amount. It appears that the petitioner instead of appearing before the Authority on 20th November, 2013, directly approached this Court on 15th January, 2014 to challenge the show cause notice dated 13th November, 2013 and for stay the order of arrest/detention of the petitioner that may be passed pursuant thereto.

2. It is the contention of the respondent that all efforts made by it for attachment of the properties of the petitioner have been unsuccessful. The respondent has sold some of the machineries to recover part of the dues from the petitioner, but no amount could be recovered towards the dues mentioned in the notice of demand dated 18th January, 2010. Therefore, the respondent had to resort to

the next action under Section 8B(1) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

3. Mr. Deshmukh, the learned advocate for the petitioner submits that it is necessary for the respondent to first exhaust all the remedies available under the Act for recovery of amount before resorting to take action of arrest or detention and relied upon decisions in case of *ATV Projects India Ltd Vs. Office of the Regional Provident Fund Commissioner*, reported in 2005(2) Bom. C.R Page 242 and *Subhashchandra Roy Vs Regional Provident Fund Commissioner-II, Recovery Officer, The Employees Provident Fund Organisation, LAWS (BOM)-2010-3-40*. The decisions cited are not applicable to the facts of the present case, since the petitioner despite having received notice of demand dated 18th January, 2010 has not challenged the same. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)