

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

CIVIL APPLICATION NO.769 OF 2015

IN

WRIT PETITION NO.10687 OF 2014

M/s. Haresh Trading Company .. Applicant

IN THE MATTER BETWEEN

M/s. Haresh Trading Company ...Petitioner

Versus

Assistant Provident Fund Commissioner

SRO, Vashi and another .. Respondents

WITH

CIVIL APPLICATION NO.770 OF 2015

IN

WRIT PETITION NO.8629 OF 2012

Maldar Barrels Pvt. Ltd. .. Applicant

IN THE MATTER BETWEEN

Maldar Barrels Pvt. Ltd. ...Petitioner

Versus

Assistant Provident Fund Commissioner

SRO, Vashi .. Respondent

Shri. V. P. Vaidya i/by Shri. Mahendra M. Aagavekar, for the Applicant.

Shri. Sureshkumar for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 20th MARCH, 2015

PC.

1. Not on board. Mentioned for urgent reliefs. The cause for moving the above Civil Applications is the show-cause notice issued under Section 8B by the Provident Fund Authorities to Shri. Haresh Dharmani the Director of the Petitioner in Writ Petition No.8629 of 2012 i.e. Maldar Barrels Pvt. Ltd.. The said Writ Petition No.8629 of 2012 was filed impugning the order dated 26.07.2012 passed by the Learned Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi by which order the Petitioner i.e. Maldar Barrels Pvt. Ltd. was directed to deposit 50% of the determined amount in the Appeal. The said Writ petition came to be disposed by this Court by order dated 15.01.2013 directing the Petitioner therein to make the deposit of a sum of Rs.5,00,000/- in the said Appeal. The time stipulated for the same was within four weeks of the said order dated 15.01.2013. It appears that the Petitioner did not comply with the said direction and in spite of numerous notices addressed by the authorities did not make the deposit nor did appear before the authorities for explaining as to why the amount has not been deposited neither did the Petitioner seek extension from this Court. This resulted in the authorities ultimately withdrawing an amount of Rs.7,85,726/- from the account of the proprietor firm of Shri. Haresh

Dharmani. The said firm i.e. M/s. Haresh Trading Company is the Petitioner in Writ Petition No.10687 of 2014. In so far as the said Writ Petition is concerned, the said Petition challenges the action of the Provident Fund Authorities of withdrawing the said amount of Rs.7,85,726/- from the account of the said firm. By order dated 04.12.2014, a Learned Single Judge of this Court directed the Provident Fund Authorities to deposit a sum of Rs.7,80,000/- recovered from the Petitioner i.e. M/s. Haresh Trading Company in this Court within a period of four weeks from the said date. It is an undisputed position that an amount of Rs.7,85,726/- has been deposited by the Provident Fund Authorities in this Court pursuant to the said order dated 24.12.2014.

2. Since the Petitioner did not make the deposit as directed by the order dated 15.01.2013 and since the Petitioner had neither sought extension of time nor had appeared before the authorities, the authorities proceeded to take action under Section 8B of the Provident Fund Act and issued a show-cause notice dated 31.10.2014 as to why the Petitioner should not be arrested for non-payment of the adjudicated amount i.e. sum of Rs.21,17,872/- (including interest U/sec.7(q) and recovery cost). As indicated above, it is the said show-cause notice issued under Section 8B that the above Civil Applications have been filed.

3. In so far as Civil Application No.770 of 2015 filed in Writ Petition No.8629 of 2015 is concerned, the Applicant i.e. Haresh Dharmani is seeking extension of time to deposit the amount of Rs.5,00,000/- as directed by the order dated 15.01.2013. Further relief sought is that the amount of Rs.5,00,000/- be paid over to the Provident Fund Authorities from the amount of Rs.7,85,726/- which is lying in deposit in this Court and upon this prevent the authorities from taking further action pursuant to the show-cause notice dated 31.10.2014.

4. In so far as the Civil Application No.769 of 2015 which is filed in Writ Petition No.10687 of 2014 is concerned, the first two reliefs which are sought are identical to the reliefs sought in Civil Application No.770 of 2015. The said Civil Application according to the Learned Counsel appearing for the Applicant was required to be filed as it is in the said Writ Petition that the order dated 24.12.2014 has been passed directing the Provident Fund Authorities to deposit the amount they have withdrawn from the account of the said M/s. Haresh Trading Company.

5. In so far as the conduct of the Applicant is concerned, it cannot be lost sight of that in spite of the order dated 15.01.2013 passed in Writ Petition No.2689 of 2012, the amount has not been deposited and therefore, the said conduct does not inspire confidence and it seems that

the attempt is to see to it that the orders passed by the Provident Fund Authorities are frustrated. However, since the relief sought in both the Civil Applications is that the amount of Rs.5,00,000/- which was directed to be deposited by the order dated 15.01.2013 to be withdrawn from the amount of Rs.7,85,276/- which is deposited in this Court. In my view, a final indulgence is required to be shown to the Applicant, so that he can prosecute the Appeal filed before the Appellate Tribunal on merits. In my view, having regard to the time lag between passing of the order dated 15.01.2013 till this date and since admittedly, no deposit has been made by the Applicant with the Provident Fund Authorities so that the Appeal could be admitted and be heard on merits. The interest of justice would be served if the entire amount of Rs.7,85,726/- is allowed to be withdrawn by the Provident Fund Authorities and the Petitioner is directed to deposit a further amount so as to make a total of Rs.10,00,000/- to be deposited with the Provident Fund Authorities in the Appeal i.e. filed by the Petitioner. The balance amount therefore would be Rs.2,14,274/-which along with amount of Rs.7,85,726/- would make a total of Rs.10,00,000/-. The Provident Fund Authorities would be entitled to withdraw the amount of Rs.7,85,726/-and the Petitioner would deposit the balance of Rs.2,14,274/- with the Provident Fund authorities within ten days from date. If the amount of Rs.2,14,274/- is not deposited in terms of the

directions as contained in the instant order, no further extension of time would be granted and the Appeal by the Petitioner would then be deemed to have been dismissed. In the said event, the Provident Fund Authorities would nevertheless be entitled to retain the amount of Rs.7,85,726/- and would be entitled to adopt proceedings for recovery of the balance amount including the issuance of arrest warrant by following the procedure under Section 8B. However, for the present, the show-cause notice dated 31.10.2014 would not be given effect to for a period of two weeks from date, if the amount is not deposited, then the course of action as contemplated under Section 8B can be followed by the Provident Fund Authorities.

6. In view of the consent given by the Petitioner to appropriate the amount of Rs.7,85,726/- which is deposited in this Court pursuant to the order dated 24.12.2014 passed in Writ Petition No.10687 of 2014 the said Writ petition challenging the action of the Provident Fund Authorities of withdrawing the said amount of Rs.7,85,726/- from the account of said M/s. Haresh Trading Company has turned infructuous. The Registry would permit the Regional Provident Fund Commissioner, Vashi through his representative to withdraw the said amount of Rs.7,85,726/- by drawing a cheque in the name of Regional Provident Fund Commissioner. The said Writ Petition No.10687 of 2014 is accordingly allowed to be withdrawn as

having turned infructuous. However in so far as Civil Application No.124 of 2013 filed in Writ Petition No.8629 of 2012 is concerned, it is allowed in terms as mentioned herein above.

7. In so far as the Civil Application No.769 of 2015 is concerned, in view of the withdrawal of the said Writ Petition No.10687 of 2014, the same does not survive. Both the Civil Applications to accordingly stand disposed of. Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]