IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 42 OF 2014
IN
WRIT PETITION NO. 3218 OF 2011

Regional Provident Fund Commissioner. ... Appellant.
V/s.
M/s.Sawant Food Products Ltd. ... Respondent.

Mrs.S.V.Bharucha for the appellant.

R.D.Oak for the respondent.

CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.

DATED : 21st September 2015.

P.C.

This Letters Patent Appeal (LPA) has been filed challenging the order passed by learned single Judge in Writ Petition No.3218/2011 on 23rd June 2011. The respondent establishment was covered under the provisions of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 ("Act of 1952" for short). It is contended that the respondent failed to remit provident fund contribution; administrative charges; and deposit linked insurance contributions within the prescribed time limit for the period from March 2000 to March 2002. The appellant has assessed damages under section 14B of the Act of 1952 vide order dated 7th July 2003. The amount of damages assessed was Rs.3,53,089/-.

2. Against the order of assessment dated 7th July 2003 passed by the Regional Provident fund Commissioner (II), the respondent preferred an appeal before Employees' Provident Fund Appellate Tribunal, New Delhi by filing Appeal No.ATA 433(9)/2004. The appellate tribunal vide order dated 20th October 2010 remanded the matter to the concerned authority with the following order:

> "Hence ordered, the matter is remanded back to the authority with a direction to assess @ 17% inclusive of interests. The appellant is directed to appear before the authority within 1 month from the date of this order, failing which, the matter may be decided as per law. Copy of order be sent to the parties. File be consigned to record room."

3. Being aggrieved by the said order, the appellant preferred writ petition which was heard by the learned single of this Court. By order dated 23rd June 2011, learned single Judge dismissed the petition summarily.

4. The learned counsel appearing for the appellant submits that the appellant is aggrieved by the direction issued by the appellate tribunal to the effect that on remand the authority to assess the damages at the rate of 17% inclusive of interests. It is submitted that in view of second proviso to section 14-B of the Act of 1952, it is the Central Board which has authority to reduce or waive the damages levied under the said section. In other words, the submission of the learned counsel is that the

appellate tribunal does not have power to direct the authority concerned to levy damages at the rate of 17%.

5. The learned counsel appearing for the respondent has placed reliance on the affidavit in reply. Learned counsel submits that second proviso to section 14-B of the Act of 1952 is not applicable to the facts of the present case. The appeal against the order passed under section 14-B is an appeal prescribed under section 7-I to the appellate tribunal. The tribunal has jurisdiction to pass an order and issue directions and on merits of the case the tribunal has remanded the matter to concerned authority with certain directions.

6. We have perused the record placed before us and the relevant provisions of the Act of 1952. Section 7- of the Act of 1952 reads as under:

> "**7I. Appeals to Tribunal.-** (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to Sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof] , or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.
>
> (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

7. Admittedly, the appeal preferred by the respondent to the appellate tribunal was against the order passed by the Provident Fund Authority under section 14-B of the Act of 1952. The second proviso to section14B reads as under:

> "**14B. Power to recover damages.-** ….. ….. …..
>
> Provided ….. ….. ….. ….. ….. …..
>
> Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, (1 of 1986) subject to such terms and conditions as may be specified in the Scheme."

8. It is not the case of the present appellant that the respondent establishment was a sick industrial company at the relevant time. In this view of the matter, the provisions of second proviso to section 14-B would not be applicable to the facts of the present case. In the facts, we do not find any error in the view adopted by the learned single Judge in dismissing writ petition. There is no merit in this LPA.

9. LPA is dismissed.

(S.B. SHUKRE, J.) **(NARESH H. PATIL, J.)**

Sanjay Nanoskar, P.S..

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/order.