

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

CONTEMPT PETITION NO.329 OF 2014

M/s. Architect Hafeez Contractor ... Petitioner

V/s.

S. C. Chakrabarty & Anr. ... Respondents

Mr. P. M. Bhagat for the Petitioner

Mr. H. V. Mehta for the Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.
DATED : MARCH 9, 2015

PC. :

1. Heard the learned counsel for the parties. By this contempt petition, the Petitioner alleges that the Respondent violated the order dated 27/09/2013 passed by the Employees Insurance Court, Mumbai in Application (ESI) No.40/2006.

2. The learned counsel for the Petitioner submits that by order dated 27/09/2013 the Insurance Court permitted the Respondents to recover interest from the amount deposited by the Petitioner in the office of the Employees Insurance Court i.e. 50% of Rs.14 lacs deposited on 06/06/2006. He submits that the Respondents filed an Application for withdrawal of the interest amount before the Employees Insurance Court. In that Application, the Employees Insurance Court, by order dated 19/03/2014 allowed the Respondents to withdraw Rs.11,93,359/- towards interest amount. He submits that in spite of

that the Respondents issued prohibitory order dated 14/03/2014 against recovery of sum of Rs.12,05,369/-. He submits that the Respondents, in their Affidavit-in-Reply filed by Shri Rajiv Kumar, Recovery Officer, made a statement that by mistake they issued prohibitory order. He submits that the same Officer made an Application before Employees Insurance Court for withdrawal of the interest amount. As such the Respondents violated the order dated 27/09/2013 passed by the Employees Insurance Court, Mumbai and hence, the Respondents are liable to be punished under the Contempt of Courts Act.

3. On the other hand, the learned counsel for the Respondents corporation vehemently opposed the present petition. He submits that the corporation has not prohibited from issuing prohibitory order under section 45-G of ESI Act, 1948 read with 2nd Schedule of Income Tax Act, 1961 and Income Tax (Certificate Proceedings) Rules 1962. He submits that by mistake the Recovery Officer has issued the order. As soon as they realized the said mistake, they refunded the said amount. He submits that, if we consider the order passed by the Employees Insurance Court dated 27/09/2013, there is no prohibition or restraint for issuing any prohibitory order. Hence, there is no question of committing any contempt. Therefore, the contempt petition be dismissed with costs.

4. Heard both sides at length. Bare reading of the order dated 27/09/2013 passed by the Employees Insurance Court, Mumbai in Application ESC No.40/2006 shows that the court has not restrained

the Respondents by any order from issuing any prohibitory order. The Apex Court in the matter of *Jhareswar Prasad Paul and Anr. Vs. Tarak Nath Ganguly and Ors. 2002 (5) SCC 352* held that the court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment and order, violation of which is alleged by the Applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained.

5. Considering the facts of the present case and law declared by the Apex Court as stated above, I do not find any substance in the present petition. Hence, the contempt petition is rejected.

(K.K. TATED, J.)