IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WA.No. 294 of 2015 () IN WP(C).25816/2014
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AGAINST THE ORDER/JUDGMENT IN WP(C) 25816/2014 of HIGH COURT OF KERALA DATED 29.10.2014

APPELLANT(S)/RESPONDENT NO.1 IN WP(C):

THE ASSISTANT PROVIDENT FUND COMMISSIONER & RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFIFCE, BHAVISHYA NIDHI BHAVAN, KALOOR
KOCHI-682017.

BY ADVS.DR.S.GOPAKUMARAN NAIR (SR.)
SRI.A.RAJASIMHAN,SC,EPF ORGANISATION

RESPONDENT(S)/RESPONDENTS/PETITIONER AND 2ND RESPONDENT IN W.P:
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1. M/S. POPULAR INDUSTRIES(PYNADATH CRUSHER),
DOOR NO.1/534, KUZHIYAMPADAM, MANJAPRA.P.O-683581
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE MANAGER,
THE FEDERAL BANK LIMITED, NEDUMBASSERY, COCHIN-683585.

R1 BY DR.GEORGE ABRAHAM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

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W.A.No.294 OF 2015

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Dated this the 3rd June, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

The verdict passed by the learned single judge directing the Appellate Tribunal to consider and pass appropriate orders in the I.A. for stay during pendency of the appeal; simultaneously ordering to keep the recovery proceedings in abeyance till such time, is sought to be challenged in this appeal preferred by the first respondent/Assistant Provident Fund Commissioner & Recovery Officer.

2. The factual position as disclosed from the proceedings is that the first respondent herein was proceeded against under the relevant provisions of the EPF Act/Scheme and an assessment order was passed, mulcting the liability to the extent as specified

in Ext.P3 order, which was passed on 23.07.2014. By virtue of the enabling provision under the statute to pursue statutory remedy by way of appeal, a period of 60 days' time is provided, which would have expired only on 29.09.2014, since Ext.P3 order was served to the petitioner only on 30.07.2014. The appellant issued a notice demanding satisfaction of the alleged due amount and thereafter proceeded with coercive steps, causing the bank account of the first respondent/Popular Industries to be attached, as per order dated 10.9.2014. Pursuant to this, the second respondent/Bank forwarded a Demand Draft dated 20.09.2014 for a sum of Rs.13,379.54/- to the appellant organisation, leaving no balance in the account, to have it remained operative. This was sought to be challenged by filing the writ petition pointing out that the power exercised by the authority was only to harass the writ petitioner and hence arbitrary and a colourable exercise of power.

3. In the course of proceedings, the learned Single Judge called for an explanation from the concerned officer as to why

recovery was proceeded within the period of statutory appeal. The version of the concerned officer as disclosed from paragraph 11 onwards of the affidavit dated 13.10.2014 is to the effect that the first respondent herein was required to comply with the assessment order within 15 days, which was not acceded to. It is also stated that there is no provision in the Act, which prohibits or precludes the authority from initiating recovery/coercive steps once an order is passed. Reliance is also sought to be placed on the decision rendered by the High Court of Gujarat in ***EPF Organisation vs. Roll Well Forge Limited***) (LPA.No.12/2010 in SCA No.3347/2009). The learned Single Judge considered the matter and observed in paragraph '6' of the judgment that, the statute, of course, did not provide for any interdiction from proceeding with recovery steps immediately after passing the order. However, with regard to the contention of the respondent organisation that no intimation was served to them as to the steps to file any appeal, if aggrieved, it is observed in the very same paragraph of the judgment that, equally true is the fact that the statute does not provide for serving any such intimation as to the proposed steps to file a statutory appeal within time. It has been observed that the provision to file statutory appeal is definitely a benefit conferred upon the employer /assessee, who has suffered the order and as such, if action to the contrary is pursued by the Department, it would invite allegation of arbitrary exercise of power; simultaneously observing that the appellate remedy available to the assessee cannot be rendered nugatory. It is in the said background that the learned Single Judge has observed in the last sentence of paragraph '6', that the statutory authority would do well to keep in abeyance the recovery proceedings till the statutory period of appeal is over. The learned Counsel for the appellant submits that the grievance is more with regard to the said observation and direction.

4. Heard the learned Counsel appearing for the writ petitioner as well. After hearing, this Court finds that the observations made by the learned Single Judge, particularly in

paragraph '6' was with reference to the Scheme of the statute. No exception is liable to be drawn with regard to the same; more so, when the learned Judge has made clear that the statute does not provide for any interdiction from proceeding with the recovery steps immediately after passing the order. The learned Single Judge has only alerted the possible consequences, if such steps are pursued by the Departmental authorities before the expiry of the statutory period. The observation is only of a 'general nature' to make the officers/department to be more prudent and alert as to the activities to be pursued so as to avoid multiplicity of litigations with reference to the plea like arbitrary exercise of power and steps for harassment. It goes without saying that, if an appeal is preferred before the appellate authority/Tribunal, the merits involved have necessarily to be considered and if any I.A. is filed, appropriate orders are to be passed in accordance with law. If there is any delay on the part of the concerned authority in considering the same and in passing orders, the lapse/liability/consequence, if any, is not liable to be shifted to the shoulders of the assessee/ employer.

5. Coming to the instant case; there is no dispute that the writ petitioner/first respondent herein has preferred an appeal before the appellate Tribunal well within time, also moving an application (I.A.) for stay. The said I.A. has been directed to be considered and appropriate orders have been ordered to be passed. Coercive proceedings have been ordered to be kept in abeyance only till such time. This Court does not find any infirmity, much less any illegality or irregularity with regard to the directions given by the learned single Judge.

6. Another important aspect to be noted is that, the appellant has got a version that such activity in causing the Bank account of the employer to be attached immediately after passing the order, was pursued as a matter of prudent exercise. It is stated that the authority concerned is dealing with a welfare legislation and the rights and liberties of the employees at large are at stake. As such, the timely action taken by the department cannot be deprecated under any circumstance,

submits the learned Counsel. This Court finds it difficult to swallow the said submission without a pinch of salt, since **word has to be proved by deed.** Coming to the course pursued by the appellant, it is to be noted that the verdict was passed by the learned Single Judge as early as on 29.10.2014. Thirty days' time was available to the appellant to have preferred an appeal, in terms of the provisions of the Kerala High Court Act, which was not done on time. The appeal has been filed after 69 days with a petition to condone the delay. The reasons stated in the petition to condone the delay, particularly in paragraph '2' of the affidavit dated 27.01.2015 reads as follows:

> *"It is most humbly submitted that due to the administrative reason, the legal opinion for filing the Appeal was received only last week of December, 2014 in my office. Immediately I got the legal opinion with regard to filing the Appeal. I gave instruction to the counsel to file Appeal. Hence, some delay occurred to give instruction to file the Appeal. The above delay is neither willful nor deliberate. In the interest of justice the same*

> *may be condoned and the writ appeal may be heard on merit. Unless this writ appeal is heard on merit it will cause financial loss to the Employees Provident Fund. It is highly essential and expedient in the interest of justice to condone the delay of 69 days in filing this writ appeal. A separate petition for the same is filed herewith and the same may kindly be allowed."*

7. From the above , it is quite clear that the only reason stated is an *'administrative reason'* to the effect that the legal opinion for filing the appeal was received only in the last week of December, 2014, in the office of the officer who has sworn to the affidavit. The delay has not been satisfactorily explained ; as to when was the opinion sought for, what was the reason for the delay etc. Still, this Court, taking a lenient view, condoned the delay as per order dated 10.03.2015. The alleged prudence on the part of the Department/Officer is not reflected from their deeds in causing the verdict to be challenged, if the same is liable to be challenged in accordance with law, based on merits.

8. In the above circumstance, this Court does not find it

as a fit case to call for interference. While making it clear that nothing prevents the authority concerned in proceeding with further steps, once an order is passed even during the period of appeal, it may not be prudent to proceed with such steps by virtue of the rights available to the parties concerned under the Statute. The course and proceedings being pursued without any regard to the same will only contribute to further litigations, unnecessarily. Further steps to be pursued by the Department have to be on the basis of proper application of mind. In other words, it shall only be by way of prudent steps. If any such adverse circumstance is resulted and ultimately, the department loses the case, they may be liable to compensate the loss that has been caused/resulted to the aggrieved party. This is more so, in view of the fundamental principle, that cost shall follow the cause.

9. It is for the department to take appropriate action and suffer the consequence, in the light of the facts and circumstances of each case and also on the basis of the

observations already made hereinbefore. Even though it is a fit case to impose cost upon the appellant, we reluctantly refrain from awarding any cost, accepting the persuasive submission made by the learned counsel for the appellant.

P.R. RAMACHANDRA MENON,
JUDGE.

BABU MATHEW P. JOSEPH,
JUDGE.

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