

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN  
&  
THE HONOURABLE MR. JUSTICE K. ABRAHAM MATHEW

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

**WA.No. 360 of 2015**

AGAINST THE JUDGMENT IN WP(C) NO.21117/2014 OF THE  
HIGH COURT OF KERALA DATED 07-01-2015

APPELLANT/RESPONDENT:

THE EMPLOYEES PROVIDENT FUND ORGANIZATION  
SUB REGIONAL OFFICE, ADITHYA SABARI TOWERS  
POST OFFICE ROAD, THIRUNAKKARA  
KOTTAYAM 686 001, REPRESENTED BY ITS ASSISTANT PROVIDENT  
FUND COMMISSIONER SRI MATHEW PALACKAL ABRAHAM

BY ADV. SRI. JOY THATTIL ITTOOP, SC, EPF ORGANISATION

RESPONDENT WRIT PETITIONER:

M/S. STERLING HOLIDAY RESORTS (I) LTD.  
NO 7, 3RD CROSS STREET, CITY TOWERS  
KASTURBAI NAGAR, ADAYAR  
CHENNAI 600 020 REPRESENTED BY ITS  
DEPUTY GENERAL MANAGER (LEGAL).

BY ADV. SRI. P.B. SAHASRANAMAN  
BY ADV. SRI. T.S. HARIKUMAR  
BY ADV. SRI. K. JAGADEESH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-02-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &  
K. ABRAHAM MATHEW, JJ.**

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**W.A. NO.360 OF 2015**  
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**Dated this the 16<sup>th</sup> day of February, 2015**

**JUDGMENT**

**K.T.Sankaran, J.**

The Employees' Provident Fund Organisation passed Ext.P1 order dated 29.4.2013, directing the respondent to remit a sum of ₹24,07,375/- as arrears of contribution under the Employees Provident Funds and Miscellaneous Provisions Act. The respondent challenged Ext.P1 order in appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi. The appeal was filed within time. On 4.7.2013, the Appellate Tribunal passed Ext.P2 order of stay on condition that the respondent should deposit 40% of the amount determined within a period of four weeks. Within the period of four weeks, the respondent sent a Demand Draft to the appellant to comply with the conditional order of stay. That Demand Draft was returned by the appellant stating that the full amount due under Ext.P1 was realised by attaching the amount in the account of the respondent with the State Bank of India.

2. It would appear that the appellant issued notice to the South Indian Bank and State Bank of India, where the respondent has accounts, directing the banks to freeze the account and to pay the amount due under Ext.P1. On 4.7.2013, the State Bank of India informed the appellant that the Demand Draft would be sent by them for the amount mentioned in Ext.P1 order. That means, the amount was sent by the State Bank of India to the appellant after Ext.P2 order of stay was passed. Moreover, Ext.P2 order of stay was passed with notice to the appellant. Therefore, even if the State Bank of India sent a Demand Draft for the whole amount to the appellant, the appellant should have returned that amount to the State Bank of India in order to comply with Ext.P2 order of stay. The appellant did not do so, but they kept the money. The respondent moved the Tribunal for release of the amount. The Tribunal held, as per Ext.P6 order dated 12.9.2013, that after appropriating 40% of the amount due, the balance shall be kept by the appellant in safe custody.

## **W.A. NO.360 OF 2015**

:: 3 ::

3. Ext.P6 order dated 12.9.2013 was challenged by the respondent in W.P.(C) No.21117 of 2014. The learned Single Judge quashed Ext.P6 order and held that the writ petitioner (respondent) is entitled to get back 60% of the amount realised by the appellant. The appellant was directed to refund the balance amount. The learned single Judge also held that for the period from 5.7.2013 to the date of refund of the amount to the respondent, the appellant would not be entitled to interest on such portion of the amount.

4. The appellant should have seen that the respondent filed the appeal before the Tribunal within time. The appellant was given notice of the appeal. The appellant appeared before the Tribunal. The appellant knew of Ext.P2 order of stay. Still the appellant pursued the proceedings to attach the amount belonging to the respondent and realise the whole amount due as per Ext.P1 and thereby even making the Appellate Tribunal powerless. The appellant was not justified in retaining any amount beyond 40% of the amount due as mentioned in Ext.P2 order of stay. The learned single Judge rightly allowed the Writ Petition. We do not find any

**W.A. NO.360 OF 2015**

:: 4 ::

ground to interfere with the well considered judgment passed by the learned Single Judge.

The Writ Appeal fails and it is, accordingly, dismissed.

**(K.T.SANKARAN)**  
**Judge**

**(K. ABRAHAM MATHEW)**  
**Judge**

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