

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 2931 of 2014 (N)

PETITIONER(S) :

**JEWEL HOMES PRIVATE LIMITED,
CASAGRANTE BUILDING, 2ND FLOOR, OPPOSITE TVS SHOWROOM,
DESHABHIMANI JUNCTION, KALOOR, KOCHI - 682 017,
REPRESENTED BY ITS MANAGING DIRECTOR P.A.JIHAS.**

**BY ADVS.SRI.B.ASHOK SHENOY
SMT.C.G.PREETHA
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.THOMAS P.MAKIL**

RESPONDENT(S) :

- 1. EMPLOYEES PROVIDENT FUNDS APPELLATE TRIBUNAL,
CORE 2, 4TH FLOOR, SCOPE MINAR,
LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR,
NEW DELHI - 110 092.**
- 2. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, 36/685A,
P.B.NO.1895, KALOOR, KOCHI - 682 017.**

**R2 BY DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE)
ADV. SRI.A.RAJASIMHAN
ADV. SRI.PRASANTH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE SUMMONS NO.KR/KCH/CIRCLE:31/ KR21865/CA/ 2011/DAMAGES/5504 DATED 23.06.2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P2:** TRUE COPY OF THE WRITTEN OBJECTION DATED 06.07.2011 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P3:** TRUE COPY OF THE PROCEEDINGS NO.KR/KC/21865/DAMAGES CELL/2011/9982 DATED 21.09.2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P4:** TRUE COPY OF THE LETTER ATA NO.704/(7)11 DATED 01.07.2013 WITH COPY OF ORDER IN ATA NO.704(7) 2011 DATED 04.04.2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' ANNEXURES:

- ANNEXURE R2(A):** TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.25884/2011.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K.VINOD CHANDRAN, J

W.P.(C).No. 2931 of 2014

Dated 25th February, 2015

JUDGMENT

The petitioner challenges Ext.P3 order issued under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) which is confirmed in Ext.P4 by the Appellate Tribunal.

2. The short contention raised is that, neither the Original Authority nor the Appellate Authority considered the question of financial difficulty which was projected before both the authorities. Ext.P4 order shows that the Appellate Authority merely found that the Officer had considered all the submissions and confirmed the order of the Original Authority. Ext.P3 indicates that the financial difficulties projected by the petitioner were found to be not a valid ground for committing default of the payment of Provident Fund dues. It was also found that, Section 14B of the EPF & MP Act does not confer any

discretionary power on the authority.

3. Both the above said propositions now stand negated by a decision of the Division Bench reported in **Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd. (2013 (3) KLT 790)**. In such circumstances, it is only proper that the Original Authority consider the matter afresh, after looking into the details produced by the petitioner. Exts.P3 and P4 shall stand set aside to facilitate such de novo consideration. The petitioner shall appear before the authority on 18.03.2015 and the petitioner shall be permitted two weeks' time to produce any evidence, after affording an opportunity for personal hearing. The matter shall be disposed of at any rate, within six months from 18.03.2015.

The writ petition is allowed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//