

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No.11695 of 2010 (J)

PETITIONER :

S.VAHEEDKUTTY, PROPRIETOR,
M/S.MUKHATHALA CASHEW PROCESSING, MUKHATHALA P.O.
KOLLAM-691 577.

BY ADVS.SRI.A.V.XAVIER
SRI.K.JOLLY JOHN

RESPONDENTS :

1. THE ASST.PROVIDENT FUND COMMISSIONER/
RECOVERY OFFICER EMPLOYEES' PROVIDENT FUND
ORGANISATION, SUB REGIONAL OFFICE, ANNEXE,
MANNANIYA COMPLEX, CHINNAKADA, KOLLAM-691 001.
2. THE ENFORCEMENT OFFICER,
EMPLOYEES' PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, MANNANIYA COMPLEX, CHINNAKADA,
KOLLAM-691 001.

R1-2 BY SRI.PIRAPPANCODE V.S.SUDHIR, SC, EPF ORGN
BY SRI.V.V.SURESH,SC,EPF.ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : LEASE AGREEMENT DTD.27.1.2009 BETWEEN OWNER OF FATHIMA CASHEW INDUSTRIES AND PETITIONER.
- EXT.P2 : LICENCE GRANTED ON 18.5.2009 TO THE PETITIONER IN RESPECT OF THE FACTORY WITH REGISTRATION NO.CHW/QLN/11/564/05.
- EXT.P3 : STATE BANK OF INDIA CHALLAN DTD.3.4.2009 FOR REMITTANCE OF P.F. CONTRIBUTION FOR FEBRUARY, 2009.
- EXT.P4 : STATE BANK OF INDIA CHALLAN DTD.17.2.2010 FOR REMITTANCE OF P.F.CONTRIBUTION FOR JANUARY, 2010.
- EXT.P5 : COPIES OF RELEVANT PAGES OF STOCK REGISTER FOR THE YEAR 2009-10 CONTAINING THE DATES 1.4.09 AND 23.3.10.
- EXT.P6 : NO.KR/KLM/22140/RECOVERY/2010 DTD.16.2.2010, WARRANT OF ATTACHMENT OF MOVABLE PROPERTY, PERIOD 12/2006 TO 07/2008.
- EXT.P7 : NO.KR/KLM/22140/RECOVERY/2010 DTD.16.2.2010, WARRANT OF ATTACHMENT OF MOVABLE PROPERTY, PERIOD 08/2008 TO 05/2009.
- EXT.P8 : NO.KR/KLM/22140/RECOVERY/2010 DTD.23/03/2010, MAHASSAR REGARDING ATTACHMENT OF 97 BAGS OF CASHEW NUTS OF THE PETITIONER.
- EXT.P9 : RESPRESENTATION OF THE PETITIONER DTD.24.3.2010 TO THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.11695 of 2010

Dated this the 7th day of August, 2015

JUDGMENT

The petitioner stated to be the proprietor of M/s.Mukhathala Cashew Processing, who took on lease the factory of M/s.Fathima Cashew Industries, Mayyanad, Kollam under Ext.P1 lease agreement dated 27.1.2009, is before this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P6, P7 and P8 and seeking a writ of mandamus commanding the respondents to withdraw the proceedings initiated against him vide Exts.P6, P7 and P8.

2. By order dated 5.4.2010 this Court passed the following interim order:-

"Admit. Adv.Pirappancode V.S.Sudheer takes notice for respondents. It is seen from Ext.P7 that the warrant of attachment has been issued against Messrs. Fathima Cashew Industries, Mayyanad, Kollam. The petitioner is Messrs. Mukhathala Cashew Processing, Mukhathala.P.O., Kollam. In execution of Ext.P7 warrant, 97 bags of raw cashew nuts have been attached vide Ext.P8 mahassar and they have been released to the Manager of the petitioner. Since Ext.P7 does not authorize attachment of petitioner's movables, the petitioner has established a prima facie case for the grant of

an interim order. Hence, there shall be an interim direction to the respondents to lift the order of attachment and to release the 97 bags of raw cashew nuts attached as per Ext.P8 to the petitioner, pending disposal of the writ petition.”

3. The 1st respondent has filed a counter affidavit justifying the issuance of Exts.P6, P7 and P8.

4. The issue raised in this Writ Petition is covered in favour of the petitioner by the judgment of a Division Bench of this Court in **Employees Provident Fund Organisation and another Vs. Manoj.K. and another (ILR (Kerala) 2015 (1) 293)** in which this Court held that the raw material procured by the lessee after the transfer of establishment by way of lease arrangement and processed to finish goods would not fall under the term 'assets' employed in Section 17B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Paragraph 9 of the judgment reads thus :-

“9. Therefore, it can safely be concluded that the raw materials procured after the transfer of establishment by way of lease arrangement, by the lessee and processed to finished goods would not fall under the term 'assets' employed in Section 17B of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952. The acquisitions after the transfer of establishment cannot be made liable for the dues of the transferor or former employer in respect of the period after the date of such transfer. The entire establishment cannot be held liable for such dues as contended by the appellants. But the assets obtained by the transferee by such transfer alone would be held liable for the same. The term 'assets' employed in Section 17B is not synonymous with the establishment. Hence we reject the arguments advanced otherwise by the counsel for the appellants."

5. In such circumstances, Ext.P8 mahazar as well as all proceedings initiated against the petitioner based on Exts.P6 and P7 are set aside. But it is made clear that this judgment will not stand in the way of the Employees Provident Fund Organisation proceeding against the defaulter, namely, M/s.Fathima Cashew Industries, Mayyanad, Kollam for recovering the dues mentioned in Exts.P6 and P7.

This Writ Petition is disposed of as above. No order as to costs.

ANIL K.NARENDRAN, JUDGE

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