

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C) .No. 18052 of 2007 (Y)

PETITIONER(S) :

T.C.PAUL,
S/O.K.C.CHACKO,
TC 11/1414, PRIYA BHAVAN, NANTHANCODE,
THIRUVANANTHAPURAM.

BY ADV.SRI.P.RAMAKRISHNAN.

RESPONDENT(S) :

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1. MANGALA V.SELVAN,
441 G, MANGALA NAGAR,
MAHARAJANAGAR, THIRUNELVELI.
 2. K.BHOOTHALINGAM,
SRIRAMAJAYAM,
PLOT NO.31, NORTH RAJA RAJESWARI NAGAR,
PERUMALPURAM.
 3. MANGALA V.NADARAJAN,
441 G, MANAGALA NAGAR,
MAHARAJANAGAR, THIRUNELVELI.
 4. MANGALA K.PRABHU,
5, NESANAINAR STREET,
OLD MILITARY LANE, PALAYAMKOTTAI.
 5. THE ENFORCEMENT OFFICER,
EPF ORGANISATION, SUB REGIONAL OFFICE,
EPFO COMPLEX,
NGO B" COLONY, THIRUNELVELI.
 6. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
(RECOVERY OFFICER),
EMPLOYEES PROVIDENT FUND ORGANISATION, PATTOM,
THIRUVANANTHAPURAM.

BY SRI.N.N. SUGUNAPALAN, S.C. &
BY SMT.T.N.GIRIJA, SC, EPF ORGANISATION.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: COPY OF THE PARTNERSHIP DEED DATED 01/04/1994.
- EXT. P2: COPY OF RELEASE DEED DATED 31/03/1999.
- EXT. P3: COPY OF NOTICE DATED 16/01/2007 ISSUED BY THE 5TH RESPONDENT.
- EXT. P4: COPY OF THE REPLY DATED 27/01/2007 SUBMITTED BY THE PETITIONER.
- EXT. P5: COPY OF THE NOTICE OF DEMAND DATED 05/04/2007 ISSUED BY THE 6TH RESPONDENT.
- EXT. P6: COPY OF LETTER DATED 16/04/2007 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXT. P7: COPY OF ORDER DATED 10/05/2007 ISSUED BY THE 6TH RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

- EXT. R6(A) : TRUE COPY OF THE INVESTIGATION PROFORMA SUBMITTED BY THE PETITIONER.
- EXT. R6(B) : TRUE COPY OF THE PROCEEDINGS NO.TN/II/24790/ENF.I(4)/KKI/2000 DATED 18/04/2000.
- EXT. R6(C) : TRUE COPY OF THE RECOVERY CERTIFICATE NO.T.N./II/24790 / ENF.1(4)KK1/2000 DATED 18/08/2000.
- EXT. R6(D) : TRUE COPY OF THE ORDER DATED 09/11/2000.
- EXT. R6(E) : TRUE COPY OF THE ORDER IN ATA NO. 534(13)/2000 OF THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI DATED 28/03/2005.
- EXT. R6(F) : TRUE COPY OF THE NOTICE ISSUED BY THE EPFO, TIRUNELVELI, DATED 16/01/2007.
- EXT. R6(G) : TRUE COPY OF THE LETTER ISSUED BY THE RECOVERY OFFICER, EPFO, TIRUNELVELI DATED 07/03/2007.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J

W.P(C) No. 18052 of 2007 Y

Dated this the 11th day of March, 2012

J U D G M E N T

The petitioner was before this Court challenging the recovery proceedings initiated against the petitioner under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short EPF & MP Act). The recovery proceedings obviously, was initiated against one Deedi Automobiles, in which the petitioner was a partner. The recovery notices are produced at Exts.P3 and P5. A prohibitory order was also issued at Ext.P7 which are challenged in this writ petition.

2. The petitioner essentially contends that though the petitioner was a partner in the said firm, the petitioner had retired from the partnership as per Ext.P2. Hence the petitioner was a partner of the establishment between 01.04.1994 to 31.03.1999. The recovery sought to be made is for the period 12/1997 and 02/2000. The

petitioner's contention is that the petitioner does not have any information about the proceedings initiated since the petitioner had retired from the partnership.

3. The respondent Organisation has filed a counter affidavit in which Ext.R6(b) has been produced which is an order under Section 7A of the EPF & MP Act. The said order is dated 18.04.2000. A recovery notice is also seen issued at R6(c) dated 18.08.2000. From R6(d) it is evident that the partners had filed an appeal before the Appellate Tribunal and that they had approached the High Court of Judicature at Madras for relief with respect to the recovery. The High Court by Ext.R6(d) granted a stay on condition of deposit of $\frac{1}{4}^{\text{th}}$ of the amount deposited. The appeal is dismissed by Ext.R6(e) order pursuant to which the notices to the petitioner also have been issued.

4. Considering the fact the petitioner had retired from the firm, it is only proper that at least with respect to the petitioner, the demand be revised if the

petitioner is able to prove the factum of retirement before the officer. The petitioner hence shall appear before the officer, the 5th respondent herein, who shall consider the claim raised by the petitioner and restrict the demand as against him to the period he has continued as a partner, in the assessee establishment.

Though the 5th respondent does not come within the jurisdiction of this Court, the cause of action has arisen on the basis of the recovery proceedings initiated by the 5th respondent and proceeded by the 6th respondent against the petitioner who is residing within the State of Kerala. Hence, this Court is competent to issue directions to the 5th respondent on the strength of the decision in ***Kusum Ingots & Alloys Ltd. v. Union of India [(2004) 6 SCC 254]***. The petitioner shall appear before the 5th respondent within a period of one month from the date of receipt of a copy of this judgment and the 5th respondent shall consider the claim made and pass

appropriate orders. It is made clear that this Court has not spoken on the merits of the case and the same would have to be considered by the 5th respondent and that too only if any amounts are remaining due and payable as per the 7A order. Definitely the petitioner could point out the assets of the firm, which should be proceeded against before proceeding are initiated against the petitioner. The recovery proceedings shall be kept in abeyance till orders are passed by the 5th respondent.

Writ petition is disposed of. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge