IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 24432 of 2015 (D)

PETITIONER:

SCHIFFLIES INDIA LTD.,
PLOT NO.244, DEVELOPMENT PLOT,
NEAR WOMEN'S APPAREL PARK,
SOUTH KALAMASSERY, REPRESENTED BY
ITS AUTHORISED SIGNATORY AND MANAGER
ADMINISTRATION AKIN VENUGOPAL.

BY ADV. SRI.R.RAMADAS

RESPONDENT:

THE ASSISTANT P.F. COMMISSIONER
AND RECOVERY OFFICER,
OFFICE OF THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
S.R.O.BHAVISHYANIDHI BHAVAN, P.B.NO.1895,
KALOOR, KOCHI-682017.

BY DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE)
SRI.S.PRASANTH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 24432 of 2015 (D)
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<u>APPENDIX</u>

PETITIONER(S)' EXHIBITS :

P1 : **TRUE COPY OF THE LETTER DT.12-4-2013 ISSUED BY THE RESPONDENT TO THE MANAGER OF THE FEDERAL BANK LIMITED, GIRINAGAR, ERNAKULAM.**

P2 : **TRUE COPY OF THE REPRESENTATION DT.21-1-2015 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.**

P3 : **A TRUE COPY OF THE WARRANT OF ATTACHMENT OF THE MOVABLE PROPERTY ISSUED BY THE RESPONDENT TO THE PETITIONER DT.5-11-2014.**

P4 : **A TRUE COPY OF THE NOTICE FOR SETTLING A SALE PROCLAMATION DT.12-6-2015 TOGETHER WITH THE VALUATION REPORT.**

<u>RESPONDENTS' EXHIBITS</u>: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24432 of 2015

Dated this the 12th day of August, 2015.

<u>J U D G M E N T</u>

The petitioner prays to stay the operation and all further proceedings pursuant to Exts.P3 and P4.

2. The petitioner is a small scale industry situated in the Industrial estate at South Kalamassery. The petitioner submits as follows : The unit is an export oriented industry. The machines in the Unit are hypothecated to State Bank of India, M.G.Road, Gurgaon and Central Bank of India, Press Area road branch, New Delhi. The petitioner had availed loans from the above banks for the working capital and for purchasing machines/machineries and also for the establishment of the above industry. The industry was working on a profit basis in teh initial years. However, due to the economic slow down and adverse conditions in the market, the unit suffered huge loss. The petitioner Company is now facing financial difficulties. The company is

not having any business operations for the last more than one year. At present there are only 3 employees in the Company. Since the Company is not having any business operations even the above mentioned 3 employees are not having any work. Because of the huge business loss suffered by the Company, the petitioner could not make the remittances due to the Employees Provident Fund Organisation in time. Since the Company is not having any business activities, the petitioner is finding it difficult even to pay the monthly salary due to the aforesaid 3 employees of the company. In spite of the financial difficulties, the petitioner is taking earnest efforts to remit the Employees Provident Fund dues to the respondent. Earlier steps were taken by the authorities under hte Employees Provident Fund Organization for attaching the Bank account of the petitioner on the ground of non-remittance of the amounts due to the Employees Provident Fund Organisation. The petitioner then remitted a sum of Rs.3,34,150/- by availing further loans from other private banks and the petitioner was discharged of the liability to the extent of the remittance mentioned above as evident from Ext.P1. Subsequently the respondent issued proceedings levying damages under Section 14 B and also levying penal interest under Section 7 Q of the Act. The petitioner then submitted replies dated 9.8.2014, 16.7.2014 and 21.1.2015 before the respondent requesting to withdraw the proceedings levying damages and penal interest in view of the financial difficulties faced by the Company. Again the petitioner has submitted a reply dated 12.2.2015 before the respondent requesting to waive the damages and interest and also to withdraw the proceedings dated 14.11.2014. But the respondent has not considered the above replies and representations submitted by the petitioner. The respondent is taking hasty steps to sell some of the machineries of the petitioner for realisation of the dues on the basis of the execution of certificate dated 4.4.2014 and issued Ext.P4 notice to the petitioner intimating that 30th day of July, 2015 has been fixed for drawing up the proclamation of sale and settling the terms thereof. Ext.P3 is the warrant of attachment of the movable property issued by the respondent. The amounts shown in Ext.P3 is Rs.2,11,047/-. The respondent is taking hasty steps to sell the machineries mentioned in Ext.P4 for realisation of the alleged dues of Rs.2,11,047/- due to the respondent. The petitioner will be put to loss if the machineries are sold by the respondent for realisation of the above mentioned dues. Hence the petitioner prays for a reasonable time to pay the alleged dues to the Provident Fund organisation. It is alleged that the respondent is trying to sell the machineries in auction. It is with this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent.

As the learned counsel for the petitioner has confined his prayer for an installment facility, the writ petition is disposed of permitting the petitioner to clear off the demand as per Exts.P3 and P4 in 12 equal monthly installments starting from 1.9.2015. It is made clear that if the petitioner defaults in paying two consecutive installments it shall be open to the respondent to proceed against the petitioner and to proceed with the recovery proceedings.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge