

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 26211 of 2014 (B)

PETITIONER:

**THE STANDARD FURNITURE,
(UNIT OF SUDARSAN TRADING CO. LTD),
CHAKKORATHKULAM, CALICUT - 673011,
REPRESENTED BY M. ASHOK KUMAR,
WHOLETIME DIRECTOR.**

**BY ADVS.SRI.A.D.RAVINDRA PRASAD
SRI.ALEX VARGHESE**

RESPONDENT(S):

- 1. THE REGISTRAR,
EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE II, 4TH FLOOR,
LAXMI NAGAR DISTRICT, LAXMI NAGAR,
NEW DELHI - 110 092.**
- 2. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
BHAVASHYA NADI BHAVAN, P.B NO 1806,
ERANHIPALAM, CALICUT - 673 006.**

R2 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE SETTLEMENT ARRIVED AT BETWEEN UNIONS AND THE MANAGEMENT BEFORE THE CONCILIATION OFFICER DATED 15-03-2003.
- EXHIBIT P2 : TRUE COPY OF THE ORDER KR/KK/SRO/PD/B/2003-2004/671/ENF.I (1) 1214 DATED 01-06-2004.
- EXHIBIT P3 : TRUE COPY OF THE ORDER NO 671/70/SRO/KKD/ENF.L(1) 2004 DATED 01-06-2004.
- EXHIBIT P4 : TRUE COPY OF THE APPEAL A.T.A NO 547(7) OF 2004 FILED BEFORE THE 1ST RESPONDENT EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL AT NEW DELHI DATED 26-07-2004.
- EXHIBIT P5 : TRUE COPY OF THE ORDER OF THE HON'BLE HIGH COURT OF KERALA WPC NO 35167/2005 DATED 16-12-2005.
- EXHIBIT P6 : TRUE COPY OF THE ORDER OF THE PROVIDENT FUND APPELLATE TRIBUNAL DATED 22-12-2009.
- EXHIBIT P7 : TRUE COPY OF THE LETTER NO KR/KK/671 RECOVERY/2013/699 DATED 18-02-2013.
- EXHIBIT P8 : TRUE COPY OF THE RELEVANT PAGES OF THE APPLICATION FOR RESTORATION OF THE APPEAL BEFORE THE 1ST RESPONDENT.
- EXHIBIT P9 : TRUE COPY OF THE ORDER DATED 05-12-2013 ISSUED BY THE PROVIDENT FUND APPELLATE TRIBUNAL.
- EXHIBIT P10 : TRUE COPY OF THE LETTER DATED 03-09-2014 SUBMITTED BY THE PETITIONER.
- EXHIBIT P11 : TRUE COPY OF THE ACKNOWLEDGEMENT OF THE 2ND RESPONDENT.
- EXHIBIT P12 : TRUE COPY OF THE CHALAN OF EMPLOYEE'S PROVIDENT FUND ORGANISATION ACKNOWLEDGED BY STATE BANK OF INDIA, CALICUT DATED 8.3.2004 FOR THE PAYMENT OF RS.6,20,000/-

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

/

K. VINOD CHANDRAN, J

W.P(C) No. 26211 of 2014

Dated this the 13th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with the order passed at Ext.P9 by the Employees Provident Fund Appellate Tribunal, New Delhi. The petitioner was imposed with damages under Section 14B and interest under Section 7Q of Employees Provident Fund and Miscellaneous Provisions Act, 1952, as per Exts.P2 and P3 orders, for the period 1/1996 to 6/2002. Against the order under Section 14B the petitioner filed an appeal before the EPF Appellate Tribunal numbered as ATA 547 (7)/2004. The petitioner also approached this Court, with a writ petition for expeditious consideration of the appeal which was allowed by Ext.P5 judgment dated 16.12.2005. Though there was a direction to dispose of the appeal within a period of four months, it is not clear as to whether the petitioner produced the above judgment

before the appellate Tribunal.

2. Admittedly, the appeal was not disposed of within the period as directed in Ext.P5. The petitioner enjoyed a stay of distress action till the disposal of the appeal. Subsequently on 22.12.2009 Ext.P6 order was passed which is extracted hereunder:-

“The date of hearing was notified to both the parties. However, despite repeated calls no one appeared for the appellant. It seems that the appellant is not interested to pursue the appeal. Hence, the appeal is dismissed for non-prosecution. Copy of order be sent to both the parties. File be consigned to record room.”

3. A notice for recovery was issued on 18.02.2013. The petitioner's contention is that the disposal of the appeal was noticed by the petitioner only on 18.02.2013, when distress action was taken. However, it is to be specifically observed that Ext.P6 has made an

endorsement, wherein copy was directed to be issued to both the parties. In any event, on 10.06.2013, the petitioner approached the Employees Provident Fund Appellate Tribunal with an application for restoration, which is produced at Ext.P8. The contention raised was that the factory is closed and there is nobody to look after the daily affairs of the factory. The petitioners' specific contention was that the petitioner received no notice of the hearing of the appeal and hence, the petitioner was made aware of the appeal only on the recovery proceedings being initiated. There was a delay of 1266 days which was sought to be condoned. The appellate Tribunal found that there is no satisfactory explanation for the delay caused and dismissed the restoration application by Ext.P9.

4. Essentially, it is to be noticed that the provision for appeal in EPF & MP Act provides for 60 days time, with a further period of 60 days in which delay can be condoned. It is trite that this Court cannot

exercise its jurisdiction under Article 226 to extend the period of limitation as provided under the statute (***Assistant Commissioner of Central Excise v. Krishna Poduval*** [2005(4) KLT 947] and ***Panopharam v. Union of India*** [2010(3) KLT 149]).

5. In the present case, the reason stated by the petitioner being closure of the business establishment, does not at all hamper the petitioner from prosecuting the appeal validly filed before the statutory authority. The petitioner's specific contention even in the above writ petition is that the factory was closed down from 2004 onwards which is evidenced by Ext.P1. However, the appeal was filed in the year 2004 and subsequent to the closing down of the factory, the petitioner was also before this Court seeking consideration of the appeal as is evidenced by Ext.P5. However, after obtaining Ext.P5 judgment in which there was a stay of distress action, the petitioner has not diligently pursued the matter before

the appellate authority. There is nothing to disbelieve the statement of the appellate authority in Ext.P6 that the date of hearing was notified to both the parties and despite repeated calls, no one appeared for the appellant. Neither Ext.P6 can be interfered with nor Ext.P9 which rejected the application for restoration application be found fault with. The restoration application was given after four years which further indicates that there was gross negligence on the part of the petitioner in prosecuting the matter.

For all the above reasons, writ petition would stand dismissed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge