

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 27480 of 2014 (H)

PETITIONER(S):

GOLDVIEW VYAPAR PVT. LTD.
HOPE PLANTATIONS, GLENMARY ESTATE, PEERMADE
IDUKKI, HAVING ITS REGISTERED OFFICE AT 31, BBD BAGH
HONGKONG HOUSE, CALCUTTA-700 001
REP.BY ITS MANAGER (HR), MR.BABU.

BY ADV. SRI.V.B.HARI NARAYANAN

RESPONDENT(S):

REGIONAL PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE, EPF ORGANIZATION
CHALAKKUZHY BUILDING, KOTTAYAM-686 001.

BY SRI.JOY THATTIL IT00P, SC, EPF ORGANISA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27480 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : A TRUE COPY OF THE BASIC TAX RECEIPT.
- P2 : A TRUE COPY OF THE JUDGMENT DTD.14.8.2009 IN WA NO.1197/2009.
- P3 : A TRUE COPY OF THE ATTACHMENT ORDER DTD.18.12.2013.
- P4 : COPY OF THE STATEMENT DTD.10.7.2013 ISSUED BY THE RESPONDENT.
- P5 : COPY OF THE STATEMENT SHOWING THE LIABILITY FOR THE YEAR 2013 AND 2014.
- P6- A COPY OF THE CERTIFICATE DATED 4.5.2010 ISSUED BY SBT
- P7- TRUE COPIES OF THE INTERIM ORDERS PASSED IN ATA NO.748 OF 2011, ATA NO.749/2011 & ATA NO.750/2011
- P8- A COPY OF JUDGMENT DATED 19.3.14 IN W.P.NO.19934 OF 2013

ANNEXURE

R1(a)- TRUE COPY OF THE LETTER NO.RRC-II/11(34)08/KR/VIP
DATED 23.9.09 ISSUED BY THE HEAD OFFICE, EPFO, NEW DELHI

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 27480 of 2014

Dated 19th March, 2015

JUDGMENT

The petitioner seeks for release of the properties which have been attached by the respondent/Organization with respect to the dues to it. The contention of the petitioner is that earlier, there were dues during the period 2000-08 which was imposed by the Provident Fund Organization under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) specifically after conducting enquiry under Section 7A. The proceedings have reached finality. Section 7A order imposed contributions and Section 7Q order imposed interest for the delay in payment of contributions. There was also an imposition of Section 14B damages for the delay caused which, according to the Organization, was deliberate.

2. When recovery steps were initiated, the

petitioner approached this Court in the year 2009 with a writ petition contending that they had submitted an application before the Central Board of Trustees (CBT) for 100% waiver of damages assessed under Section 14B as provided in the proviso to the aforesaid Section. A Division Bench of this Court by Ext.P2 issued certain directions on the basis of the proposals made by the petitioner herein which is extracted hereunder:-

“Having regard to the proposals and having heard the learned counsel appearing for the Organization we feel that the request for payment of interest in 36 instalments is unreasonable. Therefore, we permit the appellate to pay the up-to-date dues in six months instalments, the first instalment shall be paid on or before 15.10.2009 and thereafter the balance in five equal monthly instalments starting from 1st December 2009. The dues shall be paid before the 10th of every month. The dues by way of interest shall be paid in 24 equal monthly instalments starting from the month of October 2009. The appellant is permitted to move the Central Board of Trustees in the matter of waiver of damages. In the event of such a representation being filed within a period of one month from today, the same shall be considered by the Central Board of Trustees with notice to the appellant

within another three months. It is made clear that until a decision is taken as above, subject to the petitioner filing the representation, there shall be no levy of damages under Section 14B. We record the submission made on behalf of the respondents that on clearing the dues, the criminal cases will be withdrawn."

3. The petitioner is said to have cleared the entire dues under Section 7A and Section 7Q. However, an application for waiver under the proviso to Section 14B is still pending before the CBT, is the ground urged. The petitioner took no action to see that the direction in Ext.P2, to the CBT to dispose of the matter within three months, is complied with. It is not clear as to whether the petitioner produced the aforesaid judgment before the CBT. In fact, in Ext.P2 it is clearly mentioned that, the petitioner has to move an application before the CBT, in which event alone the direction would be effective.

4. In any event, the petitioner was before

this Court, again, when recovery proceedings were initiated by W.P.(C).19934 of 2013. The contentions were similar in the said writ petition also. This Court considered the same and passed Ext.P8 judgment. This Court specifically found that there was a stay of recovery of 14B damages imposed for the period 2000-08 by the Division Bench in Ext.P2. Hence the action of the Provident Fund Organization in apportioning the subsequent remittance made by the petitioner towards the dues falling after 2008 was found to be bad. The Provident Fund Organization was directed to re-compute the dues of the petitioner, after apportioning subsequent dues to the contributions payable under the EPF & MP Act.

5. This Court after specifically noticing the directions in Ext.P2, again directed consideration of the application filed before the CBT within a period of six months from the date of

production of judgment. The judgment was dated 19.03.2014. In the writ petition the petitioner does not have a contention that the judgment either at Ext.P2 or at Ext.P8 was produced before the CBT. The petitioner is again before this Court challenging the very computation which was challenged in Ext.P8 and contending that apportioning has not been done as directed in the judgment.

6. If the directions in Ext.P8 judgment are not complied with, then, the remedy is not to file a further writ petition, that too after an year. It is also to be noticed that, such a relief also has not been sought for in the writ petition. The relief sought herein is for release of the properties attached by the respondent/Organization which is said to be on account of Section 14B damages, pending payment. This Court does not find any fault in continuing such attachment, since the

petitioner is guilty of deliberate inaction, insofar as prosecuting the application filed before the CBT. The petitioner but for moving this Court and obtaining directions for disposal of the same, has not cared to produce the same before the CBT and if it was so done, then, definitely the petitioner could have moved an application for contempt. The specific direction in Ext.P2 was to file an application for expeditious disposal of the application for waiver. The present writ petition does not have an averment regarding such an application as directed in Ext.P2 having been filed or as to the judgment at Ext.P8 having been produced before the CBT.

7. In the circumstances, this Court is of the opinion that the relief now sought in the writ petition is not permissible and cannot be allowed. It is also to be noticed that the practice of getting orders from this Court for

disposal of applications within a stipulated time, without pursuing the same and subsequently approaching this Court for stay of the recovery proceedings initiated, has to be deprecated. This Court does not find any reason why this writ petition should be considered. If the petitioner does not produce an order from the CBT within six months, the respondent/Organization would be free to proceed for recovery. The petitioner cannot at this distance of time, claim a benefit under Ext.P2 or Ext.P8.

The writ petition stands dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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