IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2725 OF 2015

M/s Bellite Spring Technology and Mfg. Co.
(through its ex-Partner), 5 Jai Bharat Society,
3rd Road, Khar (W), Mumbai-52.

...PETITIONER

-VERSUS-

The Regional P.F. Commissioner (II),
Employees Provident Fund & Misc.
Provisions,
Bhavishya Nidhi Bhawan,
Town Centre, Commercial Area,
Cidco, New Aurangabad-431003.

...RESPONDENT

...

Advocate for Petitioners : Shri Kawre B.R.

Advocate for Respondents : Shri Chaudhari K.B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th January, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the orders dated 10.12.2014 and dated 12.01.2015 passed by the Respondent- Provident Fund

Authority.

3 At the outset, it is made clear that this petition is otherwise untenable since the order passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (herein after referred to as “the 1952 Act”) is appealable before the Provident Fund Appellate Tribunal, New Delhi and hence, this petition could not have been entertained. However, I am entertaining this petition in the light of the peculiar circumstances which are being narrated in this order.

4 This Court by it's order dated 13.06.2014 delivered in Writ Petition No.5632/2011 had partly allowed the petition and had directed the Petitioner to deposit the entire amount before the Respondent Authority. On the said condition, the order under Section 7A dated 28.08.2001 was set aside. It is not in dispute that the Petitioner had earlier deposited an amount of Rs.2,55,604/- while preferring an appeal before the Appellate Tribunal and pursuant to the order passed by this Court dated 13.06.2014, an amount of Rs.4,80,000/- was deposited through the learned Advocate for the Petitioner with the covering letter dated 13.08.2014.

5 The grievance voiced by the Petitioner is that the authorized

representative as well as the Advocate could not remain present before the Respondent Authority for re-hearing on 21.11.2014. An adjournment application was filed on 09.12.2014. On 10.12.2014 none appeared for the Petitioner and the Respondent Authority delivered the order. Since the matter was remanded by this Court and since the entire amount under Section 7A assessment has been deposited, I am entertaining this petition, not on merits, but only to facilitate the re-hearing in the matter.

6 Shri Kawre, learned Advocate for the Petitioner, therefore, submits that the Petitioner prays for yet another opportunity and hence, prays for direction to the Respondent for re-hearing of the matter. He candidly submits that though the notice of hearing for 21.11.2014 was received by the Advocate for the Petitioner on 17.10.2014, neither the Petitioner's representative nor it's Advocate remained present for the hearing. When an adjournment application was filed on 09.12.2014 by the partner of the Petitioner, the Petitioner did not notice that the hearing was posted on 10.12.2014.

7 It is stated that the Petitioner Factory has been permanently closed down by the end of 2000. Erstwhile partner, namely, Shri Sharad Vishwanath Bhatt is about 80 years old. As such, if an opportunity of re-hearing is granted, the Petitioner would ensure that the said opportunity is

not squandered away.

8 Shri Chaudhari, learned Advocate appearing for the Respondent Provident Fund Authority, has strenuously opposed this petition. He relies on the affidavit in reply filed by the Assistant Provident Fund Commissioner dated 24.08.2015. He submits that details with regard to this matter have been elaborately set out in the affidavit in reply which runs into almost 10 pages.

9 Shri Chaudhari specifically draws my attention to the fact that the Petitioner Establishment had applied for voluntary coverage of the 1952 Act by it's application dated 27.11.1997 wherein it was stated that the Factory was engaging more than 20 workers, 21 to be exact, w.e.f. August, 1997. He further submits that upon discovery post an enquiry, it was revealed that the Factory was engaging more than 21 workers from 1993, hence the assessment under Section 7A.

10 He further submits that three opportunities were granted to the Petitioner on 26.09.2014, 17.10.2014 and 21.11.2014. On 17.10.2014, the learned Advocate for the Petitioner sought an adjournment and was made aware that the hearing was posted on 21.11.2014. The clerk of the Petitioner Shri Sambharao appeared in the

Section 7A proceedings. However, the Petitioner did not appear.

11 Shri Chaudhari, therefore, submits that this issue deserves to be closed once and for all. The entire amount under Section 7A order has been deposited. The Petitioner cannot take advantage of it's laxity and negligence and no necessity of rehearing is established.

12 I have considered the submissions of the learned Advocates as have been recorded herein above.

13 It appears from the record that three dates were posted for hearing in the matter pursuant to the order passed by this Court in the earlier petition. On 17.10.2014, the learned Advocate for the Petitioner accepted the next date of hearing which was 21.11.2014. Even if it is accepted that erstwhile partner of the Petitioner is 80 years old, once the Advocate has accepted the responsibility to appear on behalf of the Petitioner, the hearing on 21.11.2014 should not have gone unattended. For this reason, if a re-hearing is to be ordered, the Petitioner deserves to be penalized for it's laxity and negligence.

14 In the light of the above, though I am convinced by the submissions of Shri Chaudhari, only to ensure that ends of justice are met,

I am partly allowing this petition subject to the costs and conditions which I intend to impose upon the Petitioner.

15 As such, this Writ Petition is partly allowed. The impugned orders dated 10.12.2014 and 12.01.2015 are set aside subject to the following conditions:-

(a) The Petitioner and/or it's Advocate shall appear before the Respondent Provident Fund Authority at Aurangabad on 01.02.2016 at 11:00 am.

(b) The Petitioner and/or it's Advocate shall ensure that an amount of Rs.25,000/- (Rupees Twenty Five Thousand), as costs for rehearing, is deposited with the Respondent Authority at Aurangabad on or before 29.01.2016. Said amount shall be deposited in the Respondent Establishment's account.

(c) In the event the said amount is not deposited, the Respondent Authority will be within it's right to refuse any hearing on 01.02.2016 and shall not reopen Section 7A proceedings of the Petitioner. If this situation so occurs, the orders dated 10.12.2014 and 12.01.2015 shall stand restored and there shall be no further hearing under Section 7A before the Respondent Authority at Aurangabad.

(d) In the event the directions set out in clauses (a) to (c) above are complied with by the Petitioner, it will be at liberty to file it's written notes of submissions on 01.02.2016 before Respondent No.1 Authority along with all such documents as it may desire to file. If the Petitioner is satisfied with the documents filed with the Respondent Department by it's letter dated 13.11.2000, it may proceed to make a declaration that it has no further documents to file.

(e) After the hearing on 01.02.2016, the Petitioner shall abide by further dates of hearing, if so required, as may be posted by the Respondent Authority and shall ensure that the representative of the Petitioner either in person or through an Advocate shall attend the said hearings.

(f) If the Respondent Authority demands some more documents from the Petitioner, the Petitioner shall be under an obligation to furnish the same unless it takes a stand that such documents are not traceable or are not within it's custody.

(g) After the hearing is complete, the Respondent shall close the matter for delivering it's order.

(h) A copy of the order so passed by the Respondent Authority shall be transmitted either to the Petitioner at it's address mentioned in it's communication dated 09.12.2014 or on the address of the Advocate at Aurangabad.

(i) If the Petitioner is aggrieved by the said final order passed by the Respondent Authority, it shall have the liberty to assail the said order as per Section 7I of the 1952 Act before the Provident Fund Appellate Tribunal at New Delhi.

16 Rule is made partly absolute in the above terms.

kps (**RAVINDRA V. GHUGE, J.**)