IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10954 OF 2016

M/s. ABG Shipyard Ltd. ..Petitioner
Vs.
Regional Provident Fund Commissioner-I & Anr ..Respondents

Ms Priyanka Mehendiratta for the Petitioner
Mr. Suresh Kumar for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 26th SEPTEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 3-6-2015 passed by the Learned Presiding Officer of the Employees Provident Fund Appellate Tribunal by which order the Appeal filed by the Petitioner being ATA No.507(9)2016 came to be dismissed on the ground that the same is time barred.

2 The Respondents had initiated proceedings against the Petitioner under Section 14-B of the Employees Provident Fund Act (for short the said Act) and the said proceedings culminated in an order dated 15-6-2015 passed by the Respondents levying damages on the Petitioner to the extent of Rs.2,62,57,323/- along with interest under Section 7-Q which is an amount of Rs.1,34,02,326/- making the total amount as Rs.3,96,59,649/-. The period in contention is between the years April 2009 to October-2014. The said order

was passed after hearing the representative of the Petitioner one Mr. Kishore Kunkavlekar who it seems before the authority accepted the dues as mentioned in the statement. It seems that after the said order dated 15-6-2015 came to be passed, the Petitioner did not pay the amount as adjudicated by the said order nor did the Petitioner file any proceedings to challenge the said order dated 15-6-2015.

3 The Petitioner it seems filed an application on 27-1-2016 purporting to be an application for review, seeking review of the said order dated 15-6-2015. The said application was filed after 7 months of the said order dated 15-6-2015. The Petitioner had sought review of the order inter alia on the ground that the computation was not correct and on the ground that the Petitioner's financial condition is such that it is not possible for the Petitioner to comply with the said order dated 15-6-2015. The said application for review came to be rejected by the Respondents which rejection was communicated to the Petitioner vide letter dated 18-3-2016 of the Respondents. In the said letter, it is mentioned that there is no provision on the basis of which review can be sought of an order passed under Section 14-B of the said Act. The Petitioner thereafter filed an Appeal under Section 7-I and in view of the limitation prescribed by Rule 7 of the Employees Provident Fund Appellate Tribunal Rules which postulates initial period of 60 days and which can be extended by another 60 days by the Tribunal if cause is shown to that

effect. The Appellate Tribunal dismissed the Appeal on the ground that the same was time barred having regard to the said Rule 7 of the Employees Provident Fund Appellate Tribunal Rules.

4 The Learned Counsel appearing on behalf of the Petitioner Ms Mehendiratta would by placing reliance on Section 7-B of the said Act contend that a review is maintainable. The Learned Counsel would also contend that having regard to the fact that the communication rejecting the review is dated 18-3-2016, the Appeal filed in April 2016 is within time. The Learned Counsel sought to reiterate the case of the Petitioner as regards financial stringency of the Petitioner in complying with the order passed under Section 14-B.

5 Per contra it was the submission of the Learned Counsel Mr. Suresh Kumar appearing on behalf of the Respondents that a review lies only against an order passed under Section 7-A and no other order. It was the submission of the Learned Counsel that the Petitioner having accepted the liability now cannot be heard to complain against it on the ground of financial stringency. In support of the said contention reliance was sought to be placed on the judgment of the Apex Court in the matter of **Hindustan Times Ltd. Vs. Union of India & Ors.**[1] wherein the Apex Court has held that plea of financial problems relating to other indebtedness or the delay in realisation of amounts paid by the cheques or drafts cannot be justifiable ground for the employer to

1 **(1998) 2 Supreme Court Cases 242**

escape liability. In so far as the maintainability of the Appeal is concerned, it was the submission of the Learned Counsel that the limitation prescribed by Employees Provident Fund Appellate Tribunal Rules is a special limitation and therefore Section 5 of the Limitation Act would have no application. In support of the said contention, the Learned Counsel place reliance on an unreported judgment of the Division Bench of this Court in Writ Petition No.2101 of 2014 in the matter of The **Manganga Sahakari Sakhar Karkhana Ltd. Vs. The Assistant Provident Fund Commissioner**.

6 Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. The review application filed by the Petitioner was thoroughly misconceived in the light of Section 7-B of the said Act. A review lies against an order passed under Section 7-A and no other order. In so far as the limitation is concerned, it is required to be noted that Rule 7 prescribes a special limitation and therefore the applicability of Section 5 of the Limitation Act is ruled out and hence the maximum extent to which the delay can be condoned is 60 days. In the instant case, as indicated above, the order under Section 14-B was passed on 15-6-2015 whereas the Appeal was filed on 18-3-2016, the intervening fact of an application being the review application being filed would not aid the Petitioner as the said review was misconceived as being not maintainable. From the contention urged by the Learned Counsel for the Petitioner it appears that the case of the Petitioner is

on account of financial difficulties it cannot meet its commitment under the Provident Fund Act. Such a defence has not been countenanced by the Apex Court and has specifically rejected in the case of Hindustan Times Ltd. (Supra).

7 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]