

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6654 of 2016 &

WMP.No.5901 of 2016

M/s.The Boss Profiles Limited,
24, Sorukudi Village,
Thirunallar, Karaikal,
Puduchery.
Rep. by its Director ... Petitioner

Versus

The Recovery Officer,
Employees' Provident Fund Organisation,
Puduchery. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondent dated 01.02.2016 in Ref.No.TBM/SRO/PCY/CP-13/Recy/PC/1156/Div IV/2016 in so far as the proclamation of notice dated 01.02.2016 in proclamation of sale and quash the same.

For Petitioner : Mr.Hariharan

For Respondent : Mr.J.Sathya Narayana Prasad

ORDER

Heard Mr.Hariharan, learned counsel appearing for the petitioner and Mr.J.Sathya Narayana Prasad, learned counsel, accepting notice on behalf of respondent. By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. The petitioner Company is defaulter under the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952. Notice has been issued to the petitioner demanding payment of the defaulted amount. The petitioner sent a representation on 19.01.2015, stating that they were in the final stage of getting approval from Departments to get fund transfer from abroad and they were confident that they will arrive at a proper solution in the month of February 2015. However, nothing transpired by the said time. Therefore, a notice was issued by the Authority on

19.11.2015 to the petitioner's Banker, intimating that they propose to proceed with the auction sale of the immovable property of the petitioner for realization of the Provident Fund dues viz., Contribution, Penal Damages, Interest and other cost and charges. In spite of such communication having been sent to the petitioner's Banker with a copy marked to the petitioner, the petitioner did not take any action to clear the dues, nor he approached the Authorities requesting for some indulgence by showing their bona-fides. This has resulted in proclamation of sale being issued and e-auction to be conducted on 25.02.2016. At the last moment, the petitioner approached this Court, seeking for indulgence.

3.The settled legal position is that the statutory dues under the EPF Act will override all other claims. Therefore, if at all, the petitioner wants the respondent Authorities to exercise discretion in their favour, they have to approach the authority and show their bona-fides.

4.In the light of the above, while rejecting the prayer sought for by the petitioner to quash the impugned sale notice, liberty is granted to the petitioner to appear before the respondent on 25.02.2016 and pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only). Only on such payment being made, the petitioner will be entitled to make a representation to the respondent to postpone the sale and make a request to grant some time pay the balance amount. If the petitioner fails to comply with the above condition, the Writ Petition will stand automatically dismissed without further reference to this Court.

With the above direction, the writ petition is disposed of. There is no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

r n s
To

The Recovery Officer,
Employees' Provident Fund Organisation, Puduchery.

+1 cc to M/s.K.R.Hariharan, Advocate, sr.11323

+ 1 cc to Mr.J.Sathya Narayana Prasad, Advocate Sr 11488
(25/2/16)

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