IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.53 OF 2015

IN

WRIT PETITION NO.7632 OF 2014

Kisanveer Satara Sahakari Sakhar Karkhana Limited … Petitioner
Vs.
Regional Provident Fund Commissioner-II … Respondent

Ms Manisha Divekar a/w. Mr. S. M. Katkar i/b. Mr. Avinash R. Belge for Petitioner.
Mr. Suresh Kumar a/w. Ms Priyanka Tiwari for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 09, 2017

P.C. :

Heard Ms Divekar, learned Counsel for petitioner and Mr. Kumar, learned Counsel for respondent at length.

2. By this Petition under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), petitioner seeks review of order dated 03.03.2015 passed by this Court in Writ Petition No.7632 of 2014. By that order, Petition instituted by the petitioner herein under Articles 226 and 227 of the Constitution of India as challenging the demand notice dated 31.12.2007 as also orders dated 14.01.2010 and 18.06.2014 passed by the Regional Provident Fund Commissioner II, Sub Regional Office, Kolhapur (for short 'Commissioner') and Employees Provident Fund Appellate Tribunal, New Delhi (for short 'Tribunal') respectively was dismissed. By notice dated 31.12.2007, respondent informed the petitioner about belated payments attracting interest under Section 7Q and damages under Section 14-B of the Employees Provident Funds and Miscellaneous

Provision Act, 1952 (for short 'Act'). By order dated 14.01.2010, the Commissioner levied damages of Rs.23,86,255/- for the belated payment for the period from October 2000 to October 2005. By order dated 18.06.2014, the Tribunal dismissed the appeal preferred by the petitioner.

3. In support of this Petition, Ms Divekar strenuously contended that the order under review suffers from several errors apparent on the face of the record. She submitted that levy of damages being a penal provision should be construed strictly. Only because a provision has been made for a levy of penalty, the same by itself would not lead to a conclusion that penalty must be levied in all situations. She further submitted that merely because there is delay on the part of the petitioner in remitting the amount, does not amount to a willful default. She submitted that it is a well settled principle of law that a simple default in making the payment of outstanding dues does not constitute a neglect or refusal to pay. In order to establish the neglect or refusal, something more than a default must be established. She further submitted that while dismissing the Petition, this Court referred to the decision of the Apex Court in the case of ***M/s. Hindustan Times Limited Vs. Union of India***, **AIR 1998 SC 688**. The said decision is subsequently considered by Kerala High Court in ***Regional Provident Fund Commissioner Vs. Harrisons Malayalam Limited***, **2014 I LLJ 109 (Kerala)** as also decision of the Apex Court in ***Employees State Insurance Corporation Vs. HMT Limited***, **(2008) 2 SCC 35**. She, therefore, submitted that order under review deserves to recalled.

4. On the other hand, Mr. Kumar supported the order. He has invited my attention to the contentions raised on behalf of the petitioner in paragraph 3. In paragraph 3, this Court referred to the two-fold

contentions raised on behalf of the petitioners. This Court also considered that the ground of financial problems cannot be a justifiable ground to escape the liability.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of paragraphs 5 and 6 of the order dated 03.03.2015 shows that Sections 7Q and 14B were referred. Reference was also made to the communication dated 31.12.2007 and notice dated 19.02.2008. It was also noted that opportunity was given to the petitioner and in fact Labour Officer, Mr. A. T. Shingate appeared on behalf of the petitioner. He informed that there was discrepancy in the statement enclosed with the notice regarding levy of damages. He also accepted the fact of delay in remittance of PF dues for the period from October 2000 to October 2005.

6. In paragraph 7, reference was made to the decision of Gujarat High Court in the case of ***Arvind Mills Limited Vs. R. M. Gandhi***, **1982 LIC 344** and decision of the Apex Court in **M/s. Hindustan Times Limited** (*supra*). In paragraph 8, reply dated 29.12.2008 given by the petitioner was considered and it was held that the belated payment was admitted by the petitioner and the ground for belated remittances was due to financial position.

7. This aspect was considered by the authorities below. In view thereof and for the reasons recorded in paragraphs 5 to 8 of the order dated 03.03.2015, no case is made out for reviewing the said order. In the case of **Regional Provident Fund Commissioner** (*supra*), the Division Bench of Kerala High Court dealt with Section 14 B of the Act in which words “may recover” were considered. It was held that the

words “may recover” confer a discretion on the authority to either impose or not to impose any damages. In my opinion, the said decision has no application to the facts of the present case. In the case of **E.S.I. Corporation** *(supra)*, in paragraph 18, the Apex Court referred to Section 85-B, which uses the word “may recover”. It was further observed that the levy of damages therein is by way of penalty. The Legislature limited the jurisdiction of the authority to levy penalty i.e. not exceeding the amount of arrears. It is not the case of the petitioner that the penalty is levied exceeding the amount of arrears. In view thereof, the reliance placed by the petitioner on this decision also does not advance the case of the petitioner.

8. In the case of ***Kamlesh Verma Vs. Mayawati***, **AIR 2013 SC 3301**, the Apex Court has considered the scope of review and has observed thus,

> “The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

9. Applying the tests laid down by the Apex Court to the facts of the present case, no case is made out for reviewing the order. Hence, Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)