

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 5935 OF 2007

Satyawan Bhagwat Deshmukh	... Petitioner
Vs	
1. The Union of India & Ors.	... Respondents

Mr. Surel S. Shah for the Petitioner.

Mr. N.R. Prajapati for the Respondent No.1.

Mr. Suresh Kumar for the Respondent No.2.

Mr. Bhavesh Magam i/ Mr. Sandesh Deshpande for the Respondent No.4.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

THURSDAY, 23RD FEBRUARY, 2017

P.C. :

1 The petitioner seeks a writ of mandamus or any other appropriate writ, order or direction directing the respondents to take note of his representation and proceed to recover the provident fund dues.

2 It is undisputed that the petitioner was an employee of
the Ahilyadevi Mahila Sahakari Kagad Karkhana Limited,

Solapur (for short "the said Karkhana"). The provident fund dues of the employee-petitioner were not paid and the petitioner was corresponding since 29th August, 2002, requesting the authorities under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the authority empowered by the scheme framed thereunder to take steps to recover the money even by coercive means. The fourth respondent to this Writ Petition has been impleaded because that bank had advanced certain loans to the respondent No.3-Karkhana, now in liquidation. Respondent No.4 proceeded against the movable and immovable properties which may have been mortgaged to it for recovery of its dues, but the Bank was informed that a sum of Rs.20,08,702/- along with costs, charges and expenses are due from the Establishment to the Provident Fund Department. This letter of the Provident Fund Commissioner dated 5th January, 2006, has not been pursued nor the amounts have been recovered and paid over to the employees.

3 The only contention raised before us by Mr. Surel Shah is that these dues of the employees ranks higher in priority even over and above the bank dues. The bank may proceed under

the SARFAESI Act or otherwise for selling and disposing of the immovable properties and assets of the defaulting Karkhana in liquidation, but it cannot appropriate or utilise the sums due and payable towards the provident fund dues. He places reliance upon the language of the Act and on a judgment of the Hon'ble Supreme Court in the case of *Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited (2011) 10 SCC 727*. Reliance is also placed on a judgment of the Hon'ble Supreme Court in the case of *Maharashtra State Cooperative Bank Limited vs. Kannad Sahakari Sakhar Karkhana Limited reported in (2014) 14 SCC 456* and a judgment recently delivered in *Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited & Anr.* reported in *AIR 2016 SC 494*.

4 After the matter was heard for some time, Mr. Suresh Kumar appearing for the Provident Fund Commissioner and the Assistant Provident Fund Commissioner accepted the lapse on the part of the said Commissionerate in not acting in terms of its letter dated 5th January, 2006, addressed to the Bank. The authorities have admitted that there was a delay in proceeding to

recover the amounts.

5 On taking instructions, Mr. Suresh Kumar assures the Court that the Assistant Provident Fund Commissioner, Solapur - respondent No.2 to this Writ Petition, would now pursue the directions contained in the letter dated 5th January, 2006, and the claim of the petitioner. He would proceed to recover the amount from the bank or such other entity in accordance with law as expeditiously as possible by issuing a notice within a period of three (3) weeks from today. Thereafter, steps would be taken in accordance with the notice. All the recovery measures would be concluded as expeditiously as possible and within three (3) months from today. Statements accepted as undertakings to the Court.

6 The Writ Petition stands disposed of accordingly. This order is passed in the presence of all the parties, including the Maharashtra State Cooperative Bank - respondent No.4. Mr. Shah states that the Liquidator of respondent No.3 - Karkhana is also served.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.