

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

WRIT PETITION NO. 10046 OF 2017

M/s Boparai's Martial Security Pvt. Ltd. .. Petitioner

Vs.

The Registrar, Central Government Industrial
Tribunal (Mumbai-1), Chembur, Mumbai & Anr. .. Respondents

...

Mr. A.P. Wachasundar for the Petitioner.
Mr. Suresh Kumar for the Respondent No.2.

**CORAM : PRASANNA B. VARALE, J.
DATE : 20 SEPTEMBER, 2017.**

P.C. :

Heard Mr. Wachasunder, learned Counsel for the Petitioner. It may not be necessary to refer to other details in the petition as this Court is proceeding to dispose of the petition granting liberty to the petitioner to approach an Appellate Forum. Suffice it to say that the petitioner is an employer running a security agency. The petitioner was subject to a proceeding before the Assistant Provident Fund Commissioner, Mumbai-2, Thane. The Assistant Provident Fund Commissioner, by order dated 7th July, 2017, directed the petitioner employer establishment to

deposit the outstanding dues to the tune of Rs.4,87,879/-. Being aggrieved by the order, the petitioner filed an appeal before the Central Government Industrial Tribunal, Labour Court-1 under Section 7(1) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. The submission of Mr. Wachasunder, learned Counsel appearing for the Petitioner is that the appeal is presented before the Central Government Industrial Tribunal, Labour Court-1, however, because of non availability of the Presiding Officer, the Central Government Industrial Tribunal, Labour Court-1 is non functional and as such the petitioner is left remediless. Mr. Wachasunder, learned Counsel for the Petitioner then submits that Central Government Industrial Tribunal, Labour Court-2 is another Appellate Forum but the said Forum cannot take up the proceedings on its own unless it is directed by this Court. Mr. Wachasunder, learned Counsel for the Petitioner submits that the petitioner is ready to go before any of the Appellate Forums and seek a decision from the Appellate Forum. For the non functionality of Central Government Industrial Tribunal, Labour Court-1, the petitioner is unable to move forward.

2. Mr. Suresh Kumar, learned Counsel appearing for the Respondent No. 2 is not disputing the aspect of the non-functional Appellate Forum, i.e Central Government Industrial Tribunal, Labour Court-1. Only submission of the learned counsel appearing for the respondent No.2 is that as per the requirement of the provisions the petitioner will have to deposit 75% of the amount due from them as determined by the Officer of Assistant Provident Fund Commissioner, Mumbai-2, Thane referred in Section 7(a) of the Act and this is pre-requisite for entertaining the appeal.

3. Mr. Wachasunder, learned Counsel for the petitioner made an attempt before this Court that in view of the decision of the learned Single Judge of Delhi High Court dated 18th September, 2014, in the case of *Pashok Tea Estate -Vs- Regional Provident Fund Commissioner*, the petitioner cannot be fastened with the liability of depositing 75% of the amount. As this Court is not going to arena at this stage, in view of the provision of Section 7(a) of the Act, wherein the Tribunal can exercise its power for reducing the amount deposited by recording its reason in writing, the petitioner can certainly make a request to the Appellate Forum

either for waiver of the pre-deposit or for reducing the amount. Mr. Wachasunder, learned counsel for the petitioner submits that such an application is submitted alongwith the appeal.

4. In view of this facts, in my opinion, the petition can conveniently be disposed of by permitting the petitioner to present his appeal before the Central Government Industrial Tribunal, Labour Court-I, by directing the Central Government Industrial Tribunal, Labour Court-II to hear the appeal presented by the petitioner before the Central Government Industrial Tribunal Labour Court-I alongwith the application for grant of waiver or for reducing the pre-deposit. If such application is filed, needless to state the same can be disposed of by giving an equal opportunity of hearing to the parties.

5. The petition is disposed of accordingly.

(PRASANNA B. VARALE, J.)

