

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.39/2017

Godavari Urban Coop. Bank Ltd. ... Petitioner

Vs.

Regional Provident Fund Commissioner & Anr. ... Respondents

Mr. Ravindra Lokhande for the petitioner
Mr. Suresh Kumar for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : JANUARY 30, 2017

PC.:

1. Heard. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself as the issue involved is about the restoration of appeal filed by the petitioner before the Employees Provident Fund Appellate Tribunal, New Delhi.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 25.10.2016 passed by the learned Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi, dismissing the petitioner's application for restoration of Appeal (ATA) No.376(9)/2016.

3. The learned counsel for the petitioner submits that on 25.07.2016, the appellate Tribunal dismissed the appeal as none

appeared on behalf of the petitioner. He submits that on that day the Advocate was traveling from Nasik to New Delhi by train and because the train was late, he could not appear before the Tribunal. In support of this, he relies on para 2.5 of the Writ Petition which reads thus:

*“2.5 That the counsel for the petitioner before the Tribunal was originally practicing at Nashik Maharashtra and the counsel was not able to reach the court on the said date of hearing whereas on the date of hearing due to delay in arrival of train he was not reached within time before the Tribunal and accordingly the petitioner's Appeal was dismissed in default on dated 25.07.2016 by the Appellate Tribunal. The true certified copy of the order dated 25.07.2016 passed by this EPFA Tribunal in ATA No.376(9)2016 is marked and marked as **Exhibit-D.**”*

4. The learned counsel for the petitioner submits that thereafter the petitioner filed application for restoration of the appeal. He submits that the said application was listed for hearing on 26.09.2016. On that day, the learned Tribunal adjourned the matter to 18.10.2016 for hearing of the application for restoration as well as the appeal itself on its own merits. He submits that the Advocate who appeared before the Tribunal noted the next date as 18.11.2016 instead of 18.10.2016. In support of this contention he relies on para 2.8 of the petition which read thus:

“That the said restoration application was listed for hearing on dated 26.09.2016 and accordingly the Counsel for the petitioner was present and made submission. However the learned Tribunal shown his willingness to restore the appeal on the ground that matter will be heard finally and therefore the restoration application and appeal was adjourned 18th October 2016 and the parties were directed to file their written submission. But it was mistakenly mentioned in case diary as 18th November 2016 instead of 18th October 2016. Accordingly the matter was listed on 18th October 2016 and on the above said date the counsel for the

petitioner was not appeared as he was not aware that the matter was listed on 18.10.2016 and therefore the application was dismissed in default.”

5. The learned counsel for the petitioner submits that because of mistake on the part of the advocate, the petitioner should not suffer. He submits that by mistake, the Advocate on record noted the date of hearing as 18.11.2016 instead of 18.10.2016 and hence, none appeared before the Tribunal when the matter was called out. He submits that they have good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 26.10.2016 and direct the authority to decide their application for restoration of appeal (ATA) No.376(9)/2016 on its own merits. He submits that if the order dated 26.10.2016 is not set aside, irreparable loss will be caused to the petitioner.

6. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition. He submits that as none appeared for the petitioner on 25.07.2016, the Tribunal dismissed the appeal for default. He submits that thereafter the petitioner filed application for restoration of the said appeal. He submits that when the restoration application was on board for hearing, none remained present on behalf of the petitioner. Hence, the authority has passed the impugned order. He further submits that in the present proceedings the petitioner challenges the order dated 23.08.2011 passed by the Divisional Provident Fund Commissioner-II, Nasik u/s.7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (said Act). He submits that the petitioner has filed the appeal on

24.02.2016. He submits that there was delay on the part of the petitioner to file the appeal by 4 years and 7 months. Hence, the petitioner made prayer in the appeal i.e. prayer clause 10(3) for condonation of 4 years 7 months delay. He submits that as per Rule 7(2) of the Employees Provident Fund Procedure Rules 1977, the limitation for filing the appeal is 60 days. He submits that in any case, there was delay of 4 years 7 months on the part of the petitioner in filing the appeal. Hence, there is no substance in the Writ Petition. Same is liable to be dismissed.

7. Heard. It is to be noted that, on first occasion, when the matter was dismissed for default on 25.07.2016, the Advocate was travelling from Nasik to New Delhi by train. The train was delayed and therefore, none appeared on behalf of the petitioner when the matter was called out. Thereafter they filed the application for restoration of the appeal, which was kept for hearing on 23.09.2016. On that day, the application was adjourned to 18.10.2016 for hearing along with appeal. By mistake, the Advocate appearing for the petitioner noted the next date as 18.11.2016. These facts were stated by the petitioner in petition in para 2.3 and 2.8 as reproduced hereinabove.

8. Considering these facts and because of mistake on the part of the Advocate, a litigant should not suffer and in the interest of justice, following order is passed:

- a. Order dated 26.10.2016 passed by the learned Presiding Officer, Employees Provident Fund Tribunal, New Delhi is set aside.

- b. The Tribunal is directed to decide the petitioner's application for restoration of appeal being (ATA) No.376(9)/2016 on its own merits.
- c. All contentions of both the parties are kept open including the limitation for filing the appeal.
- d. Writ Petition stands disposed of accordingly.

JUDGE