FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13341 OF 2016
WITH
WRIT PETITION NO.13342 OF 2016

Vita Municipal Council, Vita .. Petitioner

vs.

Shri Jaising Joti Kadam and Anr. .. Respondents

Mr.Nikhil Wadikar i/b M/s.Nandu Pawar for the petitioner in both the Writ Petitions

Mr.Umesh Mankapure for the respondent in both the Writ Petitions

CORAM : K. K. TATED, J.
DATE : MARCH 3, 2017

P.C.:

. Heard learned Counsel for the parties.

2 Both the Writ Petitions can be disposed of by common order because the issue involved is identical.

3 Both these petitions are arising out of the judgment passed by appellate authority under Payment of Gratuity Act, 1972 and the Member, Industrial Court, Mumbai at Sangli dismissing the petitioner's application for condonation of delay under section 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”) for filing the Appeal.

4 The learned counsel for the petitioner submits that they filed Appeal within stipulated time i.e. 120 days. The authority dismissed their application for condonation of delay only on the ground that the petitioner failed to deposit the gratuity amount at the time of filing Appeal. He submits that it is not mandatory under section 7 of the said Act either to pay and or to deposit the amount of Gratuity for filing the Appeal. In support of this principal, the learned counsel for the petitioner relied on the judgment in the matter of ***Union Bank of India vs. M/s.Sunpac Corporation and others, AIR 1986 Bom 353***. Paragraph 3 and 4 of the judgment reads thus:

> "3. As per the present practice the plaint is presented to the Prothonotary & Senior Master of this Court who is the officer appointed for the acceptance of the plaint as per O. IX, R.1, of the Civil, P.C. (hereinafter referred to as the Code). Then follows the next stage mentioned in R. 2 of the said Order, namely, the entry of the particulars of the suit in the register of suits and their seriatim numbering according to the order in which the plaints are admitted. O.V.R. 1 then states that it is only when the suit has been duly admitted that the summons is to be issued to the defendant or defendants as the case may be. This is also clear from the provisions of O. VII, R. 9."

> "4. The Code itself therefore envisages two stages - first of the presentation of the plaint and the next of the admission of the plaint. The suit is not admitted to the register of the suits and a number given to it merely on the presentation of the plaint. After the presentation the plaint is scrutinized. If there are any defects in the same, the plaintiff is required to remove them. The removal of defects is a matter or procedure. It is only after the defects are removed that it becomes eligible for an entry and a number in the register of suits. One of the defects can be the absence of leave of the Court to institute the suit where it is necessary including leave under Cl. 12 of the Letters Patent. So long therefore as the plaint is not

> admitted and entered in the register of suits all defects including that of the absence of leave under the said clause can be removed without returning the plaint. There is no question of returning the plaint. There is no question of returning the plaint which is not admitted. It simply remains under objection till it is admitted."

5 In this authority, the High Court held that leave of the court under clause 12 of the Letters Patent can be obtained after presentation of the plaint but before plaint is admitted to the Register. He submits that same principle is applicable in case in hand. He submits that the amount can be deposited after filing the Appeal.

6 The learned counsel for the petitioner also relies on the judgment in the matter of ***Ramgopal Chunilal vs. Ramsarup Baldevdas and others, AIR 1934 BOM 91***. In this authority, the Division Bench of this court held that obtaining of leave under clause 12 of the Letters Patent makes no difference for filing plaint in the court. Same can be obtained after presentation. He submits that same principle can be made applicable in the case in hand. He submits that the appellate authority ought to have granted some time to the petitioner for depositing the gratuity amount. Hence, order passed by appellate authority in both the matters is required to be set aside.

7 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that as per section 7(7) of the said Act, it is mandatory that at the time of filing Appeal they have to deposit the entire amount of Gratuity. He submits that this issue is well settled by our High Court in the matter of ***Pharma Base India Pvt.Ltd. vs. State of Maharashtra and another,***

2007 SCC Online Bom 1015. He relies on paragraph 12, 13, 14 and 15 which reads thus:

> "12. The Legislature by the second proviso to Section 7(7) of the Act has imposed fetter on the right of the appellant to file appeal. It clearly provides a pre-condition of deposit of the amount ordered by the controlling authority to entertain the appeal. In other words, right to appeal under Section 7(7) becomes vested right only when pre-condition of deposit is complied with. The Appellate Authority is not to admit the appeal unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with the authority an amount equal to the amount of gratuity required to be deposited under Section 7(4) or deposit with the Appellate Authority such amount. The second proviso to Section 7(7) leaves no manner of doubt that the Appellate Authority has no discretion to admit/ accept the appeal unless it was preferred with deposit of an amount equal to the amount of gratuity ordered by the controlling authority. The appellant, therefore, must deposit the said amount while preferring an appeal and in any case before expiry of the limitation prescribed under Section 7(7) of the Act Outer limit for such deposit would be the extended period of 60 days, if the appellant satisfies that he was prevented by sufficient cause from preferring the appeal within first 60 days. The pre-condition of the deposit, in my opinion, is mandatory and the Appellate Authority has no power to admit the appeal unless such deposit is made either at the time of preferring the appeal or at the most before expiry of the extended period of 60 days as contemplated by the first proviso to Section 7(7) of the Act."

> "13. Under Sub-section (7) of Section 7 of the Act two stages of the appeal are contemplated; the first being preferring of an appeal and the second being admittance or acceptability of the appeal. The second proviso to Sub-section (7) of Section 7 clearly prohibits admission or acceptance of the appeal unless the appellant produces a certificate of the controlling authority showing requisite deposit under Sub-

section (4) of Section 7 of the Act or deposit of such amount with the Appellate Authority. In the present case the petitioner did not comply with either of the requirements contemplated by the second proviso while preferring an appeal. The amount of gratuity was deposited by the petitioner on 12.3.2007 and in view thereof the Appellate Authority dismissed the appeal on the ground that it was not filed within the time stipulated under Section 7(7) of the Act. The purpose of the second proviso to this section is not only to secure and ensure payment of gratuity payable to the employee, but it is also to see that such employee is actually paid or his payment is secured and ensured immediately after the order of Controlling Authority is passed and is not delayed by the employer by adopting legal proceedings, namely, an appeal. If the employer is allowed to prefer an appeal without deposit, he would do so within 60 days and would keep it pending for along time and then seek permission to deposit the amount as contemplated by the second proviso. If such permission is granted after the extended period of 60 days, as contemplated in the first proviso to Section 7(7) of the Act the very object of this provision would be defeated. The appellant is obliged to either produce a certificate of controlling authority to the effect that the appellant has deposited with him such amount required to be deposited under Sub-section (4) of Section 7 or deposit with the Appellate Authority such amount within 60 days from the date of receipt of the order as contemplated by Sub-section (7) or within the extended period of 60 days as contemplated by the first proviso and if he fails to do so the appeal filed by him cannot be treated as preferred within the meaning of this section. The Appellate Authority, in my opinion, has no jurisdiction to accept the deposit of an amount equal to the amount of gratuity after 120 days as contemplated by Section 7(7) of the Act. The appeal preferred without deposit is not a valid appeal and the period of limitation in such eventuality would not stop to run."

"14. I find support of this view in Sub-section (4) of Section 7 of the Act. Clause (a) of Sub-section (4) of Section 7 provides that if there is any dispute to the amount of gratuity payable the employer is required to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. Clause (b) of Sub-section (4) empowers the employer or employee or any other person raising the dispute to the amount of gratuity to the controlling authority for deciding the dispute. Clause (c) of Sub-section (4) empowers the controlling authority to conduct due enquiry after affording an opportunity of being heard to the parties to determine the matter in dispute and if, as a result of such enquiry any amount is found to be payable to the employee, the controlling authority is empowered to direct the employer to pay such amount or, as case may be, such amount as reduced by the amount already deposited by the employer. Clause (d) of Sub-section (4) provides that the controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. Clause (e) of Sub-section (4) provides that as soon as may be after a deposit is 14 made under Clause (a) the controlling authority shall pay amount of the deposit to the applicant where he is an employee or where the applicant is not employee, to the nominee or as case may be, the guardian of such nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity. From bare perusal of Sub-section (4) it is crystal clear that under any circumstances the payment/deposit of the gratuity amount, whether disputed or not, cannot be postponed for any reason whatsoever. Looking to the statement of object and reasons of the Act and the preamble so also the language employed in Sub-section (4) of Sub-section (7) of Section 7 it is clear that the appellant must deposit an amount of gratuity as ordered by the Controlling Authority while filing an appeal and in any case before expiry of the period of 60 days as contemplated by Sub-section (7) or within the extended period of 60 days as contemplated by the first proviso and if an amount equal to the amount of gratuity is not deposited with the Appellate Authority the appeal is liable to be dismissed on the ground of limitation."

"15. If the appellants are allowed to file an appeal without deposit of the amount, as required under Section 7(7) of the

> Act, and if the appellant is allowed to deposit it even after the extended period of 60 days, the very purpose and the object of the second proviso to Section 7(7) would be defeated. In my opinion, the appeal cannot be treated as preferred within the period of limitation unless the appellant deposits an amount ordered by the Controlling Authority, as contemplated by Section 7(7) of the Act, and in such case the date of deposit only would be treated as the date of preferring an appeal."

8 The learned counsel for the respondent submits that even the Division Bench of this court confirmed the order passed by single Judge in the matter of ***Pharma Base India Pvt.Ltd. vs. State of Maharashtra and another*** (Supra). He relies on the Division Bench judgment in the matter of ***Pharma Base India Pvt.Ltd. vs. State of Maharashtra and Anr, 2009II LLJ 458 Bom***. Paragraph 13 of the Division Bench judgment reads thus:

> "13. Now, we shall consider the petitioner's submission in this regard. So far as the first submission that the Appeal was filed on December 13, 2006 and therefore, it was well within 120 days, is concerned, we find no merit. On December 13, 2006, the appellant has neither produced certificate of controlling authority to the effect that they have deposited with him an amount equal to an amount of gratuity required to be deposited under Section 7(4) nor deposited the said amount with the Appellate Authority. In view of the 2nd proviso or Section 7(7), the petitioner's Appeal cannot be said to have been filed on December 13, 2006, in the absence of production of certificate of controlling authority or deposit of an amount of gratuity. The petitioner deposited the amount for the first time with Appellate Authority on March 12, 2007 and therefore, it is to be presumed that the petitioner filed an Appeal on March 12, 2007 which is beyond the period of 120 days."

9 The learned counsel for the respondent further submits that the

same view taken by single Judge in the matter of ***Changunabai Sambhaji Gaware s. Kapus Visheshadnya and anr. in Writ Petition No.1237 of 2015. High Court of Judicature at Bombay, Bench at Aurangabad, Oral Judgment dated 29.9.2015 and 5.10.2015 (Coram: Ravindra V.Ghuge, J.).***

10 On the basis of these submissions and the authorities, the learned counsel for the respondent submits that there is no substance in both the Writ Petitions and same are required to be dismissed at the stage of admission itself.

11 I have heard both the sides at length. The main contention of the petitioner in both these matters is that it is not mandatory at the time of filing appeals under section 7(7) of the said Act to deposit the entire Gratuity amount. Section 7(7) of the said Act reads thus:

> "7. Determination of the amount of Gratuity.-
> ......(7) Any person aggrieved by an order under sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:
> Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.
> [Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub- section (4), or deposits with the appellate authority such amount.] "

12 Bare reading of section 7(7) makes it very clear that it is mandatory on the part of appellant to deposit entire gratuity amount and to submit the certificate to that effect at the time of filing the Appeal. Otherwise appeal cannot be treated as filed within limitation. Considering the Division Bench Judgment in the matter of ***Pharma Base India Pvt.Ltd. vs. State of Maharashtra and Anr.*** (Supra) and judgment in the matter of ***Changunabai Sambhaji Gaware s. Kapus Visheshadnya and anr.*** (Supra), I am of the opinion that petitioner failed to make out any case to entertain both these petitions.

13 Hence, both the Writ Petitions stand rejected.

JUDGE