IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.18688 of 2014
and
M.P.No.1 of 2014

P.N.Shankar ... Petitioner

Vs.

1.Recovery Officer,
Employees Provident Fund Organisation,
Sub Regional Office,
31, Filter Bed Road, Vellore - 632 001.

2.Regional Provident Fund Commissioner,
Regional Office,
No.37, Royapettah High Road,
Chennai - 14.

3.Assistant Provident Commissioner,
Employees Provident Fund,
Sub Regional Office, Vellore. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in the impugned proceedings dated 20.05.2014 in No.TN/VLR/38629/Recovery/2013 2014 on the file of the first respondent and quash the same and direct the first respondent to revoke the order of attachment dated 22.01.2014 issued against the premises bearing Door No.177, Chinnakadai Veethi, Tiruppathur, the individual property of the petitioner.

For Petitioner .. Mr.S.Sadasharam

For Respondents .. Mr.R.Vishnu for
Mr.G.Ramu

ORDER

This is the second round of litigation initiated by the petitioner after the earlier challenge made to the order dated

22.01.2014, raising the very same plea that he was not the owner of the concern and therefore the property standing in his name cannot be proceeded with.

2.This Court, by order dated 23.04.2014 dismissed the writ petition in W.P.No.11625 of 2014, in the following manner:

> 5.In this writ petition, it is contended by the learned counsel for the petitioner that before passing such determination order under Section 7-A of the Act, no notice was issued and no opportunity was afforded to the petitioner and even, the said order was not communicated to the petitioner. In my considered opinion, these grounds are not at all available for the petitioner to raise in this writ petition. This writ petition is concerned only with the correctness of the attachment order. If the petitioner has got any grievance regarding the determination order, it is for him to work out his remedies elsewhere in the manner known to law and not in this writ petition.
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> 6.Nextly, the learned counsel for the petitioner would submit that the property which is under attachment is the individual property of the writ petitioner which has got nothing to do with the business establishment namely M/s.Sankar Traders. This question is a disputed question of fact which cannot be resolved in this writ petition. Whether M/s.Sankar Traders is a company or it is a proprietary concern owned by the petitioner is also a matter to be gone into elsewhere and not in this writ petition. If the petitioner has got any grievance, it is for the petitioner to work out his remedies in the manner known to law and this writ petition cannot be maintained.
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> 7.In view of the all the above, I find no merit in the writ petition. The writ petition fails and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

3.Thereafter, the petitioner made a representation, once again raising the very same contention, which was rejected by the first respondent through the impugned order on the ground that the statutory returns of ownership indicates the name of the petitioner as a Proprietor of M/s.Sankar Traders, duly signed by him, the information obtained from the Department of Income Tax under Section 138 (1)(b) of the Income Tax Act, 1961 also shows him as a Proprietor and after receipt of the notice, the petitioner sent a communication that he could not attend the enquiry and requested for another date. Thereafter, show cause notice was issued before the assessment under Section 7A of the

Employees Provident Funds and Miscellaneous Provisions Act, 1952, which was also addressed to the petitioner as a Proprietor.

4.Learned counsel appearing for the petitioner reiterates the very same submission that the order passed by the third respondent dated 30.03.2012 cannot be made relatable to him as at the relevant point of time, his father was the Proprietor, who died thereafter. Therefore, the first respondent cannot proceed against the individual property of the petitioner.

5.The contentions sought to be raised cannot be accepted. As rightly submitted by the learned counsel for the respondents, the order dated 30.03.2012 has become final. It was issued to M/s.Sankar Traders. None appears for the enquiry at the time of passing the order. Thereafter, a letter was sent by the petitioner representing M/s.Sankar Traders, which shows that he is the Proprietor. This letter was sent by the petitioner to the third respondent on 27.09.2003. The information obtained by the respondents from the Income Tax Department under Section 138 (1) (b) of the Income Tax Act dated 10.03.2004 also shows the name of the petitioner as a Proprietor of M/s.Sankar Traders. For the said concern, assessment has been made by showing the petitioner as a Proprietor. The matter did not rest there. Form 5-A submitted on behalf of M/s.Sankar Traders dated 31.03.2004 also shows the name of the petitioner as a Proprietor.

6.Learned counsel appearing for the petitioner would submit that there appears to be a case of forging the signature of the petitioner. This Court is afraid that the said contention cannot be accepted. It is not as if the respondents have relied upon one document but three documents. The earlier proceeding has become final. The reasoning adopted by this Court on the earlier occasion would apply to this case also as it is the petitioner, who, now seeks to raise the contention of forgery. The petitioner has also not proved the factum of participating in the enquiry proceedings in the year 2003 and thereafter, sent a letter seeking adjournment. Thus this Court does not find any merit in the writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Recovery Officer,
   Employees Provident Fund Organisation,
   Sub Regional Office,
   31, Filter Bed Road, Vellore - 632 001.

2. The Regional Provident Fund Commissioner,
   Regional Office,
   No.37, Royapettah High Road,
   Chennai - 14.

3. The Assistant Provident Commissioner,
   Employees Provident Fund,
   Sub Regional Office, Vellore.

+1cc to Mr.Sadasharam, Advocate, S.R.No.18045

W.P.No.18688 of 2014

VGN(CO)
RS(04/04/2017)