

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT.JUSTICE T. RAJANI

Writ Appeal No.1041 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent is preferred against the ad-interim order passed by the learned Single Judge in W.P.M.P. No. 24743 of 2017 in W.P. No. 20194 of 2017 dated 21.6.2017. The appellant is the petitioner in the Writ Petition. They invoked the jurisdiction of this Court questioning the order passed by the Assistant Provident Fund Commissioner under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') dated 15.5.2017, and the consequential order passed under Section 8B/8F of the Act on 8.6.2017 in so far as damages under Section 14-B of the Act are concerned. By way of interim relief, they sought suspension of the said orders, and for a direction to the Andhra Bank and State Bank of India not to act upon the consequential order issued by the Assistant Provident Fund Commissioner, pending disposal of the writ petition.

By the order under appeal, the learned Single Judge granted interim stay on payment of 50% of the demanded amount within eight weeks, failing which the ad-interim order was to stand vacated.

Sri V. Hari Haran, learned counsel for the appellant-writ petitioner, would submit, placing reliance on the judgment of the Supreme Court in **Employees State Insurance Corporation vs. HMT Limited**¹, that it is only if the intention to avoid payment is

¹ AIR 2008 SC 1322

established, can damages be levied; and the mere fact that there was a delay in remittance of the employer's contribution towards provident fund, would not confer jurisdiction on the Assistant Commissioner to levy damages without taking note of the objections submitted by the appellant-writ petitioner in this regard.

Sri B. Narasimha Sarma, learned Senior Standing Counsel appearing for the respondents, would submit that, since the appellant had themselves admitted that they have not questioned levy of interest, the order of the learned Single Judge requires the appellant to merely pay 1/5th of the quantum of damages imposed on them; and such an order, more so, one passed under the Act which is a beneficial legislation to protect the interest of employees of undertakings, does not necessitate interference in proceedings under Clause 15 of the Letters Patent.

A perusal of the order in the Writ Petition would show that, as against the total demand of Rs. 1,09,61,721-00, the interest component is Rs. 33,53,639-00, which the appellant-writ petitioner have admittedly not questioned in these writ proceedings and are, admittedly, liable to pay the said amount. The only dispute in the writ petition relates to levy of penal damages of Rs. 76,08,082-00. The order under appeal requires the appellant-writ petitioner to pay approximately Rs.55.00 lakhs which, after adjusting the interest component in excess of Rs.33.5 lakhs, would result in payment of only 17.50 lakhs towards damages, which is just around 1/5th or 20% of the amount demanded towards damages.

The question whether the impugned order is valid or not can only be examined after the respondents file their counter affidavit

in the writ petition. As the interlocutory order under appeal only requires the appellant-writ petitioner to pay in all around Rs.55.00 lakhs, which includes the interest admittedly due and only around 1/5th of the damages levied on them, we are satisfied that the order does not suffer from such an infirmity as to warrant interference. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. The writ appeal fails and is, accordingly, dismissed.

Sri V. Hari Haran, learned counsel for the appellant-writ petitioner, requests further time for payment. In so far as the interest, admittedly due, is concerned, two weeks time is granted from today to the appellant-writ petitioner to pay the said amount. In so far as the balance amount of around Rs.17.50 lakhs is concerned, the appellant-writ petitioner is granted four weeks time from today to comply with the order of the learned Single Judge.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T. RAJANI, J)

27th July, 2017

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