

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 10648 OF 2018

The Thane District Central Co-op. Bank Ltd. ..Petitioner.

V/s.

The Regional PF Commissioner-I

(Exemption) & ors. ..Respondent.

Dr. D.S. Hatle I/b. Mr. Deepak P. Jamsandekar, advocate for petitioner.

Mr. Suresh Kumar a/w. Ms. Priyanka Tiwari, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 1, 2018.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned counsel for the respondent.

2 Rule. Rule returnable forthwith with the consent of the parties.

3 The petitioner herein has presented an appeal before the Central Government Industrial Tribunal-cum-Labour Court No. 1 (for short, CGIT) on 11/7/2018. Alongwith the appeal, the petitioner herein has also filed an application under section 7(O) of the Provident Fund Act. Learned Counsel for the Petitioner submits that since the Presiding Officer was not officiating, the Registrar therein has only given a note of

Talwalkar

having received the appeal on 11/7/2018. But the appeal is not yet registered. Learned Counsel Mr. Suresh Kumar appearing for the respondent submits that he would cooperate with the petitioner and would direct the registrar to register the appeal and the application filed under section 7(O). Learned Counsel for the petitioner submits that there is no compliance with the section 8(b) of the said Act and therefore, an order under section 8(f) could not have been passed by the authorities. Moreover, the entire amount of Rs. 32,91,185/- has been already recovered from the IDBI, from the account of the petitioner.

4 The learned Counsel for the respondent has drawn attention of this court to section 8(F) of the said Act. It is contended that the mandate of section 8(B) has not been followed by the authorities and therefore, the proceedings deserves to be quashed and it shall be held that they have not recovered the amount by following due procedure of law. The mandate of section B need not be followed in view of the provisions under section 8F of the Act which starts with non-obstante clause.

5 It is also submitted that section 8(F) starts with a non-obstante clause and therefore, compliance with section 8(B) would not be a condition precedent for recovery of the amount. In any case, section

7(O) of the said Act reads as follows :

7(O). Deposit of amount due, on filing appeal.–No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy -five per cent of the amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

6 It appears that in the given circumstances, the petitioner has also filed an application under section 7(O) before the authorities.

7 In view of this, the petition deserves to be disposed of with the following directions.

(i) The petitioner shall approach the Registrar, CGIT cum Labour Court No. 2 within 2 weeks from today. The registrar shall register the appeal as well as the application filed under section 7(O) of the Act and place the same for consideration before CGIT-cum-Labour Court No. 2 since the Presiding Officer of CGIT-cum-Labour Court No. 1 is not available.

(ii) The Petitioner shall take up the matter before the CGIT-cum-Labour Court No.2.

(iii) The learned CGIT-Cum-Labour Court No. 2 shall hear the

Talwalkar

matter on merits and after hearing both the parties shall decide the application under section 7(O) under section Employees' Provident Fund on or before 30/10/2018. All contentions are kept open.

- (iv) With these directions, petition stands disposed of.
- (v) The Rule is discharged accordingly.

[SMT. SADHANA S. JADHAV, J.]

Digitally
signed by
Aruna
Sandeep
Talwalkar
Date:
2018.10.06
15:15:13
+0530

Talwalkar