

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13750 OF 2017

M/s. Adip Enterprises

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. Shantanu Chandratre for the petitioner.

Mr. Suresh Kumar for the respondent nos.1 to 3.

CORAM : A.K. MENON, J.

DATED : 20TH FEBRUARY, 2018.

P.C. :

1. By this writ petition, the petitioner seeks to impugn an order dated 29th June, 2015 passed by the Employees' Provident Fund Organization under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
2. Mr. Chandratre, the learned counsel for the petitioner fairly states that two earlier writ petitions had been filed. However, those concerned the aspects of delay in filing the statutory appeal. He further points out that in Writ Petition no.8050 of 2015, on 16th December, 2015 the petitioner's Advocate sought leave to withdraw the writ petition to avail its remedy of the statutory appeal. The writ petition is allowed to be withdrawn.

3. The Court granted protection directing the respondents not to take coercive steps against the petitioner for about 4 weeks to enable to petitioner to file an appeal. However, despite that, the appeal was not filed in time. The application seeking condonation of delay filed before the Employees Provident Fund Appellate Tribunal, New Delhi, vide an order dated 20th Jul7, 2016 was urged on the ground that certified copy of the order of this Court in Writ Petition no.8050 of 2015 was received only on 14th June, 2016. The appeal was admittedly filed beyond time. No further grounds were urged. The application for condonation of delay came to be dismissed on the ground that no reasons have been set out.
4. Against this order dated 20th July, 2016, the petitioners have filed a second Writ Petition bearing no.13725 of 2016. The petition came to be dismissed for default on 18th January, 2017. Later, on the same day, upon mentioning and after considering the submissions, the petition was restored to file by recalling an order passed earlier on the date. Although the petition was restored for hearing on merits, the learned counsel for the petitioner submitted that he has received instructions to withdraw the writ petition with liberty to file appropriate proceedings. In view of the said statement, the writ petition was disposed of as withdrawn with liberty as prayed for.

5. This petition is thereafter filed on 21st July, 2017 more than six months after the second writ petition was withdrawn on instructions of the petitioner. In this writ petition, Mr. Chandratre states that the delay notwithstanding, the petitioner is always entitled to challenge the impugned order on the basis that this Court has power of judicial review and that the aspect of delay need not be gone into. He relied upon a judgment of the Allahabad High Court in the case of *M/s. National Winder through its Managing Director Ravindra Kumar Shah v/s. The Presiding Officer, Employees Provident Fund Appellate Tribunal at New Delhi & others in Civil Misc. Writ Petition no.66766 of 2005* and relied upon the observations in paragraph 14 to the effect that notwithstanding the power of the Tribunal to condone the delay on the ground of limitation, a remedy of judicial review is always available. after the jurisdictional review of the High Court having considered the facts. The first Writ Petition no.8050 of 2015 was withdrawn on express instructions of the petitioner to enable the petitioner to file a statutory appeal and on legal advice. Despite this liberty the petitioner filed an application for condonation of delay before the Appellate Tribunal after about six months citing non-availability of certified copy. The petitioner took advantage of the

delay in receiving the certified copy but it is seen from the order dated 20th July, 2016 passed by the Appellate Tribunal that an application for certified copy was made only on 7th June, 2016. Thus after the order dated 16th December, 2016 the petitioner made no effort to even apply for a certified copy.

6. In the facts of the case, there is no material which justifies the exercise of writ jurisdiction of the Court to interference with the impugned order. Hence, I pass the following order:-
- (i) Writ petition is dismissed.
 - (ii) No orders as to costs.

(A.K. MENON,J.)

wadhwa