

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.No.1547 of 2010 against WP.No. 334/2010
and
M.P.No.1 of 2010

M/s.Foods Fats and Fertilizers Ltd.,
rep. by its Authorised Signatory
T.K.Ravindran ... Appellant/Petitioner

Vs

- 1.The Assistant Provident Fund Commissioner,
Sub Regional Officer, Sri Venni Complex,
No.101, 100 Feet Road, Cholan Nagar,
Olandai Keerapalayam,
Puducherry - 605 004.
- 2.Regional Provident Fund Commissioner,
Regional Office, Chennai.
- 3.M/s.Protchem Industries (India) Ltd.,
F-105, 3rd Street, Behind Valliammal
College, Anna Nagar East,
Chennai - 102.
- 4.M/s.IndusInd Bank,
Nungambakkam, Chennai.

.. Respondents /Respondents

Appeal preferred under Clause XV of Letters Patent against
the order dated 08.06.2010 made in W.P.No.334 of 2010.

W.P.No. 334/2010 : This Writ Petition are filed under Article
226 of the Constitution of India praying to issue a Writ of
mandamus for bearing the first respondent from in any manner
proceeding against the petitioner company or its property in
respect of the provident fund dues to be paid by the third
respondent.

For Appellant .. Mr.Sai Krishnan
for M/s.Sai, Bharath and Ilan

For Respondents.. Ms.V.J.Latha for R1
No appearance for R2 to R4

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the auction purchaser pursuant to the auction conducted under Act 54 of 2002. By the impugned show cause notice, the appellant was asked to give its explanation as to why it should not be treated as the employer of M/s.Protchem Industries (India) Limited, treating it as a defaulter in view of it having become the successful bidder pursuant to the auction held.

2.The learned single Judge was pleased to dismiss the writ petition in view of the alternative remedy available. Challenging the same, the present writ appeal has been filed.

3.Learned counsel appearing for the appellant by placing reliance upon the judgment rendered by this Court and the provision contained under Section 31 (B) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would contend that the said provision has primacy and therefore the appellant being the secured creditor cannot be asked to pay other dues.

4.Learned counsel appearing for the first respondent would submit that as per the judgment of the Apex Court rendered in Employees Provident Fund Commissioner Vs. O.L. of Esskay Pharmaceuticals Limited (2011 (6) CTC 317), Section 11 (2) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, being a beneficial piece of legislation would have primacy over the other enactment and therefore notwithstanding the fact that Section 32 (1) of Act 54 of 2002 being subsequent, the same will have to be followed.

5.We do not propose to go into the abovesaid legal issue at this stage. What is challenged is only a show cause notice. Therefore, the appellant, without exhausting the same, cannot be permitted to rush to this Court. After all, the discretion under Article 226 of The Constitution of India is to be exercised sparingly. Admittedly, there is no lack of jurisdiction involved with the first respondent, who issued the show cause notice. Thus, this writ appeal stands disposed of giving liberty to the appellant to raise all its contentions to the show cause notice within a period of four weeks from the date of receipt of a copy

of this order. On receipt of the same, the respondent concerned shall pass appropriate speaking orders within a period of eight weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

mmi

To

1.The Assistant Provident Fund Commissioner,
Sub Regional Officer, Sri Venni Complex,
No.101, 100 Feet Road, Cholan Nagar,
Olandai Keerapalayam,
Puducherry - 605 004.

2.The Regional Provident Fund Commissioner,
Regional Office, Chennai.

+1cc to Mr.Sai Bharath & Ilan, Advocate SR.No.45517

RJ (CO)
GN (30/07/2018)

W.A.No.1547 of 2010

सत्यमेव जयते

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