

LPA No. 1038 of 2018 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No. 1038 of 2018 (O&M)

Date of decision: 11.7.2018

M/s District Kapurthala Khadi Gram Udyog Karyakarta Sangh

... Appellant

Versus

Employee's Provident Fund Department and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Vivek Salathia, Advocate
for the appellant.

ARUN PALLI, J.

Notice of motion.

Mr. Sanjay Tangri, Advocate, present in Court, accepts notice
on behalf of the respondents. Copies furnished.

The facts that are required to be noticed are limited.

The appellant, i.e. M/s District Kapurthala Khadi Gram Udyog Karyakarta Sangh, is a charitable and philanthropic society, registered under the Societies Registration Act, 1860, as also with the Khadi and Village Industries Commission. For the appellant-employer failed to remit the requisite deposits/funds in terms of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'), the Assistant Provident Fund Commissioner, vide order dated 31.10.2012, in proceedings under Section 7-A of the Act, assessed Rs.19,28,373/- as dues, to be deposited by the appellant-employer.

LPA No. 1038 of 2018 (O&M)

Being aggrieved by the assessment, the appellant preferred an appeal under Section 7-I, along with an application under Section 7-O of the Act before the Employees' Provident Fund Appellate Tribunal, (EPAFT). The provisions of Section 7-O of the Act postulates that no appeal by the employer shall be entertained by a Tribunal unless he deposits 75% of the amount due, as determined under Section 7-A of the Act. Though, a proviso thereto empowers the Tribunal, for reasons to be recorded, to waive or reduce the amount required to be deposited in terms of the said provision. The Tribunal allowed the application under Section 7-O of the Act, and the condition of pre-deposit of 75% of the amount due was reduced to 50%, subject, however, to the appellant depositing 50% of the determined amount within a specified time. Accordingly, the appeal was admitted for consideration, and operation of the impugned order, dated 31.10.2012, was stayed. However, the appellant assailed the order dated 9.1.2014, rendered by the Tribunal, vide CWP No. 4180 of 2014. Records show that while issuing notice of motion on 3.4.2014, the learned Single Judge had stayed the recovery against the appellant. And, now as vide impugned order and judgment, dated 1.5.2018, the said writ petition has since been dismissed, the appellant is before us in an intra-court appeal, under Clause X of the Letters Patent.

We have heard learned counsel for the parties and perused the records.

In brief, the case of the appellant has been that it is a charitable and philanthropic institution, and has since been running on no profit no loss basis, with special focus on the alleviation of rural poverty and generation of employment opportunities to the small farmers, rural artisans

LPA No. 1038 of 2018 (O&M)

and agricultural labourers. The appellant has been in a financial crunch, which is why even the learned Single Judge, on a consideration of its bank accounts (pass book) had granted interim stay on 3.4.2014, which remained operative till the decision of the writ petition. In fact, it would be apposite to refer to the operative part of the order dated 3.4.2014, which reads thus:-

“In the meantime, no recovery will be made against the petitioner pending final adjudication by the Appellate Authority at New Delhi.”

Ex facie, the purport and intent of the order, referred to above, was that no recovery shall be caused till the final decision of the appeal, pending before the Tribunal. Though the aforesaid writ petition remained pending for over four years, but still the appeal preferred by the appellant could not be decided. For, initially the Presiding Officer of the Tribunal at New Delhi, retired, and thereafter, the Tribunal itself was closed and its powers were re-assigned to the Central Government Industrial Tribunal. As a result, the petition filed by the petitioner got decided before any decision could be reached in the appeal by the Tribunal. Be that as it may, the case set out by the appellant; that owing to its poor financial condition or for want of requisite funds, it is unable to deposit even 50% of the determined amount, is not controverted by the respondents. Nothing is brought on record to show that the appellant is, indeed, in a position to make good the condition of pre-deposit. Concededly, the appeal filed by the appellant is pending before the Tribunal for the past over four years, and if, at this stage, it is dismissed for non compliance of the condition of pre-deposit, it shall suffer an irreparable loss. Apparently, the position, as sketched out above, was not factored in by the learned Single Judge, while dismissing the writ petition. Thus, in the given situation and on a thoughtful consideration of

LPA No. 1038 of 2018 (O&M)

the matter, we are persuaded to interfere with the discretion exercised by the Tribunal. Accordingly, to balance the equities, the amount required to be deposited in terms of Section 7-O of the Act is reduced from 50% to 25%. Accordingly, the impugned order and judgment, dated 1.5.2018, is set aside. The order dated 9.1.2014, rendered by the Tribunal, is modified in the above terms. The appellant shall deposit 25% of the determined amount with the Tribunal within a period of four weeks from today, upon which the appeal filed by the appellant shall be decided on merits. And, in the meanwhile, till the requisite amount, as indicated above, is deposited, the respondent authorities shall not cause any recovery or resort to any coercive measures. Needless to assert that in the event of default, the said protection shall cease to operate automatically.

Accordingly, the appeal is disposed of, in the above terms.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 11, 2018
AK Sharma

Whether speaking / reasoned:
Whether Reportable:

YES