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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9180 OF 2016

M/s. Supreme Cranes Pvt. Ltd. .. Petitioner
Vs.
Assistant Provident Fund Commissioner
(Employees Provident Fund Organization)
& Anr. .. Respondents

Mr. Santosh S. Mishra i/b. Kochhar & Co. for the petitioner.
Mr. Suresh Kumar a/w Ms. Priyanka Tiwari for respondents.

CORAM : A.K. MENON, J.
DATED : 15TH JANUARY, 2019.

P.C. :

1. By this petition, the petitioner has assailed order dated 18th March, 2016 passed by the Employees Provident Fund Appellate Tribunal whereby the appeal filed by the petitioner came to be rejected. The challenge before the appellate tribunal was in respect of an order dated 5th November, 2014 passed by the Assistant Provident Fund Commissioner under Section 14B and 7Q of the Employees Provident Fund & Misc. Provisions Act, 1952 (the Act).
2. The only challenge before the appellate tribunal was that due to its poor financial condition as reflected in the balance sheet and profit and loss account of the petitioner, the dues could not be remitted and that it was not intentional or deliberate. In the appeal, the petitioner

sought waiver of damages.

3. Having considered the submissions, the appellate tribunal has recorded that the liability could not be avoided on the basis of financial difficulty. However, today it is being argued on the basis that there is some error in the computation and the difference has not been taken into account. In paragraph 6 of the order, the appellate tribunal records that no erroneous element has been pointed out in the calculations either. The tribunal further records that the petitioner-appellant has taken evasive and contradictory stands. This conduct has been observed by the tribunal as one which is evasive. The learned tribunal observed that the financial difficulty is not a sufficient ground to avoid its liability under the Act.

4. The learned counsel for the petitioner also relied upon the judgment of Supreme Court in the case of *Assistant Provident Fund Commissioner v/s. Management of RSL Textiles India Pvt. Ltd.* in which the Supreme Court had found merit in the submission of petitioner that the High Court in that case had not considered the decision of the Supreme Court in Mcleod Russel India Limited v/s. Regional Provident Fund Commissioner holding that the presence or absence of mens rea and/or actus reus would be a determinative factor while imposing damages under Section 14B and that issue has been arise in the proceedings before the tribunal. Mr. Suresh Kumar however relied

upon the decision of *Hindustan Times Ltd. v/s. Union of India (1998) 2 SCC 242,* in which the Supreme Court has held that an authority acting under Section 14B is required to apply its mind to the facts of the case after giving reasonable opportunity to the other side to be heard and consider the frequency of the default and the amounts involved in further default on the part of the employer based on financial problems indebtedness, cannot be justifiable ground to escape liability.

5. Having considered the reasons in the impugned order and the submissions of the counsel, clearly there is no merit in the petitioner's contention that there were calculations errors. The order impugned is neither perverse nor illegal. I do not find any reason to interfere in this writ jurisdiction of this Court. In the circumstances, I pass the following order;

(I) Writ petition is dismissed,

(ii) No orders as to costs.

(A.K.MENON,J.)

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