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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7747 OF 2012

The Mumbai District Central Co-operative Bank Ltd and others .....Petitioners

V/s.

The Hon'ble Assist P.F. Commissioner R.O. Mumbai-II and others .....Respondents

Mr. S. A. Pawar i/b Ms. Sheetal S. Kadam for petitioner
Mr. Suresh Kumar a/w Ms. Priyanka Tiwari, Smita Thakur, Mohinee Chaugule, Sumandevi Yadav for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 24, 2019.

P.C.

Heard respective parties.

2 After the principal liability was satisfied by the petitioner under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('the Act' for short), petitioners are served with a demand notice for interest and damages pursuant to the provisions of

Section 7Q and 14B of the Act which the subject matter of challenge.

3 The submissions are, petitioner being not a principal employer, is not an employer within the meaning of the Act, the liability cannot be fastened against the petitioner.

4 *Per contra* the learned counsel for respondent while inviting attention of this Court to the Division Bench Judgment of this Court in **SICOM Limited V/s. Union of India and others** in **Writ Petition No. 156 of 2008** would urge that respondent-P. F. Authority has first charge over the property which was mortgaged and that being so, it has every authority under the Act to recover the interest and damages from the petitioner-purchaser.

5 He would rely upon the aforesaid Judgment so as to claim that pursuant to provisions of Section 11 of the Act, notice of demand issued on 04/03/2011 impugned in the petition is justifiable.

6 Considered rival submissions.

7 Having appreciated the arguments in the backdrop of Division Bench Judgment in the matter of **SICOM Limited** (cited supra) the Division Bench has made following observations in paragraph 8 which reads thus:

> *"8. Considering the law as declared in Ram Kinkar (supra) and Narandas Karsondas (supra) it would be clear that the expression "transfer" in Section 58 (e) of the Transfer of Property Act is not conveyance. The mortgagor con tinues to have an interest in the property and it is not merely a right of redemption as was sought to be contended on behalf of the petitioners. Once an English mortage does not create a conveyance in favour of the mortgagee then considering Section 11 (2) of the EPF Act there will be a first charge on the said property to the exclusion of all other creditors including secured. The law thus would be that the claim irrespective of the provisions of mortgage under the Transfer of Property Act or a sale under the provisions of the State Financial Corporation Act".*

8 In the wake of above, what can be noticed is, petitioner having already satisfied the statutory dues on earlier occasion has admitted the fact that property was mortgaged and as such satisfied the said statutory dues.

9 In the wake of aforesaid conduct of the petitioner of not raising the challenge to the initial satisfaction of statutory dues as demanded by the respondent and having regard to observations referred supra in para 8 of the **SICOM Limited** (cited supra), in my view, the issue is squarely covered against the petitioner.

10 As such, petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]