IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.992 OF 2018

Mangal Keshav Securities Limited ... Petitioner
versus
Assistant Provident Fund Commissioner ... Respondent

Mr. Piyush Raheja I/by Mr. Santosh D. Thakur, for Petitioner.
Mr. Ravi S. Rattesar, for Respondent

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 13th JUNE, 2019

P.C.:

1. The Petitioner has challenged the unilateral action of the Respondent – Assistant Provident Fund Commissioner, of recovery of sum of Rs.22,23,281/- by withdrawing directly from the Petitioner's Bank account.

2. In the facts of the case, we have heard the counsel for the parties for final disposal of the Petition.

3. Brief facts are as under :

The Petitioner is a limited company and its establishment is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act" for short). The Respondent issued summons dated 8th April, 2014 with respect to the Petitioner's deposit of provident fund dues of the employees for the period during October 2008 to October 2011. The Petitioner responded to such notice and appeared before the said authority. It is not necessary to go into the details of the proceedings before the said authority in connection with the said notice. Suffice it to record, the said authority passed an order on 7th April, 2016 holding that the Petitioner was late in depositing some of the provident fund dues, both the employer as well as employee's contribution. He therefore, raised a demand of said sum of Rs.22,23,281/-.

4. The said order passed by the competent authority is appealable before the Provident Fund Tribunal under Section 7I of the Act. The period of limitation prescribed for filing such appeal is 60 days. Long before this period of limitation was over, the Respondent on 18th April, 2016 withdraw the entire amount of Rs.22,23,281 from the Petitioner's bank account maintained with HDFC Bank. This Provident Fund Commissioner did by directly corresponding with the bank.

5. The Petitioner filed an Appeal against the order of the Respondent before the Tribunal on or around 12th May, 2016, thus within a period of limitation prescribed. The Petitioner also prayed for stay of the impugned order. The Tribunal passed an order on 17th May, 2016 which reads as under :

> *"Case file put up today at camp court Mumbai on the request on behalf of appellant. Present appeal filed by appellant under section 7-1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter shall be referred as 'the Act') against the order dated 07-04-2016 (in short 'impugned order') passed by the Respondent u/s 14-B & 7-*

Q of the Act. At this stage, counsel for appellant requested for stay of operation of impugned order on the ground that statutory dues with regard to fixed salary was paid and revised salary was approved by competent authority thereafter arrears of wages were paid within time so there is no delay in payment of statutory dues.

Considering the contents of impugned order and facts that present case pertains to revision of wages/allowances and manner of assessment of damages and interest, operation of impugned order stayed till further order. Now come upon 20-09-2016 for filing counter reply on behalf of Respondent before EPFAT, Delhi."

3. The grievance of the Petitioner is that the Respondent executed its order in hot haste. Respondent did not wait for completion of the period of limitation, nor communicated to the Petitioner his intention of withdrawing the decreetal amount from the Petitioner's bank account.

3. Learned Counsel for the Respondent raised principally two contentions. Firstly, according to him, Respondent had power to make recovery and secondly, in any case, the Petitioner could have requested the Tribunal for refund, which it had not done.

4. The facts of the case are rather glaring. Respondent had passed an order raising provident fund demand from the Petitioner on 7th April, 2016. Within just over a week thereafter, Respondent recovered the entire amount from the Petitioner's bank account through garnisee order. Respondent did not give notice to the Petitioner to

pay up such amount within reasonable time. Respondent did not give advance notice to the Petitioner communicating his intention to cause such recovery. Respondent did not even wait for limitation period to be over.

5. We do not dispute that Respondent has the power to make coercive recovery of unpaid provident fund dues. However, no such recovery can be made in such high handed fashion. When the Statute provides for a period of limitation to an aggrieved party, the Respondent cannot make such Appeal negatory by implementing its own order within shortest possible time by directly and unilaterally making recovery from the Petitioner's bank account. Firstly, no extra ordinary circumstances are pointed out to us to enable the Respondent to do so. Secondly, such strong and extra ordinary powers of garnishee recovery must be exercised with due care and caution. Unless and until it is pointed out that but for such action, Petitioner would have diverted its fund lying in the bank account to frustrate recovery of the bank amount, such powers in any case could not have been exercised within a span of 11 days. Looked from any angle, the action of the Respondent is high handed, arbitrary and unreasonable.

6. As noted, subsequently when the Petitioner filed Appeal before the Tribunal, the Tribunal found prima facie merit in such appeal. The Tribunal was persuaded to stay the order of the competent authority. Before the Tribunal, petitioner pointed out that there is no delay in depositing provident fund dues. A portion of pay of the employers was approved by the authority later. As soon as the

same was cleared, the Petitioner had deposited provident fund dues within the statutory period. This contention of the Petitioner has found prima facie favour with the Tribunal. The Tribunal has therefore, granted stay against the impugned order. The Tribunal's order has been frustrated by the arbitrary action of the Respondent. Under the circumstances, action of the Respondent in recovering amount of Rs.22,23,281/- from Petitioner's bank account is declared as illegal. Respondent shall refund such sum latest by 25th June, 2019.

7. Before closing, we would like to observe that when the Tribunal passed its order on 17th May, 2016, the factual position was different from what it would now prevail on account of this order. It would be therefore, open for the Respondent to approach the Tribunal and request for appropriate deposit or security from the Petitioner. The Tribunal would decide such application in accordance with law unmindful of the observations made in this order. If the Tribunal imposes any condition, the Petitioner shall, subject to the right to challenge, would comply with such condition.

8. The Writ Petition is disposed of.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**