IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23538 of 2012
and
M.P.Nos.1 and 2 of 2012

M/s. Relmer Electric Co.,
represented by its Managing Director
P.S.Muthuvelappan
5/2, Beach Road,
Penta Vista Apartment,
Kalashetra Colony,
Besant Nagar,
Chennai - 600 090 ... Petitioner

vs.

1. The Authorised Officer,
Office of the Employees Provident
Fund Organisation,
No.37, R.H.Road,
Chennai - 600 014.

2. The Recovery Officer,
Office of the Employees Provident
Fund Organisation,
No.37, R.H.Road,
Chennai - 600 014. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified mandamus to call for the records of the second respondent in his proceedings in EPF.C.P.25 Ref.No.CHN/RECY/TN/308/REGL/2012 dated 23.08.2012 and quash the same further direct the second respondent to raise the order of attachment vide EPF.C.P.2 Ref.No.CHN/RECY/TN/308/REGL/2012 dt.23.08.2012.

For Petitioner : Ms.C.P.Priya
for B.Raveendran

For Respondents : T.V.Sundaram for R1 and R2

O R D E R

This Writ Petition is filed challenging the notice dated 23.08.2012 to show cause as to why a warrant of arrest should not be issued against the petitioner and also a warrant of attachment dated 23.08.2012 issued on the movable property of the petitioner.

2. Heard the learned counsel for the petitioner Ms.C.P.Priya and the learned counsel appearing for the respondents.

3. The petitioner was engaged in the manufacture of transformers and registered under the Provident Fund Act. According to the petitioner, they closed down the business in October, 2002, due to non-available of orders in the manufacture of transformers. Thus, it is contended that the petitioner was not able to remit its Provident Fund regularly and however, subsequently, settled the entire Provident Fund amount due to the first respondent, also with a request to cancel the Provident Fund Registration at the earliest. It is the further case of the petitioner that the first respondent, without cancelling the registration, directed the petitioner to file NIL returns. It is further stated that periodically, communications were sent to the respondents for cancelling the registration and however, without complying with the request made by the petitioner, the impugned proceedings were issued.

4. Learned counsel for the petitioner submitted that there are no arrears payable by the petitioner towards the Provident Fund contribution and therefore, the second respondent is not justified in issuing the impugned proceedings, that too, without hearing the petitioner. She further submitted that both show cause notice as well as the warrant of attachment of movable property, were issued on the same day, thereby denying the reasonable opportunity of the petitioner to dispute the claim.

5. Learned counsel for the respondents, on the other hand, contended that the impugned proceedings were issued only because the petitioner is in arrears of the Provident Fund contribution along with interest payable thereon for the disputed period.

6. Upon hearing both sides and perusing the materials placed before this Court, it is seen that the challenge made in this Writ Petition is against two proceedings, out of which, one is the show cause notice, to show cause as to why the warrant of arrest should not be issued against the petitioner. The other impugned proceedings is the warrant of attachment of movable property. It is not in dispute that both the proceedings were issued on one and the same day. As it is contended by the petitioner that they are not in arrears and consequently, they are not liable to pay any interest, this Court is of the view that the liability of the petitioner towards the Provident Fund

Contribution arrears is to be determined first by the authority concerned after hearing the petitioner. It is seen that the petitioner approached this Court and filed the present writ petition without filing the objections to the show cause notice impugned in this writ petition. Therefore, this Court is of the view that it is better for the petitioner to approach the second respondent and give their explanation/ objection to the impugned proceedings so as to enable the second respondent to finally decide as to whether the petitioner is in arrears of any Provident Fund contribution and consequently, whether they are liable to pay interest thereon.

7. Since it is stated by the learned counsel for the respondents that the disputed claim works out only a sum of Rs.80,100/- with further interest, this Court is of the view that the impugned attachment of the movable property, that too, issued on the very same day of the show cause notice need not be continued and however, by directing the petitioner to protect the interest of the respondents in the following manner.

8. Accordingly, this Writ Petition is disposed of as follows:

(a) The impugned attachment dated 23.08.2012 of movable property is set aside and consequently, the petitioner is directed to furnish a personal bond for a sum of Rs.80,100/- to the second respondent within a period of two weeks from the date of receipt of a copy of this order along with objection/explanation to the impugned show cause notice dated 23.08.2012.

(b) On receipt of such explanation/objection along with personal bond as directed supra, the second respondent shall give an opportunity of personal hearing to the petitioner and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Authorised Officer,
   Office of the Employees Provident
   Fund Organisation,
   No.37, R.H.Road,
   Chennai - 600 014.

2. The Recovery Officer,
   Office of the Employees Provident
   Fund Organisation,
   No.37, R.H.Road,
   Chennai - 600 014.

+1cc to B.Raveendran, Advocate sr.101819
++2cc to M/s.T.R.Sundaram, Advocate sr.101784

W.P.No.23538 of 2012

cp(co)
nr 20/01/2020