

Comp.A.No.254 of 2019
in C.P.No.35 of 2001

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed by the Assistant Provident Fund Commissioner to set aside the order dated 05.03.2019 passed by the Official Liquidator in claim No.1/35/2001/claims/AR III and to direct the Official Liquidator to pay the applicant full Provident Fund dues amounting to Rs.46,06,859.70/- as per the claim dated 28.01.2019 on priority over all other dues.

2. I heard the learned counsel for the applicant and the Deputy Official Liquidator.

3. The learned counsel for the applicant submitted that the re-adjudication order dated 05.03.2019, whereby the claim was allowed only to the extent of Rs.9,76,867/- is contrary to the provisions of the Employees Provident Funds and Miscellaneous Provisions Act 1952 r/w relevant provisions of the Companies Act 1956.

4. In this regard, she relied upon the judgment of the Hon'ble Supreme Court in Employees Provident Fund Commissioner Vs. Official Liquidator of

Esskay Pharmaceuticals Limited (2011) 10 SCC 727 and in particular paragraph 18 thereof, wherein, the Hon'ble Supreme Court held that statutory priority is given to amounts payable to employees over other debts as per Section 11 of the EPF Act and that this includes damages recoverable under Section 14(b). Therefore, she submitted that the impugned order cannot be sustained.

5. In response, the Deputy Official Liquidator submitted that he is willing to re adjudicate the matter. He further submitted that the earlier re-adjudication was not preceded by an order of this Court and, therefore, re-adjudication may be ordered by this Court.

4. Keeping in mind the above facts of the case, the order of adjudication dated 05.03.2019 in claim No.1/35/2001/claims/AR III is hereby set aside and the Official Liquidator is directed to re-adjudicate the claim in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

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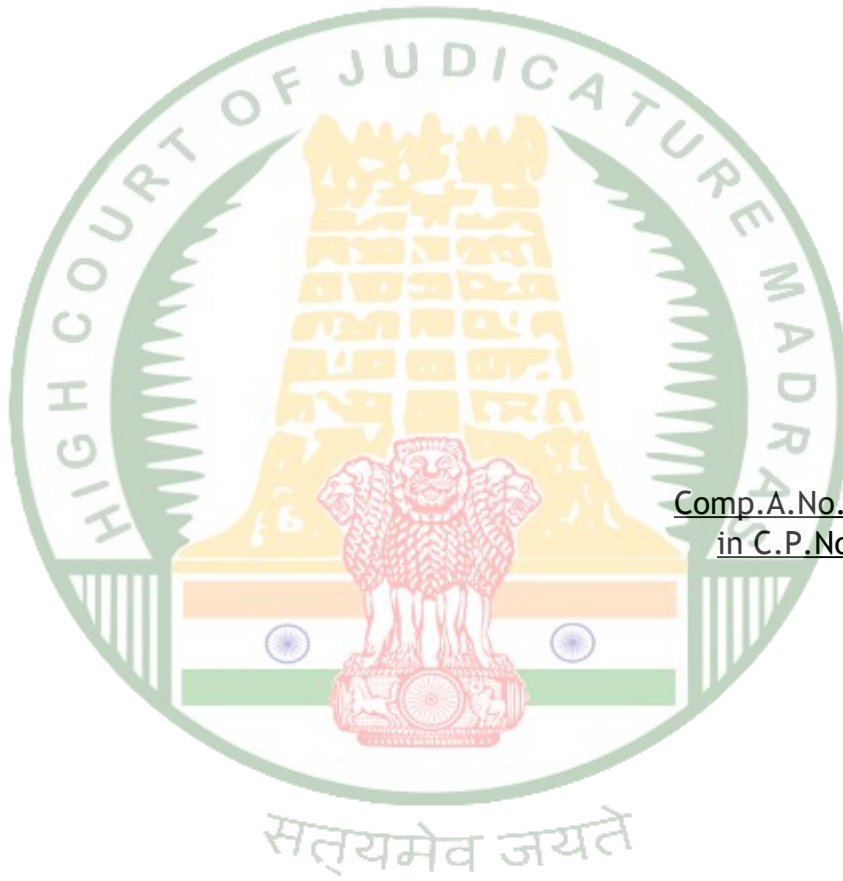
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Comp.A.No.254 of 2019

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