

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.05.2019

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P. No. 14208 of 2019

and

W.M.P. Nos.14262 & 14263 of 2019

Jay Hotels & Resorts

Rep. By its Partner

NEETA S.BAJAI

W/o. Sanjay M. VBajai

No.150, Cisons Complex,

5<sup>th</sup> Floor, Montieth Road,

Egmore, Chennai - 600 008

.... Petitioner

Vs.

1.The Regional Provident Fund Commissioner

Employment Provident Fund Office

Regional Office

No.37, Royapettah High Road,

Chennai - 600 014.

2.The Assistant Provident Fund Commissioner

Employment Provident Fund Office

Regional Office

No.37, Royapettah High Road,

Chennai - 600 014.

3.The Recovery Officer,

Regional Office

No.37, Royapettah High Road,

Chennai - 600 014.

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating the impugned order passed by the 2<sup>nd</sup> respondent vide No. CHN-1/DIV (28)/TN/54284/ENF/REG/2018-19, dated 28.02.2019 and quash the same as illegal and consequently direct the 2<sup>nd</sup> respondent to grant sufficient opportunity to the petitioner to participate in the enquiry.

For Petitioner : Mr.M.Venkadeshnan

For Respondents : Mr.T.R.Sundaram

#### ORDER

This writ petition has been filed praying for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent vide No. CHN-1/DIV(28)/TN/54284/ENF/REG/2018-19, to quash the same as illegal and consequently direct the 2<sup>nd</sup> respondent to grant sufficient opportunity to the petitioner to participate in the enquiry.

2. It is represented by the learned counsel for the petitioner that the petitioner firm suffered an order of the Employees' Provident Fund Organisation, Chennai under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), dated 28.02.2019, wherein the liability has been fastened to the extent of Rs.28,11,487/-.

3. He further submitted that the petitioner has got time to file an appeal till 20.05.2019 and that the authorities are taking coercive steps to attach the property. It is further submitted that the Presiding Officer of the Industrial Tribunal, who is the appellate authority, has gone on leave and they are unable to present the appeal before the authority. He added that a waiver petition is also going to be filed seeking waiver of the deposit as contemplated under the provisions of the Act.

4. Mr.T.R.Sundaram, learned counsel appearing for the respondents would submit that even though the petitioner has got right to file an appeal, as on date, the appeal has not been filed and in any event without pre-deposit of 75% as contemplated under the Act, the appeal cannot be entertained. Since the petitioner is going to file an appeal, they may be directed to deposit 75% of the amount as contemplated under the Act, to avoid any action being initiated by the respondents.

5. Heard the learned counsel for both the parties.

6. It is not in dispute that the petitioner has suffered order dated 28.02.2019 under Section 7A of the Act, directing the petitioner to pay the amount. It is also not in dispute that the petitioner has got time to prefer the appeal till 20.05.2019.

7. In view of the judgment of this Court in Pyramid Saimira Theatre Ltd v. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and others reported in (2009) IV LLJ 893 till the appeal time is over no coercive steps can be taken.

8. Admittedly, the Tribunal is on leave. Without any pre-deposit being made, an appeal cannot be entertained. Unless pre-deposit is made, no interim order can be passed. That apart, the writ petition has to be dismissed on the ground of alternative remedy. At this stage, the petitioner submits that he will pay 30% of the amount as liability. According to the petitioner, only Rs. 4 lakhs is due but huge amount of Rs. 28,11,487/- has been fastened as liability.

9. Taking note of the submission that the petitioner needs to pay 75% of the amount as per the Act, this Court directs the petitioner to pay 40% of the amount determined under the order dated 28.02.2019 before the expiry of the appeal period and thereafter the Central Industrial Tribunal is directed to adjudicate the matter on merits without insisting of any further deposit. If the petitioner defaults in payment, as directed above, the authorities are at liberty to take coercive steps, including attachment of the personal property of the partners of the petitioner firm as well as the properties of the petitioner firm.

In view of the above, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar/Vacation Officer

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

msv/ssm

To

1.The Regional Provident Fund Commissioner  
Employment Provident Fund Office  
Regional Office  
No.37, Royapettah High Road,  
Chennai - 600 014.

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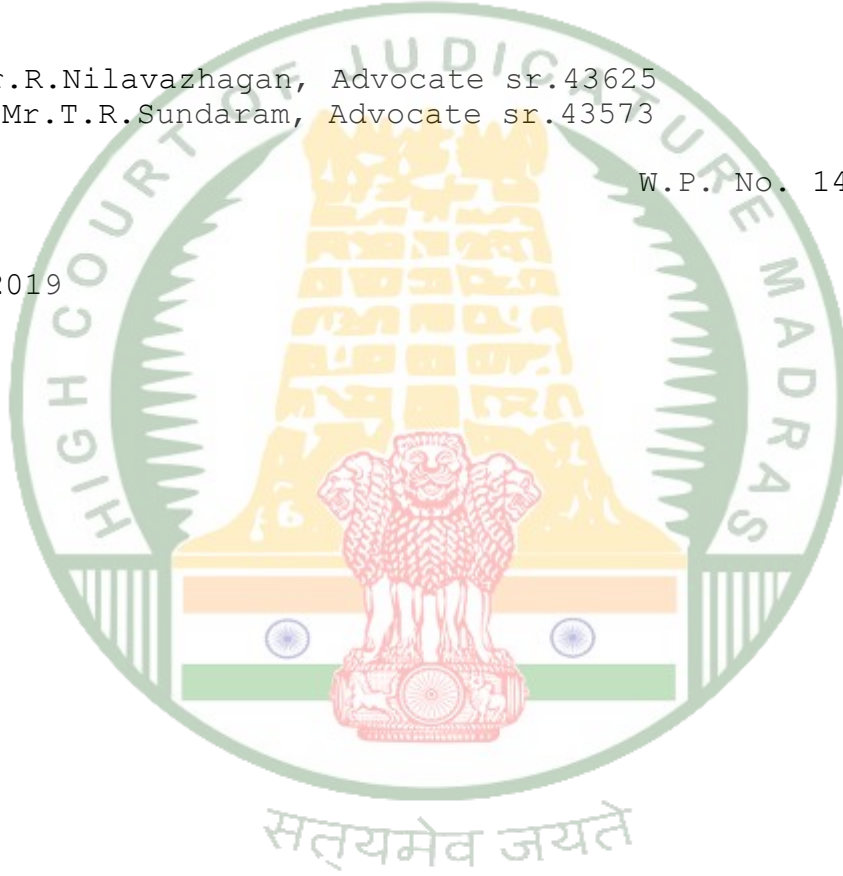
2.The Assistant Provident Fund Commissioner  
Employment Provident Fund Office  
Regional Office  
No.37, Royapettah High Road,  
Chennai - 600 014.

3.The Recovery Officer,  
Regional Office  
No.37, Royapettah High Road,  
Chennai - 600 014.

+1cc to Mr.R.Nilavazhagan, Advocate sr.43625  
+2cc to Mr.T.R.Sundaram, Advocate sr.43573

W.P.No. 14208 of 2019

mp(co)  
nr 17/05/2019



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