



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE **ABDUL QUDDHOSE**

W.P. (MD) No. 2645 of 2011

and

M.P (MD) No. 1 of 2011

Sri Laxmi Spinner (P) Limited,
Rep. By its Managing Director,
Madurai Road, Virudhunagar.

: Petitioner

Vs.

1. The Regional Provident Fund Commissioner -II,
Employees Provident Fund Organization,
No.1, Lady Doak College Road,
Madurai - 625 002.

2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, No.1, Lady Doak College Road,
Madurai - 625 002.

3. The Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
No.1, Lady Doak College Road,
Madurai - 625 002.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for records pertaining to the impugned order of attachment passed by the 3rd respondent in Ref.No.TN/MD/M7/5928/RO/2011, dated 21.02.2011 and quash the same.

For Petitioner : Mr.M.Saravanan
For Respondents : Mr.V.S.G.Venkateshwaran

ORDER

The instant Writ Petition has been filed challenging the order of attachment passed by the 3rd respondent in Ref.No.TN/MD/M7/5928/RO/2011, dated 21.02.2011.

<https://hcservices.ecourts.gov.in/cases/> According to the petitioner, their mill became sick from the year 2000 to 2006 and the records relating to the E.P.F. Contribution for the period from the year 1997 to 2000 were not



available with him. According to them, the electric power supply to the mill was also disconnected and therefore, the previous management of the mill could not remit the Provident Fund contribution. But according to the petitioner, subsequently, the contribution amount with interest were remitted by the petitioner without any arrears. Thereafter, the petitioner mill was sold to the present management during September 2008. According to the petitioner, the delay in remitting the contribution amount was due to genuine causes over which the petitioner mill had no control. But, the 1st respondent herein, without considering the reasons for the delay, mechanically levied damages of Rs.39,41,447/- on the petitioner under Section 14 B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.(herein after referred to as 'the EPF & MP Act'). As against the order passed by the 1st respondent under Section 14 B of the EPF & MP Act, the petitioner preferred an appeal before the Employees Provident Fund Appellate Tribunal. The said Tribunal by its order dated 08.09.2009, partly allowed the appeal by setting aside the order passed by the 1st respondent herein imposing damages of Rs.39,41,447/- and directed that 5% of the contribution amount should be collected from the petitioner mill as damages.

3.It is the case of the petitioner mill that they have paid the entire provident fund amount due along with interest to the 1st respondent, who in turn settled the provident fund accounts of their workers without causing any hardship to them. According to them only due to financial crisis, the provident fund contributions were not paid on time by the petitioner mill. It is also submitted by the petitioner that the 2nd respondent challenged the order, dated 08.09.2009, passed by the Appellate Tribunal, belatedly allowing the appeal filed by the petitioner, in W.P.(MD)No.9231 to 9237 of 2010, before this Court. According to the petitioner by order dated 20.07.2010, in M.P.(MD)No.2 of 2010, this Court has granted an order of interim stay of the order passed by the Appellate Tribunal. According to the petitioner, the original order dated 04.04.2007, passed by the 1st respondent is merged with the order passed by the Appellate Tribunal in the statutory appeal. Therefore, according to the petitioner, the question of staying the order passed by the Tribunal does not arise. Therefore, according to them they filed M.P (MD)No.3 of 2010, to vacate the interim stay. It is the case of the petitioner that at this juncture, they were shocked to receive the order of attachment passed by the 3rd respondent in Ref.No.TN/MD/M7/5928/RO/2011, dated 21.02.2011, attaching their property based on the order dated 04.04.2007, passed by the 1st respondent, which was set aside by the Appellate Tribunal by its order dated 08.09.2009. According to the petitioner, the attachment order dated 21.02.2011, passed by the 3rd respondent is without jurisdiction and has been passed violating the principles of natural justice. In such circumstances, the Writ Petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Heard Mr.M.Saravana, learned counsel for the petitioner and Mr.V.S.G.Venkateshwaran, learned counsel for the respondents.



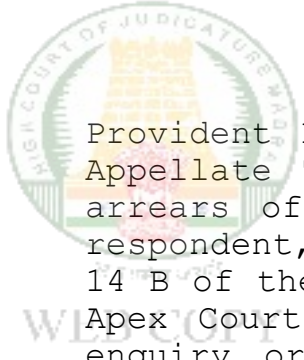
5. According to the learned counsel for the petitioner, the 3rd respondent cannot attach the property based on the order dated 04.04.2007, which was set aside by the Appellate Tribunal on 08.09.2009, in a statutory appeal. According to him, only due to financial crisis, the petitioner did not pay the provident fund contributions on time. Though it was paid subsequently along with interest, according to the learned counsel for the petitioner, there is no *mens rea* for non payment of provident fund contributions, which is prerequisite for levying damages under Section 14 B of EPF & MP Act. According to the learned counsel for the petitioner, the 3rd respondent ought to have seen that the order of the 1st respondent imposing damages was modified by the Appellate Tribunal on valid grounds and as such, the order of the 1st respondent is merged with the order of the Appellate Tribunal.

6. The learned counsel for the petitioner has also referred to a decision of this Court dated 12.02.2019, in W.P. (MD) No. 2413 of 2010, and submitted that as held by this Court, the power to recover damages under Section 14 B of the EPF & MP Act, is only discretionary. This being the case, the 3rd respondent by virtue of an order dated 04.04.2007, passed under Section 14 B of EPF & MP Act, which has been set aside by the Appellate Tribunal, has passed the impugned order of attachment attaching the property belonging to the petitioner. According to the learned counsel for the petitioner, the impugned order of the 3rd respondent, dated 21.02.2011, is without jurisdiction, as the order dated 04.04.2007, passed by the 1st respondent based on which, the impugned order of attachment has been set aside by the Appellate Tribunal by its order dated 08.09.2009.

7. Per contra, the learned Standing Counsel for the respondents would submit that admittedly provident fund contributions were paid belatedly by the petitioner and therefore, the 2nd respondent is entitled to recover damages from the petitioner under Section 14 B of the EPF & MP Act, which is also assessed by the 1st respondent at Rs. 39,41,447/- by its order dated 04.04.2007. According to the learned Standing Counsel for the respondent, even though the same was reduced by the Appellate Tribunal in its order dated 08.09.2009 in S.A.T.A.No.01(13)2007, still damages are payable by the petitioner, under Section 14 B of the EPF & MP Act, to the 2nd respondent. Therefore, according to him, no ground has been made out by the petitioner for quashing the impugned attachment order dated 21.02.2011.

8. Discussion:

The impugned attachment order, dated 21.02.2011, has been passed by the 3rd respondent based on a recovery certificate bearing No. TN/MDU/5938/PDC(1)/14B/2008, dated 02.04.2008. The recovery certificate, dated 02.04.2008, was issued based on the order dated 04.04.2007 passed by the 1st respondent against the petitioner under Section 14 B of the EPF & MP Act. But the order dated 04.04.2007, passed by the 1st respondent, has been set aside by the Employees



Provident Fund Appellate Tribunal in S.A.T.A.No.01(13)2007 and the Appellate Tribunal restricted the damages to 5% per annum on the arrears of Provident Fund Contributions and observed that the 1st respondent, while passing the order dated 04.04.2007, under Section 14 B of the EPF & MP Act, has not followed the law laid down by the Apex Court and the High Court and further, without conducting an enquiry or finding of fact that the petitioner has deliberately withheld the PF contribution, the Enquiry Officer has submitted his report, which resulted in passing the order of the 1st respondent, dated 04.04.2007, against the petitioner under Section 14 B of the EPF & MP Act. But, in the case on hand, the impugned attachment order has been passed based on the order dated 04.04.2007, passed by the 1st respondent, imposing damages on the petitioner, under Section 14 B of the EPF & MP Act, at Rs.39,41,447/- and consequently a recovery certificate dated 02.04.2008 was also issued. The Appellate Tribunal passed an order on 08.09.2009, questioning the order dated 04.04.2007 passed by the 1st respondent and therefore, the 3rd respondent cannot issue an order of attachment based on the order which has already been quashed by the Appellate Tribunal. If at all the attachment order can be passed by the 3rd respondent, it can be only based on the order of the Appellate Tribunal dated 08.09.2009, passed in S.A.T.A.No.01(13)2007, as the order, dated 04.04.2007, of the 1st respondent imposing damages was modified by the Appellate Tribunal by its order dated 08.09.2009, and as such, an order of the 1st respondent has got merged with the order of the Appellate Tribunal.

9.For the forgoing reasons, the attachment order passed by the 3rd respondent in Ref.No.TN/MD/M7/5928/RO/2011, dated 21.02.2011, is hereby quashed and the Writ Petition is allowed. However, the 2nd respondent is given liberty to recover the amount from the petitioner towards damages as quantified by the Appellate Tribunal in its order dated 08.09.2009, passed in S.A.T.A.No.01(13)2007, in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

+1cc to Mr.N.C.ASHOK KUMAR, Advocate, SR.No.56804

W.P.(MD)No.2645 of 2011

and

M.P(MD)No.1 of 2011

26.03.2019