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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01.02.2019

\+ **W.P.(C) 1580/2013 & CM No.2970/2013 (for stay)**

INDIAN BANK AND ANR ..... Petitioners

Through Mr.S.R. Sharma, Adv.

versus

REGIONAL PROVIDENT FUND COMMISSIONER AND ORS ..... Respondents

Through Ms.Inderjeet Sidhu, Adv. for R-1 & 2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. Vide the present petition, the two petitioners/Indian Bank and its Chief Manager Shri N.K. Sharma, seek quashing of the order dated 27th February, 2013 as also the consequential show cause notice dated 28th February, 2013 issued by the respondent no.2/Recovery Officer, Employees Provident Fund Organization, Faridabad. Vide the impugned notice dated 27th February, 2013, the petitioner no.2 was asked to show cause as to why he should not be arrested for his failure to pay the sum of Rs.95,11,346/- towards the outstanding provident fund dues of respondent no.3 in terms of the recovery notice dated 4th

January, 2006.

2. The admitted case of the parties is that the respondent no.3/ M/s Usha India Limited had been declared as a "defaulter" under the provisions of Employees Provident Fund & Miscellaneous Provisions Act (hereinafter referred to as the "Act") whereafter vide its order dated 27th February, 2013, the respondent no.2/Recovery Officer had declared the petitioner/Bank as a "deemed defaulter" in accordance with the provisions of Section 8-F of the Act.

3. The present petition impugning the aforesaid show cause notices was filed on the premise that the petitioner/Bank being only a secured creditor of the respondent no.3, had after selling the respondent no.3's property at 12/1, Mathura Road, Faridabad, Haryana mortgaged with it had after adjusting its recoverable dues, deposited the entire surplus amount with the Debt Recovery Tribunal No.I (hereinafter referred to as "DRT-I") and could, therefore, not be directed to pay the outstanding dues of the respondent no.3 or held to be a deemed defaulter.

4. During the pendency of the present petition, it transpired that after the sale of the respondent no.3's aforesaid property, the petitioner had deposited the surplus amount of Rs.15 crores with the Debt Recovery Tribunal. In these circumstances, this Court vide its order dated 18th January, 2017, after noticing the fact that a sum of Rs.89,03,375/- was still payable by the respondent no.3 to the respondent no.1 directed the DRT-I to transfer a sum of Rs.89,03,375/- to the Registrar General of this Court within a period of four weeks. The amount so deposited with the Registrar General

of this Court was thereafter released in favour of the respondent no.1 pursuant to this court's order dated 15th September, 2017.

5. At this stage, it may also be noted that even though the surplus amount after the sale of respondent no.3's mortgaged property, stands deposited by the petitioner with the DRT-I, the said sale was not confirmed on account of a challenge thereto by the respondent no.3 before the DRT which challenge, I am informed, now stands dismissed in default.

6. Vide order dated 19th January, 2018, this Court after noticing the fact that respondent no.1 had already received the major portion of the amount as claimed vide its recovery notice dated 04.01.2006 directed the said respondent to file an affidavit pointing out the deficiency, if any, in the amount recovered by it from the petitioner in respect of the impugned show cause notice. Pursuant to the said order, the respondent no.1 filed an additional affidavit before this Court on 21st August, 2018, stating therein that a balance sum of Rs.1,34,176/- still remained payable to it in respect of the Recovery Certificate dated 4th January, 2006 based on which the impugned show cause notices had been issued to the petitioners. At this stage, Ms. Sidhu, learned counsel for respondent nos.1 and 2 states that after the filing of the present petition, respondent no.3 has been found to pay further sums of Rs.5,73,12,517/- and Rs.3,85,40,084/- having been assessed as penal damages and interest under Sections 14B and 7Q of the Act respectively vide orders dated 22nd May, 2018. She, however, fairly states that in so far as the cause of action in the present writ petition is concerned, the only outstanding amount

recoverable by the respondent no.1 from respondent no.3 is Rs.1,34,176/-. She further states that in so far as the other amounts as referred to hereinabove arising pursuant to the orders dated 22nd May, 2018 are concerned, the respondent no.1 will take appropriate action to recover the same as per law.

7. Learned counsel for the petitioner states on instructions that the petitioner/Bank having received its dues, has no objection of any kind if this Court directs the DRT to release a further sum of Rs.1,34,176/- in favour of the respondent no.1 from the surplus amount lying with it, as had been earlier directed by this Court vide its orders dated 18th January, 2017 and 13th September, 2017.

8. In view of the facts noted hereinabove it is evident that the respondent no.1 has already received the major portion of its dues recoverable from the respondent no.3 pursuant to the Recovery Certificate dated 4th January, 2006 based on which the impugned notices were issued to the petitioner and therefore in the facts of the present case, it would be in the interest of justice to direct the DRT to release the remaining outstanding amount of Rs.1,34,176/- also in favour of the respondent no.1.

9. Learned counsel for the respondent nos.1 & 2 concedes that upon receipt of the balance amount of Rs.1,34,176/-, nothing further will survive for adjudication qua the recovery certificate dated 4th January, 2006 based on which the impugned show cause notices had been issued. In view of the aforesaid stand of respondent nos.1 & 2, the DRT-I is directed to release a sum of Rs. 1,34,176/- to the respondent no.1 from the surplus amount as deposited by the

petitioner/Bank after the sale of respondent no.3's property referred to hereinabove.

10. It is further directed that if for any reason whatsoever, the surplus amount is returned back to the petitioner before the further sum of Rs. 1,34,176/- as directed is paid to respondent no.1 by the DRT, the petitioner will be responsible for payment of the said amount of Rs.1,34,176/- to the respondent no.1. As a result of the direction to the DRT-I to release the balance amount of Rs.1,34,176/- to the respondent no.1, nothing further survives for adjudication and upon payment of the sum of Rs.1,34,176/- by the DRT or the petitioner, as the case may be, the impugned notices dated 27th February, 2013 & 28th February, 2013 will be treated as withdrawn.

11. Needless to state that it will be open for the respondent no.1 to take action as per law, qua any other amounts stated to be recoverable from the respondent no.3 pursuant to the assessment order dated 22nd May, 2018. It is also made clear that the direction to release the aforesaid amount of Rs.1,34,176/- towards the satisfaction of the recovery notice dated 4th January, 2006 by this Court will remain subject to the outcome of any proceedings initiated by the respondent no.3 to challenge, if any, the recovery notice dated 4th January, 2006..

12. The writ petition along with pending application, is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

FEBRUARY 01, 2019/aa