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

Date of Decision :- 24.10.2019

\+ W.P.(C) 3855/2014

ARUN KHANNA ..... Petitioner

Through: Mr.Deepak Tyagi, Adv.

versus

THE PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION, REGIONAL OFFICE AND ANR ..... Respondent

Through: Mr.Rajesh Manchanda & Mr.Rajat Manchanda, Advs. for RPFC. Mr.Siddhartha Shankar Ray with Mr.Varun Nischal, Advs. for applicant Mr.Pradeep Gupta with applicant in person.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

<u>REKHA PALLI, J (ORAL)</u>

<u>C.M. No.27793/2019 (for modification of order dated 07.04.2016)</u>

1. This is an application filed by one Mr.Pradeep Gupta, an ex-employee of M/s. A.V. Engineering Pvt. Ltd. seeking modification of the order dated 07.04.2016 passed by this Court. Under the said order, this Court had directed that the amount realised by the respondent no.1 from the petitioner by way of attachment be not

disbursed without further orders of the Court in this regard.

2. It has been averred in the application that the applicant is an ex-employee of M/s. A.V. Engineering Pvt. Ltd. and had served the said organisation for almost 17 years, but he is yet to receive his complete provident fund dues. The applicant has prayed that the amount due to him towards his provident fund dues be released in his favour along with the applicable interest, from the amount of Rs.18,28,737/- recovered by the respondent no.1 from the petitioner during the pendency of the present petition, as the respondent no.1 is not releasing the same because of the order passed by this Court on 07.04.2016 prohibiting it from releasing the said amount to the employees.

3. On 12.07.2019 this Court had, after hearing the learned counsel for the parties, modified the order dated 07.04.2016 by directing the respondent no.1 to consider the applicant's prayers and pass appropriate orders in respect of his provident fund dues. Pursuant thereto, the said respondent has filed an affidavit stating that the applicant is entitled to receive a sum of Rs.1,04,980/- along with interest of Rs.1,14,592/- from M/s. A.V. Engineering Pvt. Ltd. as his provident fund dues.

4. Before the present application was taken up, learned counsel for the petitioner, on instructions from the petitioner who is present in Court, fairly submits that even though the petitioner may not be liable to discharge the dues of M/s. A.V. Engineering Pvt. Ltd. under the assessment order, but in view of the grave personal difficulties being faced by the applicant as set out in the application, viz., the

applicant's daughter is stated to be suffering from cancer, the petitioner has no objection to the amount as determined by respondent no.1 being released to the applicant.

5. In view of the fair stand taken by the petitioner, it is directed that a sum of Rs.2,19,572/- be released in favour of the applicant by respondent no.1 from the amount of Rs.18,28,737/- recovered from the petitioner by way of attachment.

6. It is made clear that neither the stand taken by the learned counsel for the petitioner nor the direction to release the said amount would be treated as an admission on the petitioner's part that he has any liability towards the applicant or to the respondent no.1 on behalf of M/s. A.V. Engineering Pvt. Ltd.

7. Needless to say, it will be open for the applicant to claim any further dues from M/s. A.V. Engineering Pvt. Ltd., in accordance with law.

8. The application is disposed of in the aforesaid terms.

W.P.(C) 3855/2014

9. The present writ petition seeks to assail the attachment order dated 23.10.2013 as also the show cause notice dated 18.11.2013 whereunder the petitioner has been asked to show cause as to why warrants of arrest should not be issued against him.

10. The primary ground raised by the petitioner in the writ petition is that since the assessment order in question has been passed against M/s A.V. Engineering Pvt. Ltd. and not him, he is not connected with the said order in any manner and, resultantly, he is not liable to pay

the provident fund dues as assessed by the respondent no.1. It has, therefore, been contended that as the petitioner is not liable to discharge the dues payable under the assessment order, no warrants of arrest or show cause notice could be issued against him.

11. However, after some arguments, learned counsel for the petitioner submits that since the petitioner's father Mr.Y.P. Khanna, who was a Director in M/s A.V. Engineering Pvt. Ltd. had expired on 30.12.2011, i.e., before the assessment order came to be passed under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ('the Act' for short) on 05.11.2012, the same could not be assailed before the Employees Provident Fund Appellate Tribunal within the statutory period of appeal either by M/s A.V. Engineering Pvt. Ltd. or by the petitioner. He further submits that as the name of M/s A.V. Engineering Pvt. Ltd. now stands struck off from the Register of Companies, the petitioner who is being asked to discharge the dues on its behalf is, even today, desirous of assailing the assessment order in accordance with law. He, however, prays that since the prescribed statutory time period for preferring an appeal against the same has already expired during the pendency of the writ petition, that he may be granted time to file an appeal. He further submits that since the respondent has already attached a sum of Rs.18,28,737/- from the petitioner's tenant as against the principal amount of Rs.6,70,717/- assessed in terms of the order dated 05.11.2012, the Tribunal may be directed to consider the petitioner's appeal without necessitating him to make any further deposit.

12. Learned counsel for the respondent does not dispute any of the

aforesaid contentions advanced on behalf of the petitioner. He however, reiterates that the petitioner is also liable to discharge the dues of M/s. A.V. Engineering Pvt. Ltd., as per the terms of the assessment order.

13. I have considered the submissions of the learned counsel for the parties and with their assistance, perused the record.

14. Without commenting on the question as to whether the petitioner is liable to discharge the liabilities of M/s. A.V. Engineering Pvt. Ltd., (the employer), of which the petitioner's father was a Director, I am of the considered view that it would be in the interest of justice to permit the petitioner to prefer a statutory appeal before the Tribunal, so that the quantum of dues payable by M/s. A.V. Engineering Pvt. Ltd. can be appropriately examined by the Appellate Authority, i.e. the Tribunal. There is merit in the petitioner's contention that owing to the pendency of the present petition and the demise of his father, Mr. Y.P. Khanna, prior to passing of the impugned order, no appeal could be filed before the Employees Provident Fund Appellate Tribunal within the prescribed time.

15. In these circumstances, especially keeping in view the fact that the present petition has remained pending before this Court for the last five years, during which period an interim protection had been granted in favour of the petitioner, as also the fact that the petitioner is only seeking an opportunity to assail the assessment order by way of a statutory appeal, interest of justice demands that the petitioner be granted four weeks' time to prefer a statutory appeal assailing the order dated 05.11.2012, in accordance with law. As a sum of

Rs.18,28,737/- has already been attached by the respondent no.1, out of which, a sum of Rs. 2,19,572/- has been directed to be released to Sh. Pradeep Gupta, the balance amount of Rs.16,09,165/- available with the respondent no.1 will be retained by the said respondent till final adjudication of the appeal and will be treated as due compliance with the condition of pre-deposit, as required under Section 7Q of the Act.

16. It is made clear that the present order has been passed in the peculiar facts and circumstances of the case and will not be treated as a precedent.

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

REKHA PALLI, J.

OCTOBER 24, 2019
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