

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 26218 of 2018 and W.P. No. 21238 of 2019
and
W.M.P. No. 30434 of 2018 and W.M.P. No. 20443 of 2019

W.P. No. 26218 of 2018:-

K. Rafeeq Ahmed ...Petitioner

-vs-

1. The Recovery Officer,
The Employees Provident Fund Organisation,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.
2. The Regional Provident Fund Commissioner,
The Employees Provident Fund Organisation,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.
3. The Assistant Provident Fund Commissioner,
Sub-Regional Office,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent relating to the impugned order of attachment dated 22.12.2017, bearing Ref.TB/VL/19937/Recovery/2017/EPFCP-16 and notice for settling a sale proclamation dated 10.09.2018 bearing ref No. TB/VL/19937/Recovery/CP-17/2018 was published by the First Respondent in daily newspaper and quash the same.

W.P. No. 21238 of 2019:-

K. Rafeeq Ahmed

...Petitioner

-vs-

1. The Recovery Officer,
The Employees Provident Fund Organisation,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.
2. The Regional Provident Fund Commissioner,
The Employees Provident Fund Organisation,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.
3. The Assistant Provident Fund Commissioner,
Sub-Regional Office,
S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent relating to the impugned sale proclamation dated 18.06.2019 bearing ref No. TN/VL/19937/Recovery/2019 and quash the same.

For Petitioner : Mr. D.Bharatha Chakravarthy
for Mr. T.Sai Krishnan (in both W.P.s)
For Respondents : Mrs. V.J. Latha,
Standing Counsel (in both W.P.s)

C O M M O N O R D E R
(through video conference)

Heard Mr. D.Bharatha Chakravarthy, Learned Counsel appearing for the Petitioner and Mrs. V.J.Latha, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., K.Rafeeq Ahmed, is a partner of the Partnership Firm - M/s. K.Abdul Azeez Sons & Co., The property of the Petitioner located at Jayaram Chetty Street, Vellore had been attached and proclamation of sale had been issued for recovery of provident fund dues owed by the said Partnership Firm in the Order No. TN/VL/19937/Recovery/2017 dated 22.12.2017, the Order No. TB/VL/19937/Recovery/CP-17/2018 dated 10.09.2018 and the Order No. TN/VL/19937/Recovery/2019 dated 18.06.2019 passed by the First Respondent, which are challenged in these Writ Petitions.

3. It is pointed out by the Learned Standing Counsel appearing for the Respondents that the impugned orders in these Writ Petitions are consequential orders of recovery in furtherance to the Order No. TB/VLR/19937/14B & 7Q (11/90 to 12/99) (07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent determining the liability for provident dues of the Partnership Firm under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the 'EPF Act' for short), and in the absence of the any challenge to that parental order, the Petitioner cannot prosecute these Writ Petitions for the relief claimed. The decisions of the Hon'ble Supreme Court of India in P.Chitharanja Menon -vs- A.Balakrishnan [(1977) 3 SCC 255] and Amarjeet Singh -vs- Devi Ratan [(2010) 1 SCC 417)] are cited to buttress that proposition of law.

4. In response to the aforesaid objection raised, Learned Counsel for the Petitioner contends that the Petitioner has not been served with the Order No. TB/ VLR/19937/14B & 7Q (11/90 to 12/99) (07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent. After verification of records, Learned Standing Counsel appearing for the Respondents has produced the returned postal cover sent by Speed Post to 'K.Igbal Ahmed, Managing Partner, M/s. K.Abdul Azeez Sons & Co.' with postal endorsement 'refused' in respect of the said Order No. TB/VLR/19937/14B & 7Q(11/90 to 12/99) (07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent, and contends that the Petitioner, who is another partner of the same Partnership Firm, cannot impeach the recovery proceedings on the specious plea that he does not have any knowledge of the determination of the liability for provident dues of the Partnership Firm under Section 14-B and 7-Q of the EPF Act.

5. In this context, it must be recapitulated here that a Partnership Firm does not have any independent legal existence and it is merely a compendious name of the partners constituting it at a given point of time. It is not in dispute that the said K.Igbal Ahmed is the Managing Partner of the Partnership Firm in which the Petitioner is also a partner. It also requires to be highlighted that Section 24 of the Indian Partnership Act, 1932, reads as follows:-

"24. Effect of notice to acting partner:- Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates, as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner."

It would be useful in this context to refer to the relevant passage from the decision of the Hon'ble Supreme Court of India in Ashutosh -vs- State of Rajasthan [(2005) 7 SCC 308], which is extracted below:-

"11. Section 24 deals with the effect of notice to a partner. Such notice may be binding if the following conditions are satisfied:

- (a) the notice must be given to a partner;
- (b) the notice must be a notice of any matter relating to the affairs of the firm;
- (c) fraud should not have been committed with the consent of such partner on the firm.

12. Section 24 is based on the principle that as a partner stands as an agent in relation to the firm, a notice to the agent is tantamount to the principal and vice versa. As a general rule, notice to a principal is notice to all his agents; and notice to an agent of matters connected with his agency is notice to his principal."

Viewed from that perspective, the Order No. TB/VLR/19937/14B & 7Q(11/90 to 12/99)(07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent determining the liability of the Partnership Firm under Sections 14-B and 7-Q of the Act, which has been sent to the Managing Partner of the Partnership Firm, would have to be treated as notice to the Partnership Firm itself, which would also bind all its other partners (including the Petitioner).

6. Insofar as the refusal by the said K.Iqbal Ahmed, Managing Partner of the Partnership Firm to receive the Order No. TB/VLR/19937/14B & 7Q(11/90 to 12/99)(07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent determining the liability of the Partnership Firm, sent to him by Speed Post, is concerned, it would amount to due service on him in terms of Section 27 of the General Clauses Act, 1897, which reads as follows:-

"27. Meaning of service by post:- Where any Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post,

a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post."

Further, the Hon'ble Supreme Court of India in Harcharan Singh -vs- Shivrani [(1981) 2 SCC 535] has explained this legal position as follows:-

"7. Section 27 of the General Clauses Act, 1897 deals with the topic- "Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by refusal. In such circumstances, we are clearly of the view, that the High Court was right in

coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed with the knowledge of the contents thereof and, in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act."

In view of this incontrovertible legal position, it is not possible to countenance the contentions raised on behalf of the Petitioner ignoring the effect of deemed service of the Order No. TB/VLR/19937/14B & 7Q(11/90 to 12/99)(07/03 to 02/07)/SDC/2017 dated 04.12.2017 passed by the Third Respondent in which the liability of the Partnership Firm for provident fund dues has been determined. Inasmuch as the said order had not been challenged thereafter in the manner recognized by law, it had attained finality and had become enforceable entitling the Respondents to recover the amounts due in terms of that order. As rightly contended by the Respondents, it would necessarily follow that the implementation of recovery action taken in pursuance thereof cannot be interdicted.

7. That apart, no infirmity has been shown in the decision-making process of the First Respondent in the impugned orders requiring interference by this Court in the exercise of the discretionary powers of judicial review under Article 226 of the Constitution.

In the result, the Writ Petitions, which cannot be entertained, are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dm/kv/vjt

To

1. The Recovery Officer,
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S-I, TNHB, Phase-III,
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S-I, TNHB, Phase-III,
Sathuvachari, Vellore - 632 009.

+1cc to M/s.V.J.Latha, Advocate, S.R.No.32687
+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.32310

W.P. No. 26218 of 2018
and
W.P. No. 21238 of 2019

SR II (CO)
KKV/23/12/2020

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