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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18064 of 2016 and

W.P.(MD)No.5164 of 2017 and

W.M.P.(MD)No.13027 of 2016 &

W.M.P.(MD)Nos.4161, 4162 & 17410 of 2017

W.P.(MD)No.18064 of 2016

M/s.Nelmudikarai Primary
Agricultural Co-operative Bank,
Now called as Nelmudikarai Primary
Agricultural Co-operative Credit Society,
Rep. through its Secretary,
Kumarakuridhi Post,
Ilaiyankudi Taluk,
Sivagangai District.

... Petitioner

Vs.

1. The Proceeding Officer,
The Employees Provident Fund
Appellate Tribunal(Bangalore Bench)
No.62, 3rd Cross Industrial Suburb,
Yasvantpur 2nd Stage, Bangalore - 560 022.

2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Regional
Office, Lady Doak College Road,
Chokkikulam, Madurai - 5.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the impugned order passed by the first respondent in appeal No.EPFAT/(B)/TN 33 of 2016 dated 05.07.2016, and quash the same and direct the 1st respondent to entertain the appeal and pass orders in accordance with the law.

For Petitioner : Mr.D.Sadiq Raja

For R-2 : Mr.V.S.V.Venkateshwaran

W.P.(MD)No.5164 of 2017

M/s.A616T.Nelmudikarai Primary
Agricultural Co-operative Bank,
Now called as Nelmudikarai Primary
Agricultural Co-operative Credit Society,
Rep. through its Secretary,
Thiruppavanam Post,Thiruppavanam Taluk,
Sivagangai District.

... Petitioner

Vs.



1. The Assistant Provident Fund
Commissioner,
Employees Provident Fund Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai -2.

2. The Recovery Officer,
Employees Provident Fund Regional Office,
Lady Doak College Road,
Chokkikulam, Madurai - 2.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned auction sale notice issued by the second respondent dated 15.03.2017 which has been published in Daily Thanthi Newspaper dated 21.03.2017 and quash the same.

For Petitioner : Mr.D.Sadiq Raja
For R-2 : Mr.A.John Xavier

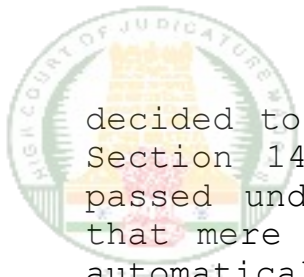
C O M M O N O R D E R

Heard the learned counsel on either side.

2. The writ petitioner is a co-operative society. It is an establishment falling under the purview of the Employees' Provident Fund Organisation. The petitioner had committed delay in the matter of remitting the contribution. Therefore, the order under Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 was passed. The petitioner was also directed to pay interest. The first respondent also passed an order under Section 14(B) of the Act levying damages. The liability to pay interest is a matter of course and the statute has not provided for any appeal for questioning the same.

3. The petitioner's counsel states that the entire interest liability has been cleared. The petitioner filed an appeal before the Tribunal questioning the levy of damages. The appeal however was not filed within time. There was a delay of 94 days in filing the appeal. The appellate Tribunal held that it lacks the jurisdiction to condone the delay beyond 60 days. The order dismissing the appeal is under challenge in W.P.(MD)No.18064 of 2016.

4. As rightly pointed out by the learned Standing counsel, it is not possible to fault the impugned order passed by the Tribunal. However in the interest of justice and taking note of the fact that the petitioner is a co-operative institution, I



decided to examine the order passed by the first respondent under Section 14(B) of the Act on merits. The order dated 09.10.2015 passed under Section 14(B) of the Act proceeded on the premise that mere delay in the matter of remittance of contribution will automatically lead to levy of damages also.

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5. I am afraid that the said approach is not in consonance with the settled parameters of law. The Hon'ble First Bench of this Court in a recent decision rendered on 16.12.2019 in W.A.(MD) No.516 of 2012 has categorically held that unless the authority deduces the element of *mens rea*, it is not open to him to levy damages.

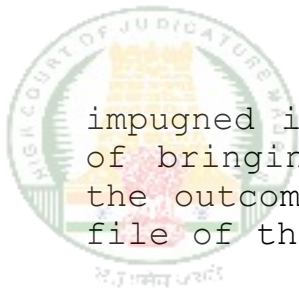
6. In this view of the matter, the order impugned in W.P.(MD)No.18064 of 2016 that was the subject matter of the appeal stands quashed and the matter is remitted to the file of the first respondent in W.P.(MD)No.18064 of 2016 to once again consider the issue of *mens rea* before levying damages. I make it clear that I have not gone into the merits of the matter. I have to quash the order levying damages only on this short ground, namely, non-reference to the element of *mens rea* in the said order.

7. Since the appeal filed by the writ petitioner had suffered a dismissal before the Tribunal, the property of the petitioner was brought to auction. Since the order that was the subject matter of the appeal has been set aside, I am of the view that the auction proceedings will have to be necessarily set aside. I record the submission of the petitioner's counsel that the interest portion has been cleared. The learned Standing counsel however is not clear on this. According to him, only part of the interest liability has been cleared.

8. It is not in dispute that the petitioner had remitted a sum of Rs.2 Lakhs by way of complying with the condition imposed by this Court while granting interim order in favour of the petitioner. The said amount need not be refunded by the respondents and the same can be adjusted, when the first respondent passes final orders under Section 14(B) of the Act. The first respondent will issue notice to the petitioner, hear him and thereafter, pass appropriate orders under Section 14(B) of the Act within a period of twelve weeks from the date of receipt of a copy of this order.

9. The order dated 09.10.2015 passed by the first respondent under Section 14(B) of the Act is quashed and the matter is remitted to the file of the first respondent in W.P.(MD) No.5164 of 2017 to pass orders afresh in accordance with law.

10. The auction sale notice dated 15.03.2017 that is
<https://hcservices.ecourts.gov.in/hcservices/>



impugned in W.P.(MD)No.5164 of 2017 is also quashed. Questioning of bringing the petitioner's property to auction will depend on the outcome of the proceedings that have now been remanded to the file of the first respondent in W.P.(MD)No.5164 of 2017.

11. The writ petitions stand allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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The Employees Provident Fund
Appellate Tribunal(Bangalore Bench)
No.62, 3rd Cross Industrial Suburb,
Yasvantpur 2nd Stage, Bangalore - 560 022.
2. The Assistant Provident Fund Commissioner,
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3. The Recovery Officer,
Employees Provident Fund Regional Office,
Lady Doak College Road,
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