

28-09-2021
Court No.1
Km/Sh- 01

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
(Via Video Conference)**

**M.A.T. 42 OF 2021
With
C.A.N. 1 OF 2021**

**Tirrihannah Compoany Ltd. .Appellant
-Vs-
Regional Provident Fund Commissioner-I & Ors.
.Respondents.**

Mr. Soumyo Majumdar,
Mr. Victor Chatterjee,
Mr. Barnamay Basak.
.. For the Appellant on virtual mode
Mr. S. C. Prasad
.. For the Respondent No.1 and 2.
Ms. Deblina Lahiri.
..For Respondent Nos.3 and 4.

The affidavit of service and the supplementary
affidavit, as filed, be kept on record.

The present appeal has been preferred
challenging an order dated 23-06-2021 passed in a writ
petition, being WPA No.1064 of 2021.

Mr. Majumdar, learned advocate appearing for the
appellant, submits that the learned Court below erred in
law in placing reliance upon the reasoning assigned by a
co-ordinate bench in an order dated 11-03-2020 passed
in WPA 276 of 2020 since the said order dated 11-03-
2020 was set aside by an order dated 19-08-2020
passed in an appeal, being MAT 499 of 2020.

He contends that the arguments advanced on behalf of the appellant while challenging the order dated 20-01-2019 passed by the respondent no.1 were not even considered by the learned Judge and the writ petition was dismissed in limine without disclosing any reason whatsoever.

Mr. Prasad, learned advocate appearing for the respondent nos.1 and 2, denies the contention of the appellant and submits that the initial claim for damages was of the year 2015 and the appellant had successfully evaded payment of such amount till date. In such circumstances, the learned Judge has rightly refused to exercise discretion in favour of the appellant.

Ms. Lahiri, learned advocate enters appearance on behalf of the bank, being the respondent Nos. 3 and 4.

Records reveal that the respondent no.1 passed an order on 26-02-2015 under Sections 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, EMP Act) quantifying the damages to be of Rs.51,61,015/-. The writ petition challenging the said order was allowed on 31-07-2018 directing the authorities to pass an appropriate order afresh. Pursuant to such direction, the respondent no.1 passed an order on 02-05-2019, which was set aside in a statutory appeal on 02-08-2019. Challenging the said

order, the respondent no.1 preferred a writ petition, which was disposed of by an order dated 11-03-2020 directing the appellant to secure an amount of Rs.51,61,015/- by way of a bank guarantee. The said order was again set aside in an appeal on 19-08-2020 directing the respondent no.1 to pass a fresh order. Pursuant to such direction, the respondent no.1 passed an order on 20-01-2021 followed by a recovery notice dated 05-04-2021. Challenging the said order dated 20-01-2021, the appellant preferred a writ petition being, (WPA 401/2021) which was heard on 17-03-2021 and 25-03-2021. Thereafter, the matter was directed to go out of list as none appeared on behalf of the appellant herein. Without taking any further steps in the said writ petition, a fresh writ petition was preferred, which was dismissed by the order impugned in the present appeal. Mr. Majumdar, however, informs this Court that the said writ petition had subsequently been withdrawn.

It appears from the order impugned in the writ petition that the appellant was heard, the records were considered and reasons were furnished in support of the assessment, as arrived at. When the respondent no.1 has performed its obligation to abide by the earlier direction passed by the Court and rendered a decision in the matter supported with reasons, in our opinion,

the learned single Judge has rightly refused to interfere with the same.

It further appears that in course of hearing before the respondent no.1 the appellant took seven adjournments. The conduct of the appellant is such that it did not deserve discretionary remedy. Easy access to justice should not be misused as a licence and a litigant cannot repeatedly approach the Court. Such practice has been deprecated by the Hon'ble Supreme Court.

It appears from the order impugned in the writ petition that about seven reasons have been set out indicating the deliberate and wilful avoidance by the writ petitioner/appellant to pay the damages. The *mens rea*, according to the Court, has been clearly established. One need not re-emphasis or over emphasis that a writ proceeding is concerned with the decision making process and not the decision itself. We find that there are sufficient reasons available for the authority to have found against the writ petitioner and the damages imposed on it.

For the aforesaid reasons, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha,J) (Tapabrata Chakraborty,J)

Later

After the order is passed in open Court, Mr. Majumdar, prays for stay of operation of the same.

Such prayer is considered and refused.

(Rajasekhar Mantha,J) (Tapabrata Chakraborty,J)