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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2021
CORAM
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 15953 of 2012
and
M.P. (MD) No..1 of 2012

M/s.Latha Enterprises
Rep by its Sole Proprietor
C.Nagasundaram,
No.114/6, Main Road,
Manakkudi Post,
Thirukkuvali Taluk,
Nagapattinam District. ... Petitioner

Vs.

1.The Assistant Provident
Fund Commissioner (Enforcement)
Employees' Provident Fund Organization
Sub-Regional Office,
P.B.No.588, Sree Complex,
'D' Block,
Madurai Road,
Trichy-620 008.

2.The Enforcement Officer,
Employees' Provident Fund Organization,
District Office,
No.82/G, Kamaraj Road,
Kumbakonam-612 001.

3.The Recovery Officer,
O/o.The Recovery Office,
Employees' Provident Fund Organization,
No.18, Madurai Road,
Sree Complex,
Trichy-8. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned order passed by the 1st Respondent in his proceedings No.ENF/D3/TN 76232/SRO-TRY/2012 dated 13.09.2012 and the consequential impugned proceedings issued by the 3rd Respondent in Ref.No.RECY/TN/TR/D3/76232/Recovery/2012 dated 07.11.2012 and quash the same as illegal and contrary to the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act 1952.

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For Petitioner : Mr. B.Saravanan

For R1 to R3 : Mr. M.Palanimuthu

ORDER

Heard Mr. B.Saravanan, Learned Counsel for the Petitioner and Mr. M.Palanimuthu, Learned Counsel appearing for the First to Third Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. The Writ Petition challenges the notice No. RECY/TN/TR/D3/76232/Recovery/2012, dated 07.11.2012 issued by the Third Respondent to the Petitioner to show cause why a warrant of arrest should not be issued for failure to pay the amount of arrears specified in Certificate No.TN/76232/SRO/TRY/2012 dated 13.09.2012.

3. The Respondents have resisted the Writ Petition by contending that the impugned notice is a consequential proceeding to the determination of liability of the Petitioner to pay Provident Fund dues in the order No.D3/TN/TR/76232 SRO-TRY/2011 dated 01.04.2011 passed by the First Respondent under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF Act' for short) and in the absence of any challenge to that parental order, the Petitioner cannot prosecute this Writ Petition for the relief claimed.

4. During the earlier hearing before this Court, it was contended by the Learned Counsel for the Petitioner that the copy of the said order dated 01.04.2011 passed by the First Respondent had not been served on the Petitioner. In that backdrop, Learned Counsel appearing for the Respondents had on 15.04.2021 produced a copy of the said order dated 01.04.2011 before this Court and Learned Counsel for the Petitioner received its copy. It was then represented by Learned Counsel for the Petitioner that the Petitioner intends to file an appeal against the order before the Appellate Tribunal, which was opposed by the Respondents stating that the time limit prescribed for the same had already lapsed. After considering the rival submissions, this Court in the order passed on 30.04.2021 held that the copy of the order furnished to the Petitioner on 16.04.2021 would entitle the Petitioner to file an appeal against the said order from that date and at the request made by the Learned Counsel for the Petitioner, the matter as admitted for enabling the Petitioner to take necessary further action and report the same. When the matter came up subsequently on 14.06.2021, Learned Counsel for the Petitioner sought further time and the case is listed today.

5. Learned Counsel for the Petitioner has filed a memo dated 12.07.2021 in which it has been stated as follows:

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"In view of the extraordinary Pandemic Situation it is not possible for the petitioner to prefer an appeal despite the fact that he is not liable to pay the EPF contribution as fixed by the order dated 01.04.2011. In order to buy Peace the Petitioner is willing to pay the amount as mentioned in the Order dated 01.04.2011 which was served upon the Petitioner only on 15.04.2021. The Instruction Letter dated 23.06.2021 given by the Petitioner is enclosed herewith. The Petitioner may be permitted to pay the amount mentioned in the order dated 01.04.2011 served on 15.04.2021 within a period of 8 weeks."

It becomes evident from the said facts that the Petitioner does not intend to prefer any appeal against the order dated 01.04.2011, meaning thereby that the Respondents are entitled to recover the entire amount due in terms of the said order. However, as the Learned Counsel for the Petitioner has stated that the amount would be deposited within a period of eight weeks from today, it is made clear that if the Petitioner fails to deposit the amount due on or before 31.08.2021, the Respondents shall be entitled to proceed further in the impugned proceedings for recovery against the Petitioner in accordance with law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Assistant Provident
Fund Commissioner (Enforcement)
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+1 CC to M/s.B.SARAVANAN, Advocate (SR-22426[F] dated 14/07/2021)

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12.07.2021

RK (09.08.2021) 4P 5C

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