



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.9137 of 2011

and

M.P (MD)No.2 of 2011

WEB COPY

M/s.The Golden Fireworks Industries,
Old No.47, New No.14, K.M.Rama Nadar St.,
Sivakasi-626 123, represented
by its Partner K.Chamundeeswaran

... Petitioner

versus

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, Lady Doak College Road,
Chockikulam, Madurai-625 002.

2.Employees' Provident Fund Appellate Tribunal,
(Ministry of Labour and Employment)
Scope Minor, Core-II 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the 2nd respondent relating to ATA No.846(13) 2009; quash the order of the 2nd respondent passed in ATA No.846(13) 2009; Dt:14.06.2011 dismissing the appeal filed by the petitioner and the order of the 1st respondent passed in No.TN/RO/MDU/4940/RO/Circle-8/PDC/LD/2007; Dt:27.03.2007 imposing damages at Rs.1,42,535/- under Section 14B of the employees' Provident Fund and Miscellaneous Provisions Act.

For Petitioner : Mr.Seenivasagam

For R1 : Mr.V.S.V.Venkateshwaran,
Standing Counrsel

ORDER

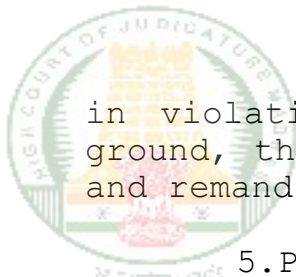
This Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records of the second respondent relating to ATA No.846(13) 2009 and quash the order of the second respondent passed in ATA No.846(13) 2009; Dt:14.06.2011, dismissing the appeal filed by the petitioner and the order of the first respondent passed in No. TN/RO/MDU/4940/RO/Circle-8/PDC/LD/2007; Dt:27.03.2007 imposing damages at Rs.1,42,535/- under Section 14B of the employees' Provident Fund and Miscellaneous Provisions Act.



2.The case of the petitioner is that due to financial constraints, the petitioner closed the Factory during November 2005. The petitioner Factory was governed by the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and regularly remitting the contribution. The closure of the petitioner Factory was duly intimated to the first respondent that enabled their employees to make their claims of Provident Fund Benefits stood in their name. After closing of the said Factory, the Factory was sold and the petitioner/Factory cleared all the arrears of contribution to the Employees Provident Fund and the Employees State Insurance Corporation etc. Thereafter, the petitioner received a notice, dated 21.02.2007 from the first respondent to appear for hearing by enclosing the notice dated 09.02.2007 stating that there was certain arrears payable by way of interest. Therefore, the petitioner appeared before the first respondent, on 14.03.2007 and sought for the particulars of the claim. As per their account, the first respondent appraised that there was a belated payment of contribution made by the petitioner and as the EPF Organisation has to pay the interest to the employees. Therefore, the petitioner has remitted the amount as noted in the notice, dated 09.02.2007. After the sale of the factory premises, the purchaser demolished the entire structure. While so, the petitioner has received another notice dated 28.05.2007 stating that proposed attachment of properties alleging some more arrears as payable by the petitioner and on going through the said notice alleging that non-payment of damages imposed on the petitioner. To that effect, the petitioner had never received any communication. Further, the petitioner has averred that usually the appeals are taken up for hearing during the camps of the Provident Fund Appellate Tribunal, at Tamil Nadu. The appeal filed by the petitioner was not taken up in any camp of the Appellate Tribunal at Tamil Nadu and the posting of the appeal on 14.06.2011 the said hearing date was not informed to the petitioner. The said appeal was dismissed on 14.06.2011, however, the petitioner has received the said order through the post only on 06.07.2011. Without giving sufficient opportunity to putforth his case, the second respondent passed the said order. By taking undue advantage of the impugned order, the first respondent is taking steps to execute the order by attachment of movable and immovable properties of the petitioner. Challenging the same, the present writ petition is filed.

3.Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the first respondent and perused the materials available on record.

4.The learned counsel appearing for the petitioner submitted that for imposing damages, the petitioner filed an appeal before the Appellate Tribunal, constituted in New Delhi. While doing so, the appeal was dismissed by the Circuit Bench, which was constituted at Coimbatore without issuing any notice to the petitioner, which is



in violation of the principles of natural justice. On the sole ground, this Court may set aside the ex-parte order of the Tribunal and remand the matter back to the Tribunal for fresh consideration.

5.Per contra, the learned Standing Counsel appearing for the first respondent has filed a counter affidavit, wherein, it has been stated that the first respondent came to know that the petitioner had sold the immovable property to one M/s.Kavitha Textiles during the period of 03.2006 and thus, the said purchaser, bearing the liability to pay any due from the petitioner. In the present case, the petitioner had an outstanding due payable to the tune of Ts.71,325/- towards damages. Hence, the said purchaser, vide letter dated 24.08.2011(Exhibited as Annexure-VII) to pay the outstanding due of Rs.71,325/- payable by the petitioner. In turn, the said purchaser, had remitted a sum of Rs.26,325/- during 09/2011 and a sum of Rs.44,910/- in 11/2011. Therefore, the entire outstanding due had been received by the first respondent.

6.In view of the submission made by the learned Standing Counsel appearing for the first respondent, nothing survives for adjudication in this writ petition, since the petitioner sold the property in favour of M/s.Kavitha Textiles. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Regional Provident Fund Commissioner,
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- 2.Employees' Provident Fund Appellate Tribunal,
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