

COCP-803-2021(O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**COCP NO.803 of 2021(O&M)
Date of Decision: June 03, 2021**

Dhoot Developers Pvt. Ltd.

...Petitioner

Versus

B.K.Verma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Sanjay Joshi, Advocate
for the petitioner.

Mr.Sumeet Goel, Advocate
for the respondent.

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HARINDER SINGH SIDHU, J.

This Contempt petition has been filed for initiating contempt proceedings against the respondents alleging wilful disobedience of order dated 20.03.2020 passed in CWP No.6988-2020.

The petitioner Dhoot Developers Pvt. Ltd. is a Company.
Respondent No.1 is Assistant Provident Fund Commissioner, Bathinda.

The Assistant Provident Fund Commissioner (authorised officer under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952) (for short 'the 1952 Act') had passed an order, whereby, the petitioner had been directed to deposit an amount of Rs.64,74,734/- on receipt of the said order. The petitioner preferred a statutory appeal under Section 7(1) of the 1952 Act before the Central Government Industrial Tribunal-cum-Labour Court (CGIT), New Delhi. Vide order dated 01.12.2017, his appeal/complaint was forwarded by the

CGIT, New Delhi to CGIT-I, Chandigarh as the matter fell under the jurisdiction of the said Division.

It was the case of the petitioner that when the appeal was originally filed there was a delay of only 57 days in filing the appeal. The office of the CGIT, Chandigarh raised certain objections and returned the Memorandum of Appeal to the counsel for the petitioner. However, the appeal could not be re-filed as the original file collected from the office of the Tribunal was lost. The appeal was re-filed only on 10.06.2019. Along with the appeal, an application under Section 5 of the Limitation Act seeking condonation of delay in re-filing the appeal was also filed. The application was dismissed by the Tribunal vide order dated 28.02.2020 on the ground that under Rule 7(2) of the Employees Provident Fund Procedure Rules, 1997, the Tribunal had no power to extend the delay beyond a maximum period of 120 days. Assailing the aforesaid order of the CGIT, Chandigarh, the petitioner filed CWP No.6988 of 2020, wherein, an interim order dated 20.03.2020 was passed, whereby, the respondents were directed to issue instructions to the Bankers of the petitioner to permit the petitioner to operate its accounts. It was recorded in the order that the petitioner undertakes to get an FDR made from one or more of the accounts for an amount of Rs.40,00,000/- (forty lakhs only). It was directed that the petitioner would give an undertaking before the respondents that the said FDR will not be encashed till final orders were passed by the Court in the writ petition.

The operative part of order dated 20.03.2020 reads as under:

“In the meantime, respondent-authorities are directed to issue appropriate instructions to the Bankers of the petitioner to

permit the petitioner to operate their accounts as the petitioner undertakes to get an FDR made from one or more of these accounts for an amount of Rs.40,00,000/- (Forty lakhs only). The petitioner would give a photocopy of the said FDR along with an affidavit and undertaking to the respondent-authorities that the said FDR shall not be encashed till final orders passed by this Court in the present writ petition.”

It is the case of the petitioner that in terms of the order dated 20.03.2020 the petitioner Company got prepared an FDR of Rs.40 lacs dated 26.05.2020 for a period of one year with Axis Bank Ltd. Gurgaon. A copy of the same was sent to the EPFO on 29.05.2020. An affidavit-cum-undertaking dated 02.06.2020 was also furnished.

CWP No.6988 of 2020 was allowed vide judgment and order dated 06.10.2020. The High Court held that the Tribunal had committed an error in over-looking the fact that in the case of the petitioner the delay was in re-filing of the appeal and not in filing of the appeal. It was held that the Tribunal had failed to note the difference regarding delay in filing and re-filing. The order of the Tribunal dated 28.02.2020 was set aside and the matter was remitted to the Tribunal to pass a fresh order in accordance with law.

The operative part of the final order dated 06.10.2020 passed in CWP-6988-2020 reads:

“On consideration of the matter, this Court is of the considered view that the Tribunal has committed an error in over-looking the fact that the delay in filing and re-filing of an appeal are to be examined on entirely different levels of explanation furnished by the appellant. In this case, memorandum of appeal is alleged to have been filed but on

account of certain procedural objections, it was returned to the counsel and thereafter re-filed. From the reading of the order passed by the Tribunal, the impression gathered is that the Tribunal has failed to note the difference between the delay in filing and re-filing. The Tribunal has also referred to various judgments passed by the Supreme Court including M/s Patel Brothers vs. State of Assam and others, AIR 2017 SC 383, Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others, (2017) 5 SCC 42.

In M/s Patel Brothers (supra), there was a delay in filing of the revision petition under Assam Value Added Tax Act, 2003. Similarly, in the case of Oil and Natural Gas Corporation Ltd. (supra), the delay was in filing of an appeal before the Supreme Court.

Since, the Tribunal has not examined this matter with reference to delay in re-filing, therefore, it is considered appropriate to set aside the order passed by the Tribunal on 28.02.2020 and remit the case back to the Tribunal for passing a fresh order in accordance with law.

Keeping in view the facts of the case, the Tribunal is requested to make a sincere endeavour for expeditious disposal of the application, seeking condonation of delay in re-filing.

With these observations the writ petition is allowed.”

The respondents assailed the order dated 06.10.2020 by filing LPA No.819 of 2020, wherein, vide order dated 19.11.2020, notice of motion was issued and operation of the judgment in CWP No.6988-2020 was stayed. The said order reads:

“Case has been heard through Video Conferencing in view of COVID-19 Pandemic.

Contents that learned Single Judge has passed an order,

operative part whereof reads as under:-

“Since, the Tribunal has not examined the matter with reference to delay in re-filing, therefore, it is considered appropriate to set aside the order passed by the Tribunal on 28.02.2020 and remit the case back to the Tribunal for passing a fresh order in accordance with law.

Keeping in view the facts of the case, the Tribunal is requested to make a sincere endeavour for expeditious disposal of the application, seeking condonation of delay in re-filing.

With this observations, the writ petition is allowed.”

According to Mr. Goel the Act contained only one provision i.e. Section 17(2) empowers it to condone the delay, however not beyond 120 days. According to him, learned Single Judge proceeded on a wrong premise as it has referred to re-filing of the appeal before the Tribunal. According to him, the term re-filing is a misnomer of the realm of the Act. If there is delay in refilling, it would be considered as delay in filing itself. Prima facie we find substance in this plea.

Notice of motion for 03.02.2021.

Operation of the judgment of the learned Single Judge is stayed meanwhile.”

The petitioner received a communication dated 25.12.2020 from Axis Bank intimating that its bank account had been attached under notice from EPFO, Bhatinda. The petitioner sent an email dated 02.01.2021 to respondent No.1 pointing out that their action was in violation of the interim order dated 20.03.2020 passed in the CWP.

Mr. Joshi, Ld. Counsel for the petitioner stressed that the CWP filed by the petitioner had been allowed. While allowing the writ petition

the Ld. Judge had not vacated the interim order. Hence, it continued to operate even after the disposal of the writ petition. The respondents had not challenged the interim order dated 20.03.2020 in the LPA. The challenge was only to the final order passed in CWP No.6988 of 2020, whereby, the matter was remitted to the Tribunal to decide the application for condonation of delay filed by the petitioner. He stressed that the interim order dated 20.03.2020 was substantive in nature. Pursuant to the interim order, the petitioner had prepared an FDR of Rs.40 lacs and also submitted an undertaking. The interim order is operative and it is only the final order remitting the case to the Tribunal for passing fresh order on the application for limitation, that has been stayed. Thus, it is contended that the action of the EPFO of attaching the account of the petitioner Company was illegal, unwarranted and in contempt of the interim order dated 20.03.2020 passed in the writ petition. He relied on a decision of Hon'ble Supreme Court in ***All Bengal Excise Licensees' Assn. v. Raghendra Singh, (2007) 11 SCC 374.***

In this case Hon'ble Supreme Court has emphasised that an order, even though it is interim in nature, is binding till it is set aside by a competent Court. It was held that no party can be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof.

Ld. Counsel for the respondent on the other hand contended that there is no contempt. The interim order dated 20.03.2020 merged in the final order passed in the writ petition. While disposing of the writ petition the Ld. Single Judge did not direct that the interim arrangement in terms of the order dated 20.03.2020 would continue till the decision on the

application for condonation of delay by the Tribunal and that the petitioner could continue to operate the account and that the respondents were restrained from attaching the same. He argued that such a direction was also not given in the LPA whereby the operation of the judgment of the Ld. Single Judge was stayed.

The sole question for consideration is whether after the final disposal of the writ petition the interim order dated 20.03.2020 continues to operate ?

The petitioner had filed CWP No.6988 of 2020 challenging the order of the Tribunal dismissing its application for condonation of delay. On 20.03.2020 interim order was passed whereby the respondents were directed to issue instructions to the Bankers of the petitioner to permit it to operate its accounts. The petitioner undertook to get an FDR prepared for an amount of Rs.40,00,000/- (forty lakhs only). The petitioner was required to give an undertaking before the respondents that the said FDR would not be encashed till final orders were passed by the Court in the writ petition.

The writ petition was allowed vide judgment and order dated 06.10.2020. It was held that the Tribunal had erred in over-looking the fact that in the case of the petitioner the delay was in re-filing of the appeal and not in filing of the appeal and that the Tribunal had failed to note the difference regarding delay in filing and re-filing. The order of the Tribunal dated 28.02.2020 was set aside and the matter was remitted to the Tribunal to pass a fresh order in accordance with law.

In the LPA filed by the respondents vide order dated 19.11.2020 notice of motion was issued and operation of the judgment in CWP No.6988-2020 was stayed.

It is well settled that an interim order merges in the final order passed in any proceedings. In the instant case vide the interim order dated 20.03.2020 the respondents were directed to issue instructions to the Bankers of the petitioner to permit the petitioner to operate its accounts. The petitioner was to get an FDR made for an amount of Rs.40,00,000/- (forty lakhs only) and also furnish an undertaking before the respondents that the said FDR will not be encashed till final orders were passed by the Court in the writ petition. On its plain terms the order was to operate only till the final orders were passed in the writ petition. The writ petition was allowed. The order of the Tribunal was quashed and the Tribunal was directed to decide the application for condonation of delay afresh. Ld. Counsel for the respondents is right in his contention that after the final disposal of the writ petition the interim order ceases to operate as it has merged in the final order. Accordingly, after the final disposal of the writ petition the direction in the interim order to the respondents to permit the petitioner to operate its bank accounts ceased to operate. So also the direction to the petitioner to not encash the FDR.

For the same reason the second limb of the argument of the Ld. Counsel for the petitioner that as the respondent had not challenged the interim order dated 20.03.2020 in the LPA it continued to operate also cannot be accepted. Rejecting a similar contention raised before it Hon'ble Supreme Court in *State of W.B. v. Banibrata Ghosh, (2009) 3 SCC 250* had observed:

“28. We also do not understand as to how the Division Bench could be impressed by the fact that the interim order was not appealed against by the State Government. It is to be

understood that an interim order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings. The non-filing of the appeal, which seems to have impressed the Division Bench, according to us, is of no consequence.”

The argument that the interim order was substantive in nature and pursuant to it the petitioner had got an FDR of Rs.40,00,000/- prepared also does not alter the legal position. On the interim order ceasing to operate the petitioner and the respondent would no longer be bound by it.

Accordingly, there is no merit in this petition and the same is dismissed.

Needless to add it would be open to the petitioner to avail of any remedy in the LPA filed by the respondent or otherwise in accordance with law.

June 03, 2021

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No