

Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 13.06.2022

DELIVERED ON:13.06.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 1160 of 2021

With

I.A. No.CAN 1 of 2021

Ontrack Systems Limited

VERSUS

**The Regional Provident Fund Commissioner – II,
Employees Provident Fund Organization & Ors.**

Appearance:-

Mr. Abhrajit Mitra, Sr. Adv.,

Mr. Soumya Majumder,

Mr. Subhankar Nag,

Mr. Soumbho Ghose,

Mr. B. Kumar,

Mr. D. Sen

.....for the appellant.

Mr. Anil Kumar Gupta

.. for the respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal filed by the appellant is directed against the judgment and order dated 14th September, 2021 in W.P.A. No.13339 of 2019. The appellant challenged an order passed by the respondent authorities under Section 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the Act"). The orders were passed in the year 2014 and the writ petition was filed in the year 2019.

2. The undisputed fact is that there was delay in remittance of the employees' as well as employer's contribution to the respondent organisation. Consequently, the levy of interest was automatic and it appears that the appellant has not contested the levy of interest and the same has been recovered in full and the contribution, that is, both the employees' and employer's contribution has been remitted belatedly. What remains is the damages, which is payable under Section 14B of the Act, which has been quantified as more than Rs.44 lakhs.

3. It is submitted by Mr. Mitra, learned senior counsel appearing for the appellant that out of the said amount, Rs.4 lakhs has been recovered by way of bank attachment. It is submitted that in paragraph 8 of the impugned judgment and

order, the learned Single Bench has made an observation that the appellant with a view to deliberately avoid the mandate under Section 70 of the Act has not preferred a statutory appeal since a pre-deposit of 75% of the amount in dispute is a pre-condition. It is submitted by the learned senior counsel that in terms of the provisions of Section 7I read with Section 70, such mandatory pre-deposit is not required when an appeal is preferred as against an order passed under Section 14B of the Act. Therefore, it is submitted that the finding rendered by the learned writ Court is incorrect. The learned senior counsel submits that he is very well aware of the recent decision of the Hon'ble Supreme Court in the case of **Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organisation** reported in **2022 LiveLaw (SC) 202** wherein it has been held that *mens rea* or *actus reus* is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities. However, it is submitted that the authority, which passed the order has not discussed the submissions made on behalf of the appellant and the order is a non-speaking order.

4. The learned standing counsel appearing for the respondents submitted that the question of considering hardship faced by the

appellant cannot arise insofar as the employees' contribution is concerned, as it has already been deducted but not remitted to the organisation within the time permitted. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **M/s. Hindustan Times Ltd. Vs. Union of India and Ors.** reported in **AIR 1998 SC 688.**

5. Considering the fact that from 2014, the department has been unable to implement its orders and recovered the damages, which has been quantified and levied and also owing to the fact that the appellant has raised a plea that it is no longer in business and the banks, which have advanced loans have attached their assets, we are of the view that the appellate remedy available under the Act need not be foreclosed to the appellant. In fact, that appears to have been the thought process of the learned Single Bench as we can decipher from the observations made in paragraph 8 of the impugned judgment and order.

6. We fully agree with the other observation made by the learned Single Bench as regards the purpose for which the Act was enacted and that it is a social welfare legislation.

7. Thus, considering the overall facts and circumstances of the case, we are of the view that the appellant may be permitted to avail the appellate remedy before the Tribunal within the time that may be fixed by this Court. So far as the cost, which has been directed to be paid to the West Bengal State Legal Services Authority, Kolkata is concerned, we are of the view that the cost can be modified and a sum of Rs.50,000/- (Rupees Fifty Thousand) be paid to the West Bengal State Legal Services Authority, Kolkata to be utilised for any one of the schemes which has been approved by the National Legal Services Authority, New Delhi. Such cost shall be remitted within two weeks from the date of receipt of the server copy of this judgment and order. After remitting the cost along with the receipt, the appellant is granted two weeks' time thereafter to file an appeal before the Tribunal and if such an appeal is filed, the Tribunal shall not reject the appeal memorandum on the ground of limitation and the appeal may be considered in terms of the provisions of the Act.

8. In this regard, the Tribunal may take note of the submissions of the appellant that no pre-deposit is called for when an appeal is preferred as against an order passed under

Section 14B of the Act and decide the same in accordance with law.

9. It is made clear that the above timelines shall not be extended at any cost and until the appeal is preferred, the respondent organisation shall not initiate any coercive action as was submitted before the Hon'ble Division Bench on 14th January, 2022.

10. With the above observations, the appeal and the connected application are disposed of.

11. No costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)