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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19952 of 2022

M/s. SKG Pulp and Paper Mills Private Limited & Ors.
Vs.
Assistant Provident Fund Commissioner,
Sub-Regional Office & Ors.

Mr. Puspall Chakraborty,
Mr. Saptarshi Mukherjee
.... For the petitioners.

Mr. Shiv Chandra Prasad
... For the respondents.

This writ application has a chequered history. The writ petitioners had previously assailed the orders passed on 28th May, 2013 and 31st July, 2013 under section 7A and 7B respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act") by filing a writ application being WPA 33775 of 2013. On contested hearing, this Hon'ble Court by an order dated 23rd February, 2021 dismissed the said application and vacated all interim orders. Being aggrieved by the said order, the writ petitioners filed an appeal, which was registered as FMA 620 of 2021. On contest, the Division Bench of this Hon'ble Court by an order dated 23rd June, 2021 dismissed the said appeal.

Mr. Chakraborty, learned advocate representing the petitioners submits that the respondents have

subsequently determined the liability of the petitioners and for enforcement thereof issued a show cause notice as to why a warrant of arrest should not be issued. It is submitted on behalf of the petitioners that a request was made by the petitioners by a letter dated 24th June, 2021 requesting the respondents to allow the petitioners to pay-off the arrear dues of Rs.29,15,434/- by way of 72 installments. Mr. Chakraborty further submits that by a further letter dated 21st June, 2022 the petitioners had also requested the respondents to once again revisit the orders passed under Section 7A of the said Act for the period January, 2011 to March, 2013. By drawing attention of this Court to page 76 of the writ application it is submitted that a further representation has been made on 17th August, 2022 requesting the Recovery Officer to permit the petitioners to liquidate the arrears dues of Rs.20,10,003/- in 40 equal monthly installments. Mr. Chakraborty submits that despite receipt of aforesaid representations, the respondents have neither taken any steps nor have they permitted the petitioners to liquidate the dues by way of installments. He submits that the petitioners' have a legal right to have their representations considered and unless the representations are considered, no coercive action should be taken against the petitioners. He submits that the present writ application can be disposed off by directing the respondents to consider the representations made by the petitioners.

Per contra, Mr. Prasad, learned advocate representing the respondents/Provident Fund Authority submits that the petitioners had already challenged the orders passed under Section 7A & 7B of the said Act by filing a writ application. Such challenge did not succeed. The Hon'ble appeal Court had also refused to interfere with the order dated 23rd February, 2021, passed by this Hon'ble Court dismissing the writ application. The petitioners have not complied with the aforesaid order passed under Section 7A & 7B of the said Act. It is only after issuance of the show cause notice that the present writ application has been filed. The present application is an abuse of process of Court. The petitioners have no bona fide intent to pay of the admitted dues. The petitioners have failed to comply with the direction passed by this Court. The present application should be dismissed with costs.

I have taken note of the submissions made by the learned advocates appearing for the respective parties and have considered the materials on record. I find that when the writ application was moved it was represented on behalf of the petitioners that the petitioners wanted to liquidate the dues by way of installments. Having regard to the above to test out the *bona fide* of the petitioners, this Court by an order dated 21st September, 2022 directed the petitioners to deposit a sum of Rs.1,50,000/-.

Records would reveal despite such direction, the petitioners had defaulted in making payment of Rs.1,50,000/-. A further opportunity was afforded to the petitioners to deposit the said amount of Rs.1,50,000/- by an order dated 30th September, 2022 after payment of cost of Rs.10,000/-. It is in pursuance of the aforesaid order that the writ petitioners had deposited a sum of Rs.1,50,000/-. Since then on 31st October, 2022 when the aforesaid matter was taken up for hearing, Mr. Chakraborty, learned advocate representing the petitioners submitted that the petitioners are no longer interested to obtain directions for payment of the entire demand of the respondents by way of installments, he only insisted that this Hon'ble Court may be pleased direct the respondents to reconsider the representations made by the petitioners.

I find that the present writ application has been filed only after receipt of the notice of show cause as to why warrant of arrest shall not be issued. I find such notice dated 10th August, 2022 had been issued on account of failure of on the part of the petitioners to pay the certificate demand of Rs. 20,10,003/- along with costs. Despite giving an initial impression to this Court that the petitioners are interested to pay the dues by way of installments, which prompted this Court to pass orders, the petitioners have backed out and now claim that their

representations may only be considered. The petitioners are thus not interested in making payment of the dues as determined by the Provident Fund Authorities. The above writ application has been filed only to delay issuance of warrant of arrest. The prayer for consideration made by Mr. Chakraborty, at the first blush, may look innocuous, however, considering the fact that the petitioners are not interested to pay-off the dues as determined by the respondent authorities, it would appear that the present application is, in fact, an abuse of process of Court. The petitioners have no legal right to seek reconsideration of their case which had already reached finality.

I am of the considered view that directing the respondents to consider the petitioners' representations for revisiting the order passed under Section 7A of the said Act, at this stage would be travesty of justice.

In the facts as stated hereinabove, no useful purpose will be served in keeping the writ application pending, the same is accordingly dismissed.

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

(Raja Basu Chowdhury, J.)