IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CIVIL APPLICATION NO.3249 OF 2022
IN WP/10214/2021 WITH WP/10214/2021

REGIONAL PROVIDENT FUND COMMISSIONER -I,
AURANGABAD
VERSUS
M/S DAINIK BHASKAR CORPORATION LTD., THROUGH MIR
ANWAR ALI (DEPUTY MANAGER) AND OTHERS
...
Mr N. K. Choudhari, Advocate for applicant;
Mr N. S. Jaju, Advocate for respondent No.1
Mr P. B. Jadhav & Mr Yatin Thole, Advocates for respondent Nos.2 to 4

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

PER COURT:

1. By this application, the applicant/Regional Provident Fund Commissioner-I has put forth prayer clause (B) as under :

> *"B] Pending the hearing and final disposal of the above mentioned Writ Petition, permit the applicant to withdraw the sum of Rs.76,83,542/- (Rs. Seventy Six Lakhs Eighty Three Thousand Five Hundred and Forty Two Only) deposited in this Hon'ble Court, along with the interest accrued thereon, in pursuance of the order dtd. 28/09/2021 passed in the above mentioned Writ Petition, and for that purpose issue necessary order;"*

2. The learned Advocate representing the Assessee M/s Dainik Bhaskar Corporation had sought time on 11/03/2022 for filing a short affidavit to this civil application. It is regretfully stated

today that, the affidavit could not be filed. Nevertheless, there is no embargo on the learned Advocate in canvassing all his points, and therefore, I have permitted him to address the Court, which he has extensively done.

3. The learned Advocate for the Provident Funds Authorities draws my attention to the paragraph 6 set out in the application, which reads as under :

> *"6. The applicant states that, besides, at this stage, it would be apposite to have reference to the judgment of this Hon'ble court (Hon'ble Single Judge) in the case of Ralliwolf Limited vs. Regional P. F. Commissioner reported in 2001(2) Mah.L.J. 169, wherein, it is inter alia held, as under :*
>
> > *"….The payment of provident fund dues to the Fund, therefore, stands on the same footing as the payment of wages which is due to the employees. That is an entitlement to which the employees are entitled by dint of the work which they have put in. These are dues which are payable whether or not an undertaking is sick.* ***<u>They constitute an intrinsic part of the employees' right to life under Article 21 of the Constitution.</u>"***

4. The vehement submissions of learned Advocate Shri. Jaju are under :

(a) The Assessee has stated at page No.15 in the memo of the petition that, even if it is held that the Assessee is in arrears of Provident Fund subscription, it would be a maximum amount of Rs.98,17,794/-.

(b) The above statement is made without prejudice to the contentions of the Assessee against the assessment under Section 7-A of the Employees Provident Funds & Misc. Provision Act, 1952 (for short ‘The Act’).

(c) If the amount is allowed to be withdrawn by the Provident Funds Authorities, they would subsequently not return the amount to the Assessee, if it is concluded that the 7-A assessment was bad in law.

(d) If the Provident Funds Authorities permit the workers to withdraw some portion of the said amounts, it would be extremely cumbersome to recover the said amounts, if the Assessee is held to be not liable under Section 7-A of the Act.

5. The submissions of the learned Advocate for the Assessee, though appear to be attractive, have their own pit falls. If the Assessee is, without prejudice to it's rights, making a statement

that, it may have to pay Rs.98,17,794/-, it would have been advantageous for the Assessee to deposit the said amount without prejudice to its' rights, with the Provident Funds authorities, so as to curtail Section 14-B and Section 7-Q liability i.e. Damages and Interests on the unpaid amounts. This would actually lessen the future burden upon the Assessee, since damages and interests are purely a matter of arithmetical calculations and they are virtually like "fait-accompli" once assessment under Section 7-A of the Act, is sustained. The damages and interests would then be calculated from the dates the 7-A amounts fell due, if not deposited.

6. It is well settled that such deposits of amounts either under the directions of this Court or under the directions of the Appellate Tribunal under Section 7-O, are to be made with the Provident Funds Authorities for two fold purposes. Firstly, that such deposit would thereafter curtail the damages and interest to be deposited. Secondly, the workers, who may desire to draw advances for certain reasons, which is permissible in law, can be paid from these amounts and it is always permissible to adjust these amounts in repayments of the workers or the future deposits by the Assessee. The chance of the said amount having been

permanently lost is a remote possibility since the Assessee will continue to pay Provident Fund contribution as long as the establishment survives and is in operation.

7. In view of the above, this civil application is allowed in terms of prayer clause (B), reproduced above.

8. Needless to state, the said amount would be subject to the decision before the Appellate Tribunal in the 7-B proceedings. It goes without saying that, even if the Assessee succeeds in the 7-B proceedings, excess amounts deposited can either be refunded or can be adjusted in future Provident Fund contributions.

9. Since the amount has already been deposited by the Assessee, the interim protection granted/available to the Assessee, would continue till the decision in the pending writ petition.

(RAVINDRA V. GHUGE, J.)

sjk