

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.490 OF 2022

Nasik Merchant's Co-Op. Bank Ltd. .. Petitioner

Versus

The Regional Provident Fund

Commissioner- II and Anr. .. Respondents

...

Mr.P.M.Palshikar for the Petitioner.

Mr.Suresh Kumar for the Respondents.

...

CORAM: RAVINDRA V. GHUGE, J.

DATED : 18th JANUARY, 2022

P.C:-

1. By this petition, the petitioner-Bank has put forth prayer clause 13(a) and (b) as under :-

“13(a). That this Honourable Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ or Order or direction under Article-226 & 227 of Constitution of India calling for the records and proceedings of Appeal No.46 of 2021 in the matter of Impugned Order dated 25.11.2011 passed by Learned Presiding Officer of the Employees Provident Fund Appellate Authority, Mumbai and after going through legality, validity and propriety of the same, be pleased to quash and set aside the Impugned Order dated 25.11.2021.

13(b). That pending the hearing and final disposal of this Petition, this Honourable Court be pleased to stay the

operation and implementation of the Impugned Orders dated 18.08.2021 and 25.11.2011 passed by respondent Nos.1 and 2 respectively.”

2. I have considered the submissions of the learned Advocate for the petitioner-Bank and the learned standing counsel for the respondent No.1-Provident Fund Authority. An Appeal under Section 7-I of the EPF & MP Act, 1952 bearing CGIT-2/EPFA/Q No.46 of 2021 is pending before the learned Appellate Tribunal -2 at Mumbai.

3. Section 7-I of the Act of 1952 reads as under :-

“7-I. Appeals to Tribunal.-(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

4. Section 7-O of the Act of 1952 reads as under :-

7-O. Deposit of amount due, on filing appeal.- No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from

him as determined by an officer referred to in section 7-A :

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

5. In *O.G.Bajaj Construction Vs. Assistant Provident Fund Commissioner, Nagpur*¹, the learned Division Bench of this Court considered the scope and powers of the Appellate PF Tribunal, in considering an application for waiver or reduction in the deposit amount. It was held in paragraphs 17, 18 and 19 as under :-

“17.Any party claiming waiver of prior deposit has to show :

- (1) That the order under appeal is patently illegal or without jurisdiction.
- (2) No liability whatsoever is attracted.
- (3) Even if liability is attracted, on facts, the appellant has no capacity or resource and liquidity of paying the dues so claimed.

18. On the last date of hearing, the learned Advocate for the appellant had agreed to place on record some evidence from which he would demonstrate incapacity of the appellant to make prior deposit, and shall urge for waiver based on such material.

The learned Advocate for the appellant has today tendered an affidavit, which we have perused.

19. The affidavit tendered today does not disclose an iota of statement or evidence in support to demonstrate financial capacity of the appellant and incapacity if it be so.”

6. After this matter was briefly heard, I had called upon the learned counsel for the petitioner-Bank to take instructions as to the deposit of 75% of the amount assessed under Section 7-A inquiry. The learned counsel submits on specific instructions

1 2010(3) Mh.L.J. 325

from the petitioner-Bank that the amount would be deposited with the RPFC-II, at its Sub-Regional office at Nashik within one week. The impugned interim order of the PF Appellate Tribunal would, therefore, stand complied with.

7. The learned counsel for the petitioner-Bank contended that though the petitioner would now deposit 75% of the assessed amount, there is a possibility that the PF Appellate Tribunal may not grant interim protection to the petitioner.

8. In Old Village Industries, Ltd. Vs. Assistant Provident Fund Commissioner, Employees' Provident Fund Organization & Anr.², the Delhi High Court considered the aspect of the pre-condition of deposit for the entertainment of the appeal. It was held as under :-

“6. The power to waive or reduce the amount to be deposited is relatively to the amount determined by the officer under S.7A of the Act. In other words the pre-requisite of deposit of 75 per cent of the demanded amount applicable to an order passed under S.7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of S.7(1) to the order passed under S.7A. Such provisions are to be construed strictly and cannot be given a wider meaning so as to create a liability which is intended to be correct to the entertainment of an appeal. The liability to deposit arises in the situation strictly contemplated under the provisions of this section. There is nothing in the section so as to extend its application to an order passed under S.14B of the Act. An employer has a right to prefer an appeal against an order under S.14B, under S. 7(1) of the Act but the pre-condition of “deposit for entertainment of such an appeal is not covered under S.7-O of the Act. Thus, I have no hesitation in rejecting the contention of the respondents that it would be mandatory for the employer to deposit 75 per cent of such amount before appeal can be entertained or even that there

2 2005(3) L.L.N. 572

cannot be stay of recovery of the said amount by the appellate authority. The argument raised on behalf of the respondents would be untenable even for another reason that damage is the consequence of the demand raised under S.7-A of the Act. The provisions of S.14B of the Act attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in a category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Such provisions being related to revenue would be construed strictly whether to the advantage or disadvantage of the person upon whom the liability is sought to be fastened. Once the provisions of S.7-O does not include an appeal against an order under S.14B then it would be in no way permissible to include such an order by implication or otherwise.

7. In regard to the pendency of the appeal before the appropriate forum it is clear that no fault can be attributed to the petitioner employer. He has preferred an appeal in the prescribed forum under S.7(1) which is admittedly pending before the Appellate Tribunal. The obligation to hear an appeal lies upon the Tribunal and if for any reason whatsoever it is not able to hear the appeal, it will be most unfair to enforce its demand particularly when the validity of such a demand is challenged by the employer on various legal as well as computation basis.”

9. It calls for no debate that an application under Section 7-O in an appeal under Section 7-I, enables the appellant to make out a case of either waiver or reduction of the amount to be deposited as a pre-condition, while filing the appeal. An order on such application under Section 7-O is in the form of a direction of the Appellate Tribunal. Such application for waiver or reduction could be granted depending upon such facts and circumstances as are postulated by this Court in *O.G.Bajaj* (supra). Consequentially, the order passed by the Appellate Tribunal has to be complied with and that would indicate the adjudication by the Appellate Tribunal with

regard to the quantum of the pre-deposit. As a natural effect of such order, the appellant is required to deposit the amount, as directed by the Tribunal and the appeal would, thereafter, be taken up for final hearing. Once such an order under Section 7-O is passed and complied with, the appellant has to be protected against recovery of the remainder amount as assessed under Section 7-A, lest, the purpose of adjudicating upon an application under Section 7-O would be rendered a mere formality. I am, therefore, of the view that once the appellant deposits the amount as may be directed under Section 7-O, the appellant has to be protected against coercive measures for the recovery of the remainder amount, as assessed under Section 7-A.

10. As such, since the petitioner/assessee is willing to deposit 75% of the amount, as required under Section 7-O, this petition is disposed off with the following directions:-

- (a) The petitioner-Bank shall deposit 75% of the assessed amount with the RPFC, Nasik, on or before 28/01/2022.
- (b) In view of the said deposit, the petitioner-Bank shall be protected against coercive steps, which are likely to be initiated or have been initiated against it by respondent No.1 and there shall be no further recovery of the remainder 25% of the assessed amount, until the Appeal is decided.
- (c) The litigating parties shall appear before respondent No.2/ Appellate Tribunal on 11/02/2022 at 11.00 a.m. and separate notices for the said date of appearance would not

be necessary.

- (d) After granting a reasonable opportunity of hearing to the litigating parties, respondent No.2 would endeavor to deliver it's judgment on or before 30/06/2022.
- (e) In view of the above directions and as the amount is being deposited on or before 28/01/2022, the prohibitory orders or coercive steps initiated by the respondent No.1- PF Authorities, shall stand nullified.

(RAVINDRA V. GHUGE, J.)

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