IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.981 OF 2021

M/s. Suman Construction ..Petitioner
Versus
The Assistant P. F. Commissioner ..Respondent

Ms. Jaymala Ostwal a/w Komal M. Gosavi, Akanksha Sarpole i/by M/s. JJ Associates, for the Petitioner.
Mr. Suresh Kumar a/w Smita Thakur, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th JULY, 2022

P.C.

1. Heard.

2. Under the provisions of Section 7A of the Employees Provident Funds Act and Misc. Provisions Act, 1952 (hereinafter referred to as "the Act" for the sake of brevity) an order came to be passed on 31st July, 2019 after hearing the petitioner thereby determining the amount of Rs.62,66,421/- as due and payable by the petitioner for a period from February-2001 to December-2006. The aforesaid assessment was irrespective of the interest and damages to be quantified under Section 7Q and 14B of the said Act.

3. The petitioner feeling aggrieved preferred an

appeal on 22nd January, 2020 along with an application for condonation of delay. The said application came to be rejected vide order dated 3rd February, 2021. As such, this petition.

4. Counsel for the petitioner while questioning the said order would urge that even if the order under Section 7A of the Act was passed on 31st July, 2019, the same was not properly communicated to the petitioner and as such, there was delay in preferring appeal. He would claim that there were certain circumstances viz. death of wife of the managing partners, delivery of copy of the order to the watchman etc. which has resulted into filing of the appeal at belated stage. She would as such claim that without there being delay, the petitioner by way of abundant caution preferred an application for condonation of delay which is rejected vide order impugned thereby overlooked the fact that the delay caused was bonafide and unintentional. So as to substantiate her contentions, she has relied on factual matrix from the record which is with the petition.

5. Counsel for the respondent would oppose the claim, as according to him, sub-rule (2) of Rule 7 of the Rules framed under the Act provides for limitation of sixty days which in exceptional case can be extended by another sixty days. According to him, the record depicts

that the order which is challenged in the appeal was served on the petitioner through speed-post and there is sufficient material to infer that the order was duly served on the petitioner. In addition the contentions are, the limitation prescribed under Rule 7 cannot be extended under Section 29 of the Limitation Act.

6. I have appreciated the said submissions.

7. The fact remains that in the prayer for condonation of delay application, the petitioner initially came out with a case that the order was duly served on the establishment, however, such pleadings were subsequently diluted by giving supplementary reasons by raising grounds.

8. From the pleadings of the petitioner in application for condonation of delay, it is specifically pleaded that the petitioner/establishment has received copy of the order impugned in October, 2019, but on account of disturbance and family problem, the appeal was preferred at belated stage. It is also claimed that Mr. Potdar, who was looking after entire business of the petitioner lost his wife and as such, there was delay on the aforesaid count.

9. As far as the aforesaid contentions are

concerned, petitioner in categorical terms has given admission that the order was served on the establishment in October, 2019. In this background, rightly so, the petitioner has taken out an application for condonation of delay.

10. The fact that sub-rule (2) of Rule 7 of the Rules framed under the Act provides maximum sixty days period in addition to initial period of sixty days for filing of an appeal is no more *res-integra*. The said provisions have been interpreted in detail by this Court in the matter of ***The Manganga Sahakari Sakhar Karkhana Ltd. Vs. The Assistant Provident Fund Commissioner in Writ Petition No.2101 of 2014*** order delivered ***on 5th November, 2014***.

11. In the scheme of the said rules, the provisions of applicability of Section 29 of the Limitation Act cannot be read to the benefit of the petitioner. The issue is squarely covered by the aforesaid judgment.

12. In that view of the matter, no illegality could be noticed in the order impugned. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]