

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6479/2017

Jijau Ginning and Pressing Factory
Vs.

The Assistant Provident Fund Commissioner, Akola

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri A.R. Deshpande, Advocate for petitioner
Shri H.N. Verma, Advocate for respondent.

CORAM : AMIT BORKAR, J.

DATE : SEPTEMBER 12, 2022.

By this petition, the petitioner is challenging the orders dated 04.08.2017 and 09.04.2014 passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short '**EFP Act**'). According to the petitioner, the impugned order was passed *ex parte* on 03.04.2014, which according to the respondent, was sent to the petitioner on 09.04.2014. The petition was filed on 20.09.2017. Therefore, there are laches of three years in filing the present petition. To explain the laches in filing the petition, the petitioner has made averments in paragraph 13 of the petition. It is stated that the order dated 03.04.2014 was communicated to the petitioner on 08.03.2017. However, since the limitation for filing the appeal had already expired, the petitioner is filing the present petition.

2. The respondent has contested the petition by filing its reply. Along with the reply, the respondent has produced a copy of the outward register to demonstrate a copy of the order sent to the petitioner by post. The relevant extract of the outward register dated 13.03.2014 is placed on record to show that the impugned order was sent to the petitioner by post. Additionally, the respondent has placed on record Roznama to show that the partner of the petitioner was present during the course of the proceedings. Only on the last two dates was the petitioner absent, and thereafter the proceeding was decided on merits. Therefore, according to the petitioner, the proceedings were decided *ex parte*. Along with the reply, the respondent has filed an order attaching two accounts of the petitioner(i) Khamgaon Urban Cooperative Bank Limited and (ii) Buldhana District Central Cooperative Bank. According to the petitioner, Buldhana District Central Cooperative Bank has issued a letter to the petitioner communicating that there is no attachment in pursuance of the order dated 06.06.2014. The petitioner could not get instructions as regards the attachment of his account in Khamgaon Urban Cooperative Bank Limited.

3. The respondent has also placed on record a copy of a show-cause notice as to why an arrest warrant should not be issued against the petitioner. In pursuance of the said warrant, the petitioner, on 07.06.2016, filed an application with the Provident Fund Commissioner stating that he is ready to deposit the amount to be recovered against him.

The petitioner sought one month to deposit the said amount. Accordingly, the Regional Provident Fund Commissioner on 06.02.2017 granted time to the petitioner on a deposit of ₹1 lakh and on furnishing a personal bond to remain present in the proceedings.

4. A perusal of the record shows no material produced by the petitioner to show that the account in Khamgaon Urban Cooperative Bank was not attached as per the order dated 06.06.2014, which indicates that at least on 06.06.2014 Petitioner had knowledge of the order dated 09.04.2014.

5. Thereafter, on 07.06.2016, petitioner approached the Provident Fund Commissioner and undertook to deposit the amount of dues. At least on that day, the petitioner had knowledge about the order passed under Section 7A of the EPF Act. Despite the said fact, the petitioner has made a false statement in paragraph 13 that the order under Section 7A was communicated to the petitioner on 08.03.2017.

6. Ordinarily, this Court is liberal while entertaining the petition after the statutory period of limitation or petition suffering from laches, provided there is sufficient cause for delay in approaching the Court. However, it is necessary to emphasize the fact that if a petitioner seeks relief either under Article 226 or Article 227 of the Constitution, he must show the utmost diligence and approach this Court as

expeditiously as possible. It is equally true that any law lays down no limitation for presenting a petition under Article 226 or Article 227. It is also true that in proper cases, the Court would permit a petitioner to approach this Court after a long lapse of time. However, ordinarily, when there are no exceptional circumstances, any undue delay would be sufficient to dis-entitle a petitioner from obtaining relief under Article 226 or Article 227.

7. In the facts of the case, the overall conduct of the petitioner is far from satisfactory. The averments in paragraph 13 considered in the context of the reply filed by the respondent demonstrate that the petitioner has made false averment that he had knowledge of the order dated 09.04.2014 only on 08.03.2017. Therefore the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India cannot help such a litigant who has not approached this Court with clean hands. Moreover, the petitioner has made a false statement in the petition while explaining laches in filing the petition. In that view of the matter, there is no merit in the petition. The petition is, therefore, dismissed. No costs.

JUDGE

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