IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

LPA No.444 of 2022
Date of decision: 31.05.2022

Vivek Goel ......Appellant

Versus

Employees' Provident Fund Organization & anr. .....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**
**HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Pritam Singh Saini, Advocate for the appellant.
Mr. Rajesh Hooda, Advocate for the respondents.

**SANDEEP MOUDGIL, J.**

In the instant intra-court appeal, the appellant has challenged the order dated 06.04.2022, passed by the learned Single Bench, vide which the writ petition filed by the appellant had been dismissed by upholding the recovery certificate dated 13.02.2015 as well as the warrant of arrest dated 09.02.2016, issued in pursuance to the assessment order dated 10/12-12-2014 (Annexure P-1) passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "1952 Act").

2. The facts leading to the present appeal are that an assessment

order dated 10/12.12.2014 was passed by respondent No.1 under Section 7-A of the 1952 Act on account of non-deposit/payment of dues against provident fund contribution for the period 3/2005 to 10/2012 by M/s Gee Pee Aar Rubber Mills Private Limited and the appellant being one of its Directors.

3. It is a matter of record that neither the liability under the assessment order dated 10/12.12.2014 was discharged nor the same was challenged. In pursuance thereof, recovery certificate dated 13.02.2015 as well as the warrant of arrest dated 09.02.2016 were issued.

4. The appellant laid challenge to the recovery certificate dated 13.02.2015 as well as the warrant of arrest dated 09.02.2016 before this court by way of CWP No.3757 of 2016. The said writ petition came to be dismissed, vide order dated 06.04.2022. Accordingly, the present appeal to impugn the said order.

5. Having heard learned counsel for the parties and after going through the records of the writ petition as well as the impugned order dated 31.05.2022, passed by the learned Single Judge, we find no merit in the present appeal.

6. The primary contention in the present appeal is that in view of Section 8-B of 1952 Act, the mode of recovery of arrears through arrest of

employer and his detention in prison could be adopted only after the attachment and sale of movable and immovable properties of the establishment as prescribed in the 1952 Act vide clause (a) to sub section (1) of Section 8-B read with its proviso, which is reproduced hereunder:-

> "***8B. Issue of certificate to the Recovery Officer***.
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> *(1) Where any amount is in arrear under section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:*
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> (a) *attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;*
>
> (b) *arrest of the employer and his detention in prison;*
>
> (c) *appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:*
>
> *Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.*
>
> *(2) The authorized officer may issue a certificate under subsection (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.]"*

7. From a bare perusal of aforesaid statutory provisions, it is self evident that the aforesaid contention as raised by the appellant is wholly

misplaced. Rather, it is apparent that the remedies/modes provided for recovery of dues are coextensive and mutually exclusive of each another.

8. In sum and substance, the recovery of amount due from an establishment or the employer can be affected through any of the modes such as attachment and sale of movable or immovable property of the establishment or the employer, as the case may be or it can be through arrest of employer and his detention in prison or even by way of appointing a Receiver for the management of the movable and immovable property of the establishment or the employer, as the case may be. The view expressed herein above finds support from decision dated 18.08.2021 passed in case titled as **Satish Kumar Jhunjhunwala vs Regional Provident Fund Commissioner, (Calcutta)** reported as **2021 Labour & Industrial Cases 4719**, para no. 9 whereof is reproduced here under:-

> "*9. On a plain and proper reading of the aforesaid section, I am unable to agree with the contention of the petitioner that it is incumbent on the respondent authorities to proceed against the establishment and initiate all other recovery modes of before issuing a warrant of arrest against the petitioner director. On the contrary, it appears from the scheme of the section that the remedies provided to the respondent authorities for recovery of their dues are co-extensive and mutually exclusive of each another. I also find the decisions relied on by the petitioner to be distinguishable and inapposite to the facts of the instant case."*

9. Similar view has been expressed by a Division Bench of this Court also while dealing with Section 8-B of 1952 Act, in case titled as **Sobhag Textile Ltd. vs Regional Provident Fund Commissioner, Haryana and another** reported as **2000 (4) SCT 508.** Relevant paragraphs 8 & 9 of the aforesaid judgment, are reproduced here under:-

> "*8. This leaves us with the question as to whether the threatened civil imprisonment of the petitioner is ultra vires to Section 8-B of the 1952 Act. Shri Grover argued that before resorting to the mode contemplated by sub-clause (b) of Section 8-B(1), the respondents are duty bound to take action for sale and attachment of the property of the establishment as contemplated by sub-clause (a) thereof. As against this, Shri Rajesh Bindal argued that the proviso appearing below clause (c) of Section 8-B(1) does not affect the power of the Recovery Officer to adopt either of the modes stipulated in clauses (a) or (b) of Section 8-B(1).*
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> *9. We have given serious thought to the submission of the learned counsel. In our view, the impugned notice cannot be quashed on the ground that the respondents have not taken action in terms of clauses (a) of Section 8-B(1). Sub-section (1) of Section 8-B of the 1952 Act prescribes alternative modes of recovery of the arrears on the basis of certificate issued by the authorised officer. Attachment or sale of moveable or immoveable property of the establishment or, as the case may be, and arrest of the employer and his detention in prison are two of the three modes which can be adopted by the Recovery Officer. Proviso appearing below clause (c) of Section 8-B(1) of the 1952 Act lays down that attachment and sale of any property under Section 8-B shall first be effected against the properties of the establishment and proceedings against the property of the employer can be taken only if the amount due cannot be recovered from the properties of the establishment. However, there is nothing in the said proviso from which it can be inferred that respondent No. 2 is not entitled to have recourse to mode prescribed in clause (b) of Section 8-B(1) before taking recourse in the sale of property under Section 8-B(1)(a) and in the absence of any such*

*embargo, it is not possible to agree with Shri Grover that the notice issued by respondent No. 2 should be declared illegal, arbitrary and unjustified.”*

10. We are fully convinced to observe that there is no impediment in issuance of impugned arrest warrants for the purpose of affecting recovery of arrears, as from a bare reading of the provisions of 1952 Act as well as the proviso, one cannot lead to a conclusion that in all cases of recovery from an establishment or the employer, the mode of attachment and sale of movable or immovable property of the establishment or the employer has to be adopted at the first instance. In fact, the proviso to sub section (1) of Section 8-B regulates only clause (a) and (c) of sub section (1) and not clause (b). In case the proviso is made to govern or regulate sub clause (b) to sub section (1) also, the same would restrict/regulate the substantive part of sub section (1), which enables the Recovery Officer to effect recovery through any one or more of the modes enumerated therein, which are co-extensive and mutually exclusive of each another. Any other interpretation thus would defeat the legislative intent.

11. More than that, it has also been taken note of in the order passed by the learned Single Judge that there has been no challenge to the assessment order dated 10/12.12.2014, passed by respondent No.1.

12. Hence in view of the discussion made herein above, we do not

find any illegality in the order dated 06.04.2022 necessitating any interference of this Court inasmuch as the appeal fails as it is devoid of merits.

13. Dismissed.

**(SANDEEP MOUDGIL)** **(AUGUSTINE GEORGE MASIH)**
**JUDGE** **JUDGE**

31.05.2022
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|---|---|
| Whether speaking/reasoned | Yes |
| Whether reportable | No |