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17.04.2023
Ct. No. 32
rrc

MAT 647 of 2023
with
IA No. CAN 1 of 2023

[Baranagar Jute Factory PLC. Workers Union (UTUC) Vs. Sampat Mal Jhanwar & Ors.]

Mr. Kalyan Bandyopadhyay, Ld. Sr. Adv.
Mr. Abhishek Halder
Mr. Tamaghna Saha
..... For the appellant

Mr. Abhrajit Mitra, Ld. Sr. Adv.
Mr. Anirban Ray
Mr. Ananta Kumar Shaw
Mr. Anirudha Agarwalla
Mr. Yasho Vardhan Kochar
Ms. Priyanka Garain
..... For the respondent nos. 1 & 2

Mr. Shiv Chandra Prasad
..... For the Provident Fund Authority

The present application being CAN 1 of 2023 has been filed praying for leave to prefer an appeal against an order dated 5th April, 2023 passed in a writ petition being WPA 7663 of 2023 and for stay of operation of the order dated 5th April, 2023.

Mr. Bandyopadhyay, learned senior Counsel appearing for the applicant/appellant, namely, Baranagar Jute Factory Workers Union (UTUC) submits that in connection with the writ petition being WPA 7663 of 2023 which was preferred by the writ petitioners challenging, *inter alia,* attachment orders and notices/orders dated 14th March, 2023, the applicant herein has filed an intervention application. Without considering the said application and without expressing any *prima facie* opinion as regards legality of the attachment orders, the learned Judge by the impugned order granted liberty to the writ petitioners to withdraw an amount of Rs.70,000,00/- (Rupees Seventy Lakhs).

He argues that an order under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, the said Act) is appealable under Section 7-I of the said Act and as per Section 7-O of the said Act, no appeal shall be entertained unless the employer deposits 75% of the amount due. For non-compliance of the order under Section 7-A of the said Act, the attachment orders were rightly issued. Without considering such jurisdictional issues, as urged and without deciding the intervention application, the learned Judge erred in law in passing the interim order.

Drawing our attention to the averments made in paragraph 11 of the application, Mr. Bandyopadhyay submits that after an interim order was passed in an earlier writ petition being WPA 1849 of 2023, the writ petitioners received an amount of Rs.1,56,16,417/- and the said amount had been siphoned out by the writ petitioners to their sister concern, namely, AXIS Overseas Limited. In support of his arguments Mr. Bandyopadhyay has placed reliance upon a judgment delivered in the case of *´Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) and others Vs. Baranagore Jute Factory PLC. And others'* reported in *(2017) 5 SCC 506*.

Per contra, Mr. Mitra, learned senior counsel appearing for the writ petitioners/respondent nos. 1 and 2 herein submits that the directions contained in the order impugned had not prejudiced the applicant herein in any manner whatsoever. The learned Court had only granted liberty to the writ petitioners to withdraw an amount of Rs.70 lakhs for the purpose of payment of wages of the employees in the jute factory which is having more than 2000 workers.

Mr. Mitra informs us that the intervention application along with the writ petition has been fixed for hearing before the learned single Judge tomorrow.

Mr. Mitra submits that the order impugned had not prejudiced the applicant in any manner and as such he is not a *'person aggrieved'*. In support of his arguments he has placed reliance upon a judgment delivered in the case of *'Jasbhai Motibhai Desai Vs. Roshan Kumar and Others'.*

In reply, Mr. Bandyopadhyay argues that the applicant has suffered a legal grievance inasmuch as the money which has been allowed to be withdrawn pertains to provident fund dues of the workers and the judgment in the case of *Jasbhai Motibhai Desai (supra)* has no manner of application.

Records reveal that on 5th April, 2023, three writ petitions along with the connected applications were taken up for hearing by the learned single Judge. The writ petition being WPA 7663 of 2023 was preferred challenging, *inter alia,* attachment orders dated 14th March, 2023 in which the appellant/applicant herein had preferred an application for intervention. Similar application for intervention had also been filed by the applicant in the other writ petition being WPA 1849 of 2023. As regards the said applications, the learned single Judge observed that the same are required to be heard and the matters were made returnable for hearing on 12th April, 2023.

From the order it appears that the learned Court granted liberty to the writ petitioners to withdraw a sum aggregating to Rs.70 lakhs from the bank account maintained by the respondent nos. 3 to 9 on account of wages payable to the workers, observing *inter alia* that the factory was a running concern and the wages of the workers are already overdue. In the said order it was also observed that the directions issued would be without prejudice to the rights and contentions of the Provident Fund authorities as regards the quantum of current provident fund contribution, as identified by the writ petitioners in the affidavit, as filed.

We have been informed that pursuant to the directions of the learned Court, the writ petitioners have already filed an affidavit of compliance confirming disbursement of the wages made in favour of the workers.

In the said conspectus and as the learned Judge has exercised discretion in favour of the writ petitioners after detailing the reasons, no interference is called for in the present appeal.

Accordingly, the application being **CAN 1 of 2023** is dismissed and consequently, the appeal being **MAT 647 of 2023** also stands dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Rai Chattopadhyay, J.) **(Tapabrata Chakraborty, J.)**