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Ct 550

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10576 of 2023

M/s. Naba Kumar Construction
Vs.
The Union of India & Ors.

Mr. Debasis Sur
Mr. Goutam Debnath
Mr. A. Patra
Mr. H. S. Paul

.... For the petitioner.

Ms. Debjani Ghosal

.... For the respondent nos. 2 and 3

1. The present writ application has been filed, *inter alia*, challenging the order dated 11th November, 2022, issued by the Recovery Officer, which is appearing at page 28 of the writ application.
2. It is submitted on behalf of the petitioner that challenging an order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) dated 16th March, 2022, an appeal has been filed before the Central Government Industrial Tribunal (CGIT), which has been registered as Appeal No.8 of 2022. It is submitted that the appeal has been posted for hearing in the month of July, 2023. Unfortunately, during the pendency of the aforesaid appeal, the authorities have proceeded to execute a certificate,

issued for realizing the amount due under the order passed under Section 7A of the said Act as aforesaid.

3. Ms. Ghosal, learned advocate representing the provident fund authorities submits that the petitioner could have availed his remedy before the Tribunal and could have proceeded to seek a stay of the recovery proceedings. It is submitted that this Hon'ble Court ought not to entertain this writ application as there is an efficacious alternative remedy available to the petitioner. She further submits that it is still open to the petitioner to proceed before the Tribunal and makes an appropriate application for seeking appropriate relief.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although, it has been contended on behalf of the respondents that there is an alternative remedy available, yet I find that during the pendency of the aforesaid appeal, the respondents have proceeded to execute the order under Section 7A of the said Act. In my view, when the statute itself recognizes the right of an establishment to prefer an appeal from an order passed under Section 7A of the said Act, without seeking leave of the Tribunal, no recovery proceedings ought to have been initiated especially when, the statute not only contemplates pre deposit of a portion

of the amount due, in respect of appeal from orders under Section 7A of the said Act but also authorized the Tribunal to reduce or exempt such pre deposit.

5. In such view of the matter, let the recovery proceedings initiated by the respondents vide notices dated 11th November, 2022 and 9th January, 2023 be stayed.
6. The petitioner is further permitted to apply before the CGIT, praying for appropriate reliefs within a period of eight weeks from date. In the event any such application is filed, the CGIT shall consider and dispose of the same in accordance with law. The demands raised by the authorities shall abide by the orders passed by the CGIT.
7. Since no fruitful purpose will be served in keeping the writ application pending, the same is disposed of.
8. Since I have not called for any affidavits, allegations made in the writ petition are deemed to have been denied by the respondents.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)