

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20159 of 2023

Swarna Technology Private Limited
Vs.

Enforcement Officer, Employees'
Provident Fund Organisation & Ors.

Mr. Debanuj Basu Thakur
... For the petitioner.

Mr. Rajib Ray
... For the respondent nos. 1 and 2.

1. The present writ application has been filed, inter alia, challenging the order dated 31st August, 2022 passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act").

2. Mr. Basu Thakur, learned advocate representing the petitioner submits that the order passed by the Assistant Provident Fund Commissioner, is an *ex parte* order. It is submitted that on the last date, the petitioner could not appear before the respondents and it is for such reason the hearing was closed. Subsequently, the petitioner came to learn that a final order had been passed by the respondent no.2 on 31st August, 2022, whereupon a demand of Rs.34,84,805/- has been raised on the petitioner, for the period 1st April, 2013 to 31st August, 2017.

3. It is still further submitted that an order of attachment dated 18th November, 2022 has already been issued by the provident fund authorities. It is submitted that unless the petitioner is given an opportunity to contest the proceedings, the petitioner shall suffer irreparable loss and injury. The petitioner prays for setting aside of the order dated 31st August, 2022.

4. Per contra, Mr. Ray, learned advocate representing the provident fund authorities submits that in this case the proceedings under Section 7A of the said Act had been initiated against the petitioner sometime in the year 2016. The petitioner had duly entered appearance in the matter and had thereafter from time to time taken several adjournments. Ultimately, by a detailed order dated 31st August, 2023 the aforesaid determination under Section 7A of the said Act was concluded by the Assistant Provident Fund Commissioner. He submits that the petitioner has an efficacious alternative remedy in the form of an appeal and this Hon'ble Court in exercise of its extra-ordinary writ jurisdiction ought not to entertain the present application.

5. Heard learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case I find that the order passed under Section 7A of the said Act is an appealable order.

6. Having regard to the aforesaid and taking into consideration the submissions of Mr. Ray, I am of the view that the petitioner should first exhaust the alternative remedy available to him.

7. In view thereof and in the event, the petitioner files an appeal before the Appellate Authority within a period of 30 days from date, the Appellate Authority shall hear out and decide the same on merits in accordance with law.

8. With the aforesaid observations/directions, the writ application is disposed of.

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

10. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)