IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15479 OF 2023

M/s. Kalpesh Enterprises ..Petitioner
Versus
Regional Provident Fund Commissioner ..Respondent

Mr. P. M. Bhagat, for the Petitioner.
Mr. Ravi Rattesar, for the Respondent/RPFC, Vashi.

CORAM : MILIND N. JADHAV, J.

DATE : 11th DECEMBER, 2023

P.C.

1. Heard Mr. Bhagat, learned advocate appearing for the Petitioner and Mr. Rattesar, learned advocate appearing for the Respondent.

2. The Petition takes exception to the statutory order dated 20.03.2023 passed by the Competent Authority under Section 7Q of the Employees Provident Funds and Misc. Provisions Act, 1952 (For short "the said Act"). Learned advocate has also placed on record order of even date passed under Section 14B of the said Act. The liability under the order passed under Section 7Q is approximately Rs.7,18,000/-, whereas liability under the order passed under Section 14B of the said Act is approximately Rs.11,98,773/-. What is of immediate concern is prohibitory order dated 09.09.2023 issued by the Competent Authority which is at Exh.A - page No.34 of the

Writ Petition, *inter-alia,* directing the Commissioner, Navi Mumbai Municipal Corporation to freeze payments to be made to the Petitioner in respect of the contractual obligations between the Petitioner and the Corporation. However, there is clear error on record in the prohibitory order for recovery of Rs.1.3 Crores as actual liability of the Petitioner which is reproduced in paragraph No.1 of the prohibitory order which taken together under Section 7Q and 14B of the said Act is approximately Rs.19,17,726/- only.

3. Mr. Bhagat also has drawn my attention to the fact that the period for which the interest has been levied in the year 2023 is beginning from 2003 onwards and in that view of matter, an arguable case has been made out for grant of ad-interim relief by the Petitioner.

4. However, in his usual fairness, Mr. Bhagat would submit that statutory appeal against the original order dated 20.03.2023 passed under Section 7Q, as also the order under Section 14B of the said Act has already been filed before the CGIT-I, Mumbai and it is nomenclatured as Appeal No.53 of 2023.

5. Mr. Rattesar, learned advocate appearing for the sole Respondent would submit that since the statutory appeal along with application seeking stay on the aforesaid two orders has already been filed, this Court be pleased to pass appropriate order as deemed fit in law so as to allow the statutory Appellate Authority to

decide the issue.

6. I am in agreement with the submissions made by Mr. Rattesar. In the facts of the present case, considering that the substantive appeal has already been filed by the Petitioner, the said statutory Appeal is directed to be decided and adjudicated by the CGIT-I, Mumbai within a period of six months from today. Though, I am informed by both the learned advocates that at present CGIT-I is vacant, as also, CGIT-II, parties shall have liberty to mention the matter in the event if, any extension is required.

7. Mr. Rattesar, learned advocate would next submit that if this Court is inclined to remand the matter to the statutory Authority for hearing of the statutory Appeal, this Court should direct the Petitioner to deposit at least 50% of the amount considering that order under Section 7Q of the said Act is not appealable. Considering the facts of the present case and more importantly that application seeking stay has already been filed along with the statutory Appeal by the Petitioner, I am not inclined to accept the submissions made by Mr. Rattesar and order any pre-deposit in this case. The reason being that in the present case, summons were issued for the periods beginning from 1996 and orders under Sections 7Q of the said Act claiming interest was passed in the year 2003 for the period beginning from 2003 onwards. In that view of the matter, the Authority would undoubtedly look into the above aspect and decide the case of the

Petitioner on merit. Hence, considering the impugned claims/demands against the Petitioner and the timeline in the present case, at the time of consideration of the stay application, learned CGIT may consider passing appropriate orders therein.

8. In view of the above observations, the prohibitory order dated 09.09.2023, which is at Exh.A - page No.34 of the Writ Petition is quashed and set aside.

9. If any direction has been implemented by the Commissioner, Navi Mumbai Municipal Corporation under the said prohibitory order, the said implementation shall be immediately revoked. Considering the fact that the prohibitory order dated 09.09.2023 has been set aside, it is directed that if any monies are due and payable from the Navi Mumbai Municipal Corporation, the same shall be paid to petitioner in accordance with law.

10. With the above directions, the Writ Petition is disposed.

[MILIND N. JADHAV, J.]