



WEB COPY



W.A.No.2030 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A.No.2030 of 2023

Tamilnad Mercantile Bank Ltd.,
rep. by its Branch Manager,
Erode Branch,
KMP Towers,
41, Theppakkulam Street,
Erode – 638 001.

.. Appellant

Vs

The Recovery Officer/
The Regional Commissioner II,
Employees' Provident Fund Organisation,
District Office, Erode Raj Majestic,
No.351/5, First Floor, Cauvery Road,
Karungalpalayam,
Erode – 638 003.

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 20.07.2023 passed by the learned Single Judge in W.M.P.No.21117 of 2023 in W.P.No.21777 of 2023.



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For the Appellant : Mr.V.Chandrasekaran

For the Respondent : Mr.P.K.Panneerselvam

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.V.Chandrasekaran, learned counsel for the appellant and Mr.P.K.Panneerselvam, learned counsel for the respondent.

2. The present appeal is filed against the interim order passed by the learned Single Judge directing the present appellant to furnish bank guarantee for an amount of Rs.6,09,80,164/- [Rupees Six Crores Nine Lakhs Eighty Thousand One Hundred and Sixty Four only].

3. It appears that the present appellant is a creditor of M/s.Sri Textile Erode Private Limited. The property was sold by the Liquidator and the sale proceeds are received by the



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present appellant. The Provident Fund Department issued a show cause notice to the appellant invoking Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 terming the present appellant as a garnishee. The show cause notice directs the present appellant to deposit Rs.6,09,80,164/- [Rupees Six Crores Nine Lakhs Eighty Thousand One Hundred and Sixty Four only], failing which it is stated that further coercive action would be taken.

4. Learned counsel for the respondent contends that the respondent, being the Provident Fund Department, has a priority charge and, as such, is entitled to recover the amount from the appellant. The amount to be recovered is the amount payable by M/s.Sri Textile Erode Private Limited towards the provident fund dues of the labourers and workers.

5. The issue is pending consideration with the learned Single Judge and also before the National Company Law



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Tribunal. The parties certainly can get their claims decided before the National Company Law Tribunal, where the matter is pending. The writ petition is also pending consideration with the learned Single Judge.

6. After the sale of the property, the Liquidator has released an amount of Rs.4,43,41,000/- [Rupees Four Crores Forty Three Lakhs Forty One Thousand only] subject to the undertaking by the bank (appellant herein) to the effect that *“payment to PF authorities as directed by NCLT in future will be made from the share of distributed amount remitted to the Bank”*.

7. The matter is now *sub judice* before the National Company Law Tribunal. An undertaking is already given by the appellant. The matter is still under consideration and not yet finally disposed of by the National Company Law Tribunal and/or by the learned Single Judge, where the appellant has



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approached.

8. In the light of the above, we set aside the condition imposed on the appellant to furnish the bank guarantee. The learned Single Judge has already kept the matter on 3.8.2023. The parties may put forth their stand before the learned Single Judge.

The writ appeal is disposed of accordingly. There will be no order as to costs. Consequently, C.M.P.No.17246 of 2023 is closed.

(S.V.G., CJ.)

(P.D.A., J.)

02.08.2023

Index : Yes/No
Neutral Citation : Yes/No
sasi



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU,J.

(sasi)

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