

WP(MD)No.6049 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.6049 of 2021

and

W.M.P.(MD)Nos.4722 and 4723 of 2021

M/s.Nallathambi Construction &
Engineering Works,
Rep. through its Proprietor,
9/225, Annavithottam Street,
Kundankulam,
Radhapuram Tk,
Tirunelveli District – 627 106.

... Petitioner

versus

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub Regional Office,
NGO “B” Colony,
Tirunelveli – 627 007.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records from the file of the respondent herein in No.CB/TNY/89391/14B/PDC1(4)/2019 dated 17.05.2019 issued by the respondent claiming damages to the tune of Rs.4,23,481/- for the period 09/2015, 01/2016, 3/2016 to 05/2016, 09/2016 to 02/2017, 06/2017 to 06/2018, 09/2018 to 10/2018, 12/2018 to 02/2019 issued by the respondent and to quash the same.



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For Petitioner : Mr.P.Chandra Bose

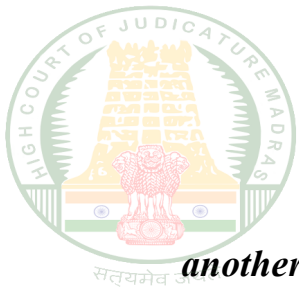
For Respondent : Mr.M.Mahaboob Athiff

ORDER

The petitioner, a Construction and Engineering Works Company, has filed this writ petition as against the levy of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by the respondent/Employees' Provident Fund Organization, in No.CB/TNY/89391/14B/PDC1(4)/2019, by order dated 17.05.2019.

2. This writ petition has not been entertained by this Court and notice alone has been ordered by this Court on 18.03.2021.

3. When this writ petition is taken up for hearing, the learned counsel appearing for the respondent has raised a preliminary objection as to the maintainability of this writ petition that the petitioner is a proprietorship concern and it is not a juristic person or legal entity and therefore, it cannot invoke Article 226 of the Constitution of India. In support of the same, the learned counsel has also relied on a Judgment of the Hon'ble Supreme Court reported in **2025 SCC OnLine SC 1825 (Dogiparthi Venkata Satish and**



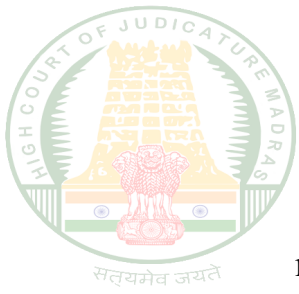
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another vs. Pilla Durga Prasad and others), wherein, the Hon'ble Supreme Court has held as follows:

4.1. A proprietorship concern is nothing, but a trade name given by an individual for carrying on his business. A proprietorship concern is not a juristic person. It cannot sue, however, in view of Order XXX Rule 10 CPC, it can be sued. In order to analyse the said provision, it would be appropriate to reproduce the same. It reads as follows:

“10. Suit against person carrying on business in name other than his own – Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.”

4.2. The use of the word can in Order XXX Rule 10 CPC only indicates that proprietorship concern may be made a party. However, it does not necessarily mean that the proprietor itself if made a party would not be enough, inasmuch as, the proprietorship is to be defended by the proprietor only and not by anybody else. Once the proprietor has been impleaded as a party representing the proprietorship, no prejudice is caused to rather its interest is well protected and taken care of by the only and only person, who owns the proprietorship. Order XXX Rule 10 CPC does not in any



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manner debar a suit being filed against the proprietor.

4.3. It is well settled by series of judgments that proprietorship concern cannot be equated either with a company or with a partnership firm. Order XXX deals with partnership basically, however, Rule 10 thereof refers to proprietorship. It makes very clear that proprietorship concern cannot sue but it can be sued.

4. The learned counsel for the respondent further submits that as against the levy of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the petitioner Company is having an appeal remedy under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

5. Since the petitioner is having an appeal remedy, this writ petition is dismissed with liberty to the petitioner to approach the appellate authority and file an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

6. Since this Court has not entertained this writ petition by ordering notice, the appellate authority shall waive the period of limitation for



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entertaining the appeal, if the appeal is filed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

16.09.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub Regional Office,
NGO "B" Colony,
Tirunelveli – 627 007.



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B.PUGALENDHI,J.

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