BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.22568 of 2015

M/s.Pudukotai Agro.Engg.
Service Co-op Centre Ltd.,
rep.by its President
R.Muniyasamy
4/19A, Main Road
Pudukottai
Thoothukudi District ... Petitioner

-vs-

The Assistant Provident Fund Commissioner
Bhavishya Nidhi Bhavan
N.G.O. 'B' Colony
Tirunelveli
Tirunelveli District ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus seeking to call for the records in the communication dated 09.11.2015 in No.TN/TI/37781/CD II/Circle : 23/2015, issued by the respondent herein and quash the same and consequently direct the respondent herein to refund a sum of Rs.2,21,689/-, which the petitioner's establishment is entitled as interest.

For Petitioner : Mr.N.Subramanian

For Respondent : Mr.K.Muralisankar

O R D E R

This is a case where the respondent subjected the immovable property of the petitioner to a public auction for the purpose of recovering of a sum of Rs.3,21,732/- being dues of provident fund payable by the petitioner on 15.12.2010. The said sale was confirmed on 03.02.2011 and a sum of Rs.33,10,000/- was recovered. After adjusting the dues of provident fund, there remained a balance of Rs.21,20,402/- which was liable to be refunded to the petitioner. In spite of confirmation of sale by order dated 03.02.2011 and the receipt of the entire auction amount of Rs.33,10,000/- much prior to the date of confirmation of sale, the respondent refunded the balance amount in three instalments i.e., Rs.10,00,000/- each on two occasions through cheques dated 23.06.2011 and 19.08.2011 and the balance amount of Rs.1,20,402/- through cheque dated 21.11.2012 and thereafter, interest on the said amount of Rs.1,20,402/- was paid by the respondent through cheque dated 24.02.2014.

2. The claim of the petitioner in the present writ petition is for payment of interest on the delayed payment of surplus auction amount and he made a claim for payment of interest at the rate of 18% per annum and in all, he claimed a sum of Rs.2,21,689/-.

3. The calculation sheet of the said amount is perused by this Court, which includes the interest on the delayed payment of Rs.1,20,402/- as well and the interest claimed at the rate of 18% per annum and the same is claimed with effect from 29.12.2010 the date on which the respondent received the entire auction amount.

4. As against the claim made by the petitioner, the respondent filed a detailed counter affidavit stating that the surplus amount received in the public auction was refunded to the petitioner and therefore, the petitioner is not entitled for any further amounts.

5. A perusal of the counter affidavit, especially Paragraph No.14, would disclose that the sale was confirmed on 03.02.2011. A sum of Rs.10,00,000/- each was paid to the petitioner by the respondent by cheques dated 23.06.2011 and 19.08.2011 respectively. As the petitioner was already paid interest on the remaining amount of Rs.1,20,402/-, the question of considering the claim of the petitioner for payment of interest on the remaining amount of Rs.1,20,402/- does not arise.

6. In Paragraph No.14 of the counter affidavit, it is also admitted that the surplus amount received in the public auction is required to be refunded to the petitioner within a period of three months and failing which, the respondent should pay simple interest at the rate of 12% per annum from the date of expiry of the said period till the date of payment. Paragraph No.14 of the counter affidavit reads as under:

> *"14. With regard to contentions in para 3, it is humbly submitted that the petitioner himself has accepted that out of the sale proceeds ofRs.33,10,000/- and after adjusting the amount payable to EPF organization to the tune of Rs.3,21,732/- the balance has to be refunded. Also, after confirmation of sale on 03.02.2011, a sum of Rs.10,00,000/- was released vide Cheque No.878339, dated 23.06.2011 and another Rs.10,00,000/- was released vide Cheque No. 177508 dated 19.08.2011. The establishment was a chronic defaulter and failed to remit the dues in time. Therefore, following receipt of special Revenue Recovery Certificate further outstanding were also been proposed to be adjusted. Also, after confirmation of*

sale on 03.02.2011 a sum of Rs.10,00,000/- has been released vide Cheque No.878339 dated 23.06.2011 and another Rs.10,00,000/- has been released vide Cheque No.177508 dated 19.08.2011. Therefore, after adjusting the accrued dues and also keeping the balance money of Rs.1,20,402/- for future adjustment, the above said amount Rs.20,00,000/- was released. The establishment was informed vide this Office letter dated 05.07.2012 about the period and dues against which part of the excess amount received by way of auction of the immovable properties was adjusted. As per rule 7.4.26.2 of the recovery manual of Employees's Provident Fund Organisation "Where the agreed price of the property exceeds, the amount due from the defaulter, the Employees' Provident Fund organisation should pay such excess amount to the defaulter within a period of three months failing which the Employees' Provident Fund organisation should pay simple at the rate of twelve per cent from the date of expiry of aforesaid period till the date of payment'. Accordingly, claiming of interest at the rate of 18% by the petitioner is against the provisions contained in para 7.4.26.2 of Recovery manual of Employees' Provident Fund Organisation which stipulates that excess amount should be paid within a period of 3 months failing which EPFO should pay simple interest @ of 12% from the date of expiring of aforesaid period. Further, there *is no provision under the Recovery Manual for claiming of interest even before the confirmation of sale."*

7. Thus, the liability of the respondent for payment of interest on the delayed payment of the excess auction amount is not in dispute. However, the claim of the respondent is that the interest is payable only on expiry of the three months' period in terms of Rule 7.4.26.2 of the Recovery Manual of Employees' Provident Fund Organisation. But, the fact remains that the respondent received the entire auction amount on 29.12.2010 and the sale was confirmed on 03.02.2011 and therefore, the respondent is under obligation to refund the balance amount within three months from the date of confirmation of sale. In the instant case, admittedly, the said amount of Rs.20,00,000/- was not refunded to the petitioner within a period of three months from the date of confirmation of sale.

8. That be the case, the petitioner is deprived of his money, which he otherwise would have put to use and the respondent retained the said amount without any authority of law. Thus, the liability of the respondent to pay interest cannot be denied and the entitlement of the petitioner for payment of interest is also justified.

9. Then, the next question that would arise for consideration is as to whether the stand of the respondent by placing reliance on Rule 7.4.26.2 of Recovery of Manual of Employees Provident Fund Organisation stating that the interest is payable only on expiry of the initial period of three months is justified or not.

10. Once it is admitted by the respondent that they are liable to pay interest at the rate of 12% per annum for retaining the amount, which ought to have been refunded to the petitioner immediately after confirmation of the sale and adjusting all the dues, there is no justification on the part of the respondent for restricting the same only from the date of expiry of the initial period of three months. As the petitioner is deprived of enjoying the amount, which he is otherwise legally entitled to, the respondent is under the obligation to compensate the petitioner appropriately.

11. As there is no dispute on the liability of the respondent for payment of simple interest at the rate of 12% per annum, this Court is of the considered view that notwithstanding Rule 7.4.26.2 of the Recovery Manual of Employees' Provident Fund Organisation, the respondent is liable to pay interest at the rate of 12% per annum with effect from 03.02.2011 till the date of actual payment of the said amount. Admittedly, the amount of Rs.10,00,000/- each was paid on 23.06.2011 and 19.08.2011. If the stand of the respondent is to be accepted and interest is awarded only on expiry of the three months period, the same would amount to depriving the property right of the petitioner guaranteed under Article 300A of the Constitution of India.

12. In such circumstances, this writ petition is allowed and the respondent is directed to pay interest at the rate of 12% per annum on Rs.10,00,000/- with effect from 03.02.2011 till 23.06.2011 and on further sum of Rs.10,00,000/- from 03.02.2011 till 19.08.2011 by duly calculating the said amount, as expeditiously as possible, at any rate, within period of six weeks from the date of receipt of a copy of this order. If the respondent fails to pay the amount within the time as stipulated above, the entire amount due to the petitioner, by virtue of this order, would also carry interest at the rate of 18% per annum. No costs.

06.02.2025

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

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MUMMINENI SUDHEER KUMAR, J.

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