(2012) 07 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 19703 of 2009 (O and M)

C.B. Sharma APPELLANT

Vs

The Employees' Provident Fund Appellate Tribunal and Others RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 14B, 7Q
Negotiable Instruments Act, 1881 (NI) — Section 138, 7(i)

Citation : (2012) 135 FLR 637 : (2012) LLR 1098 : (2013) 1 SCT 312

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ram Pal Verma, for Mr. O.P. Sharma, for the Appellant; Sandeep Goyal, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—Challenge in the present writ petition is to the order dated 17.11.2009 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi (for short, ''the Tribunal'') dismissing the appeal filed by the petitioner against the orders dated 14.1.2008 and 27.12.2007 passed by the Assistant Provident Fund Commissioner, Haryana, Faridabad, under Sections 7-Q and 14B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short, ''the EPF Act''), as time barred. Learned counsel for the petitioner submitted that the petitioner was earlier carrying on his business from premises bearing House No. 1337, sector 28, Faridabad. It was rented premises. Later on, he constructed his own building and shifted to the new place of business bearing Plot No. 454, Sector 21-D, Faridabad in March 2002. The impugned order was passed by the Assistant Provident Fund Commissioner on 27.12.2007 without serving any notice to the petitioner, as the notices were sent to him on his old address. When the petitioner came to know about the passing of the order, immediately he filed appeal before the Tribunal. However, the same has been dismissed as time barred vide order dated 17.11.2009. The petitioner should have been heard on merits. Delay in depositing the provident fund was on account of the fact that the petitioner firm was in financial crises due to recession.

2. On the other hand, learned counsel for respondent Nos. 2 and 3 submitted that notices were sent to the petitioner at the address available on record in the office of the Provident Fund Commissioner. The petitioner firm was brought under the provisions of the Act with effect from 1.7.1995. In case there was any change of address, the petitioner was duty bound to bring it to the notice of the office immediately. The Provident Fund Commissioner cannot be said to be at fault in not sending the notice at the changed address of the petitioner when it was not informed in the office.

3. Learned counsel for respondent Nos. 2 and 3 further submitted that after the passing of the impugned order on 27.12.2007, the petitioner had represented to the Regional Provident Fund Commissioner, Faridabad, vide communication dated 26.3.2009 and stated that because of poor financial conditions, he will not be able to pay the damages in lumpsum, rather the same will be paid in installment of Rs. 1 lack per month from April 2009 onwards. In terms thereof, some cheques issued by the petitioner were cleared, whereas one of the cheques was dishonoured on account of which a complaint u/s 138 of the Negotiable Instruments Act (for short the Act'').has also been filed against the petitioner. The aforesaid letter of the petitioner clearly established that he was in knowledge of the order passed by the Assistant Provident Fund Commissioner u/s 14B of the Act in March 2009. In fact, the petitioner admitted therein that he had received information about the passing of the order on 16.2.2009 through M/s Havell''s India Limited, Faridabad. Still as is evident from the impugned order passed by the Tribunal, the appeal was filed on 16.11.2009 i.e. nine months after the date of knowledge of the order passed against the petitioner. In terms of the provisions of Section 7(i) of the Act read with Employees'' Provident Fund Appellate Tribunal Procedure Rule, 1997 (hereinafter to be referred as the Rules), the period of filing of appeal to the Tribunal is sixty days. The Tribunal has been empowered to condone the delay in filing the appeal further for a period of sixty days. Delay could not be condoned as even the maximum period for which delay could be condoned had already expired. There was nothing wrong in the order passed by the Tribunal whereby the appeal had been dismissed on account of delay.

4. Heard learned counsel for the parties and perused the paper book.

5. The facts which are not in dispute are that the petitioner is the sole proprietor of the establishment namely M/s Chitra Industrial Services. It was covered under the provisions of the EPF Act with effect from 1.7.1995. It was located earlier in Plot No. 1337, Sector-28, Faridabad. The place of business was changed to Plot No. 454, Sector 21-D, Faridabad, as claimed by the petitioner in March 2002. The order was passed by the Commissioner under Sections 7-Q and 14-B of the EPF Act raising demand of interest and penalty against the petitioner on 27.12.2007. The petitioner though sought to claim that before passing the order notice had

not been served upon him but the fact remain that the petitioner got the knowledge of the order passed on 16.2.2009 as is evident from letter written by him to the Commissioner on 26.3.2009 stating therein that due to domestic problems and financial crises, he will not be in a position to pay the amount in lumpsum and will pay the same in monthly installment of Rs. 1 lack from April 2009 onwards. In the aforesaid letter it is mentioned by the petitioner that he received the intimation about the demand raised against him on 16.2.2009 through M/s Havell''s India Limited, Faridabad.

6. In terms of the aforesaid communication, cheques were issued by the petitioner. Some of the cheques were encashed whereas one was dishonoured for which a complaint u/s 138 of the Act was also filed by the Commissioner. The appeal was filed before the Tribunal on 16.11.2009 against the order dated 27.12.2007. The same was dismissed by the Tribunal on 17.11.2009 opining that the same was time barred.

7. The contention sought to be raised by learned counsel for the petitioner was that the petitioner having not been communicated the order and even prior thereto having not been served with any notice, the order passed by the Commissioner was not in his knowledge. It was on account of the fact that the petitioner had changed his place of business. As and when it came to his knowledge, immediately the appeal was filed. The same should not have been dismissed on account of delay under these circumstances. However, the contention is totally misconceived.

8. Firstly, when the petitioner was already covered under the provisions of the EPF Act and had been allotted a code, in case he had changed his place of business, he was duty bound to inform the changed address to the authorities and update the record. Further even if it is assumed that the petitioner had not been served any notice and the order dated 27.12.2007 was not communicated to the petitioner immediately but the fact remains that it came to the knowledge of the petitioner on 16.2.2009 when recovery proceedings were initiated and in response thereto the petitioner had even requested the Commissioner vide his letter dated 26.3.2009 that he will not be able to pay the amount in lumpsum and will pay the same in monthly installments of Rs. 1 lack each. Some amount was paid in terms thereof. Still the appeal was filed nine months after the date of receipt of intimation about the order passed by the commissioner.

9. In terms of the rule, period of 60 days has been provided for filing the appeal before the Tribunal. For sufficient reasons the Tribunal can extend the period for further 60 days. Once the petitioner undisputedly had the knowledge of the order passed by the Commissioner on 16.2.2009, the appeal filed nine months thereafter had rightly been dismissed by the Tribunal as time-barred. For the reasons mentioned above, I do not find any reason to interfere with the impugned order. The writ petition is accordingly dismissed.

