(2014) 11 KL CK 0105

In the High Court Of Kerala

Case No : Writ Appeal No. 1456 of 2014

Employees Provident Fund Organisation APPELLANT

Vs

Manoj K. RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B
Transfer of Property Act, 1882 — Section 105

Citation : (2015) 1 ILR 293 : (2014) 4 KHC 964

Hon'ble Judges : V.K. Mohanan, J;K. Harilal, J

Bench : Division Bench

Advocate : Pirappancode V.S. Sudhir, Advocate for the Appellant; V.V. Raja, M.T. Sureshkumar and T.M. Chandran, Advocate for the Respondent

Judgement

K. Harilal, J.—This Writ Appeal is directed by the Employees'' Provident Fund Organisation and its Recovery Officer at Kollam, the appellants herein, against the impugned judgment passed by the learned Single Judge of this Court in WP (C) No. 3566/2010 filed by the 1st respondent herein. It is the case of the 1st respondent herein that he is a lessee who had undertaken a cashew factory bearing Registration No. CHW/KUR/11/194/1998 as per Ext. P1 rental agreement dated 21/01/2009 entered into between him and the 2nd respondent. The period of lease was for 5 years commencing from 21/01/2009 to 31/12/2013. According to him, as per Clause 11 of Ext. P1 agreement, the 2nd respondent herein is liable for the dues/responsibility towards the various statutory authorities incurred, prior to the date of agreement. While so, Ext. P2 warrant of attachment of movable property dated 07/01/2010 was affixed in the premises of the factory, from where it was revealed that an amount of Rs. 29,40,543/- was due from the defaulter M/s. Kairali Cashew, Vappala, and that constructive possession of around 4000 Kgs of raw cashew nuts packed in 75 bags lying in the godown, in addition to another 15 bags, were attached for the realisation of the said dues by the authorities under the first appellant. According to the 1st respondent, he had absolutely nothing to do with the factory for the period from 10/2001 to

7/2008 and the liability amounting to Rs. 29,40,543/- covered for the above period, had occurred prior to the undertaking of the factory. So, the finished goods absolutely owned and possessed by him cannot be made liable for the dues, if any, committed by the defaulter.

2. The appellants 1 and 2 contended that the aforesaid amount can be recovered from the 1st respondent in this writ appeal. According to the appellants, the proviso to Section 17B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity "the Act") provides that the liability of the transferee shall be extended to the value of assets obtained by him by such transfer and the term ''assets'' herein relates to the entire ''establishment''. Thus, if the entire establishment has been transferred, the liability of the transferee is unlimited. Since, in the instant case, the entire factory has been leased out, the transferee cannot escape from the liability by taking course to this proviso.

3. The learned counsel for the appellants has not disputed the fact that the 1st respondent has leasehold right only over the factory. But he advanced arguments challenging the interpretation of Section 17B of the Act made by the Single Bench of this Court. According to him, the Single Bench went wrong by giving a narrow interpretation to the expression ''assets'', employed in Section 17B of the Act. By the lease arrangement, the entire establishment has been transferred to the lessee. Therefore, according to Section 17B, the 1st appellant organisation has the right to realise the dues of the prior employer accrued upon the establishment including the finished goods produced by the subsequent lessee of the establishment.

4. Per contra, the learned counsel appearing for the 1st respondent drew our attention to the proviso to Section 17B of the Act and contended that such right under Section 17B of the Act is confined to the assets leased out to the lessee and finished goods produced from the raw materials would not come under the assets procured after the lease transaction conveyed by the lease. Thus, both counsel appearing for the parties canvassed the arguments interpreting the scope and extent of Section 17B from different angles.

5. Going by the impugned judgment, it could be seen that the Single Bench of this Court allowed the Writ Petition on a finding that under Section 17B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, finished goods which were procured and processed in a factory taken on lease by the 1st respondent are not liable to be attached for the dues of a different establishment which was carried on in the factory premises earlier with the lease period of the 1st respondent.

6. So, the question to be considered by us in this Writ Appeal is, whether the finished goods which were procured and processed after the commencement of lease arrangement would fall under the expression ''assets'' employed in proviso to Section 17B of the Employees'' Provident Funds and Miscellaneous Provisions

Act, 1952? This question in controversy debated at the Bar centers around Section 17B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. It is apposite in this context to extract Section 17B of the Act which reads as follows:

"17B. Liability in case of transfer of establishment.- Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or [the (Pension) Scheme or the Insurance Scheme], as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

7. The above Section deals with the liability of the transferee in the case of transfer of establishment by sale, gift, lease or licence or in any other manner whatsoever. This provision casts a liability jointly and severally with the former employer, on the transferee, to whom the establishment is transferred, to pay the dues of the former employer in respect of the period earlier to the period of the transfer. But the proviso to the Section limits the extent of liability to the value of ''assets'' obtained by such transfer only. It is significant and pertinent to note that the raw materials procured by the lessee after the commencement of lease arrangement and processed to the finished goods can never be a movable transferred under the lease of establishment. In the instant case, the 1st respondent has a leasehold right only. According to Section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of right to enjoy such property only.

8. Therefore, it can safely be concluded that the raw materials procured after the transfer of establishment by way of lease arrangement, by the lessee and processed to finished goods would not fall under the term ''assets'' employed in Section 17B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. The acquisitions after the transfer of establishment cannot be made liable for the dues of the transferor or former employer in respect of the period after the date of such transfer. The entire establishment cannot be held liable for such dues as contended by the appellants. But the assets obtained by the transferee by such transfer alone would be held liable for the same. The term ''assets'' employed in Section 17B is not synonymous with the establishment. Hence we reject the arguments advanced otherwise by the counsel for the appellants. The Single Bench has interpreted the scope and extent of liability under Section 17B of the Act in its correct perspective. There is no illegality or impropriety in the findings whereby the learned Single Judge allowed the writ petition. Hence this Writ Appeal is dismissed.