

(2013) 06 KL CK 0076
In the High Court Of Kerala
Case No : W.A. No. 597 of 2013

Employees Provident Fund Organisation	APPELLANT
Vs	
Sreekamakshy Agency (Pvt.) Ltd.	RESPONDENT

Date of Decision : 03-06-2013

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2013) 138 FLR 969 : (2013) 2 KHC 773 : (2013) 2 KLT 996 : (2013) LLR 833

Hon'ble Judges : Manjula Chellur, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Thomas Mathew Nellimoottil, for the Appellant; A.D. Ravindra Prasad, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The appeal is filed by the Employees Provident Fund Organization against the judgment of the learned Single Judge, limiting the damages under S. 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") at 10% of the amount as specified in Exhibit P1. It is the admitted case that the 1st respondent, covered under the Act, had failed to make the contribution under the Act as also the contributions for the Pension Fund and Deposit Linked Insurance Fund for the period between April, 1995 and December, 2000. Under S. 14B of the Act Exhibit P1 order was passed, assessing damages at an amount of Rs. 11,17,495/- as a measure of penalty, levying the said amount as damages. The 1st respondent was before this Court in Writ Petition, contending that the Appellate Tribunal in its order, produced as Exhibit P4, failed to consider the contentions of the 1st respondent in the correct perspective and rejected the same only on the specious ground of financial disability; which apparently cannot be a ground to reduce the damages.

2. Before the learned Single Judge, the 1st respondent/writ petitioner relied on

the decisions in Employees" State Insurance Corporation and Another Vs. K.N. Premanandan and Another, , Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another, and Harrisons Malayalam Ltd. Vs. The Regional Provident Commissioner and Others, : Harrisons Malayalam Ltd. Vs. The Regional Provident Commissioner and Others, , to advance their case, while the Standing Counsel for the Organization relied on the decision in Indian Telephone Industries Ltd. Vs. Asstt. P.F. Commnr. and Others : Indian Telephone Industries Ltd. Vs. Asstt. P.F. Commnr. and Others to canvass for the position that financial problems cannot be a ground to reduce or waive damages. It was also argued by the learned counsel for the Organization that the damages levied being compensatory in nature, the learned Single Judge erred in reducing the quantum, especially since no discretion is cast on the authority to reduce the quantum.

3. The learned Single Judge has found that the financial difficulties set up by the 1st respondent/writ petitioner is not merely the statement of impecunious circumstances, but is supported by the details of the products of the industry, the consumers, the market conditions and the depletion of demand for the product. According to us, the learned Single Judge has considered the matter elaborately and found that the reasons projected by the 1st respondent-Company would warrant reduction of damages. We are in agreement with the learned Single Judge that when contribution is paid along with interest under S. 7Q, damages, though the same is to be recovered in terms of paragraph 32A of the Scheme, is definitely dependent upon the discretion of the officer initiating such proceedings. In fact, if that were not so, there would be no contention that financial loss cannot be a reason for exercising discretion in reducing or waiving the damages. By excluding the financial circumstances alone from consideration, it naturally follows that there are other conditions which could result in waiver or reduction of damages. Such waiver or reduction could only be under the exercise of discretion. The factual situation relied on by the learned Single Judge, according to us, definitely is not one requiring interference, especially since the maximum damages have been levied by the authority. We also take note of the contention that the unit is not functioning and that the damages now levied relate to the period April, 1995 to December, 2000. We are not convinced that any interference of the judgment of the learned Single Judge is called for.

In the result, the Writ Appeal is dismissed, however, without any order as to costs.