
(2002) 08 DEL CK 0188

In the Delhi High Court

Case No : Letters Patent Appeal No. 572 of 2002

Girdhar Silk Mills (P) Ltd.

APPELLANT

Vs

Presiding Officer, EPF Appellate Tribunal

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(4), 14B, 3, 7

Citation : (2002) 101 DLT 139 : (2003) 1 LLJ 489

Hon'ble Judges : Mukul Mudgal, J;A.D. Singh, J

Bench : Division Bench

Advocate : S.P. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This letters patent appeal is against the Order of the learned Single Judge dated 27th May, 2002, dismissing the Civil Writ Petition No. 3394/2002, filed by the appellant/writ petitioner against the interim Order of 75% per cent pre-deposit of the amount determined u/s 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") demanded from the petitioner pending appeal by the Tribunal.

2. In an appeal filed u/s 7(1) of the Act, exemption was sought under the proviso for pre-deposit of the 75% amount determined and the said application preferred by the appellant was disallowed and it was asked to deposit 75% of the amount. The relevant portions of Section 7(1) and 7(o) of the Act reads as follows:

"7-I. Appeals to the Tribunal:- (1) Any person aggrieved by a notification issued by Central Government, or an order passed by the Central, or any authority, under the proviso to Sub-section (3), or Sub-Section (4), of Section 1, or Section 3, or Sub-section (1) of Section 7A, or Section 7B [except an order rejecting an application for review referred to in Sub-section (5) thereof], or Section 7c, or Section 14B, may prefer an appeal to a Tribunal against such order.

(2) Every appeal under Sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7-O. Deposit of amount due, on filing an appeal:- No appeal by the employer shall be entertained by a tribunal unless he has deposited with it seventy-five percent of the amount due from him as determined by an officer referred to in Section 7A."

3. Thus the appellant/petitioner was required to deposit 75% of Rs. 5,24,086/- amount determined u/s 7A of the Act. The appellant/writ petitioner before the learned Single Judge challenged the order of the pre-deposit passed by the Appellate Tribunal under the Act declining to waive the deposit of 75% of the amount due. The Learned Single Judge concluded that there was a finding of fact that there were 38 employees working in the appellant's establishment and the plea of the appellant that there were less than 20 employees and others were friends of the employees from other establishments who came to the office canteen to meet their friends could not be countenanced. It was also noticed that several opportunities were given to the appellant to lead evidence and at the critical time, the respondent took a plea that in a fire in 1995, the entire relevant records had been destroyed. In view of these circumstances and the pendency of the matter for over 8 years, the learned Single Judge declined to interfere with the order, refusing waiver of the pre-deposit. The Learned Single Judge in our view has rightly refused to exercise the jurisdiction in the present case at the interim stage as the facts vividly disclose that no case is made out for waiver of the deposit and the plea of fortuitous circumstances of friends of the employees in the canteen swelling the number of employees beyond 20 and the further fortuitous circumstances of the fire destroying all relevant records makes it evident that the learned Single Judge was fully justified in dismissing the writ petition. Furthermore the facts disclosed do not indicate that the appellant's facts fall within the sweep of the proviso to Section 7-o of the Act which provides for waiver or reduction of deposit of 75% of the amount found due as per Section 7A.

4. The conduct of the appellant in procrastinating and thus prolonging the proceedings and then coming out with a version of destruction of records due to fire in our view demonstrate its lack of bonafides warranting the conclusions of the learned Single Judge. Further the appellant has relied on the facts of another CWP. No. 4007/2002 where the writ petitioner was permitted by the learned Single Judge to predeposit 3.5 lacs against a demand of Rs. 22.49 lacs to aver discrimination against it. Firstly there can be no discrimination qua a judicial order. Ever otherwise the appellant cannot rely upon another interim order without, demonstrating any similarity in the factual situation between facts of CWP. 4007/2002 and the present case. No such attempt to claim parity on facts has been made either in the pleadings or the arguments advanced before us.

5. In this view of the matter, since the learned Single Judge was validly exercised the discretion and no perversity or infirmity in the order of the learned Single

Judge has been shown, this appeal warrants dismissal.

6. Accordingly, the appeal is dismissed.