
(2016) 10 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5360 of 2016 with Civil Misc. Stay Application No. 4783 of 2016

M/s. Ajanta Cinema

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7-A

Citation : (2017) 1 WLCRajUC 21

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mr. Sunil Samdaria, Advocate, for the Petitioner; Mr. R.B. Mathur, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Mohammad Rafiq, J.—This writ petition has been filed by the petitioner challenging order dated 14.07.2015 passed by the Employees Provident Fund and Appellate Tribunal, New Delhi(for short "the appellate tribunal") as also original order dated 18.06.2004 passed by Assistant Provident Fund Commissioner, Employees Provident Fund Organisation under Section 7-A of the Employees Provident Fund and Misc. Provisions Act, 1952(for short "the Act"). Insofar as later order dated 18.06.2004 is concerned, validity of that order need not be gone into at this stage because appeal filed by the petitioner against that order has been dismissed by the appellate tribunal on the ground of delay.

2. Mr. Sunil Samdaria, learned counsel for the petitioner submitted that cinema hall with respect to which order under Section 7-A of the Act was passed was closed down way back on 13.10.2000 and such recovery is admittedly subsequent to closure of cinema hall. Show cause notice dated 29.10.2003 issued under Section 7-A of the Act by the competent authority was never served upon the petitioner inasmuch as order of determination passed on 18.06.2004

was also not served upon the petitioner. The petitioner remained completely unaware of the aforesaid two orders till the recovery proceedings were initiated by the respondents. The petitioner at that stage approached this Court by way of filing S.B. Civil Writ Petition No. 2521/2010 which was dismissed vide order dated 04.07.2013 on objection of the respondents that the basic order dated 18.06.2004, which is appealable, has not been assailed by the petitioner. The petitioner challenged that order by filing D.B. Civil Special Appeal No. 777/2013 before Division Bench of this Court which was too dismissed vide judgment dated 28.10.2013. It is thereupon that the petitioner approached the appellate tribunal by filing appeal and which has been dismissed vide impugned order dated 14.07.2015, not on merits, but on the ground of delay.

3. Mr. R.B. Mathur, learned counsel for the respondents opposed the writ petition and submitted that the petitioner was aware of the recovery proceedings since 2005 because notice to show cause as to why warrant of arrest may not be issued against him was served on the petitioner on 22.07.2005 and in response to it, the petitioner submitted an application before the competent authority on 20.08.2005. He ought to have taken appropriate steps from that stage to challenge the original order. Learned counsel for the respondents submitted that this aspect of the matter was gone into by this Court in 2013 and the petitioner instead of availing remedy of appeal even at that stage choose to avail remedy of special appeal before Division Bench of this Court and in 2014 when the appeal was actually filed by the petitioner before the appellate tribunal it had become enormously delayed.

4. Having heard learned counsel for the parties and perused the material on record, this Court finds that it may be true that the petitioner was pursuing wrong remedy, but this is also not disputed that the show cause notice dated 29.10.2003 and determination order dated 18.06.2004 were never served on the petitioner. Mere fact that the petitioner choose to file writ petition before this Court and further special appeal before Division Bench of this Court may not be a reason for the appellate tribunal for not independently entertain the appeal filed by the petitioner on merits, particularly when case of the petitioner is that the cinema hall in respect of which order of determination is passed was closed down on 13.10.2000.

5. In view of above, this Court is inclined to set aside order dated 14.07.2015 passed by the appellate tribunal and condone the delay in filing of the appeal and remit the matter to the Employees Provident Fund Appellate Tribunal, New Delhi to decide the appeal of the petitioner on merits at the earliest, but not later than a period of six months from the date copy of this order is produced before it. However, it is directed that interim order passed by this Court in the present petition shall continue till appeal filed by the petitioner is decided by the appellate tribunal.

6. With the aforesaid direction, present writ petition is allowed.

7. Stay application stands disposed off.