**(2016) 08 CAL CK 0099**

**In the Calcutta High Court**

**Case No :** W. P. 11880 (W) of 2016

M/s. Bharnobari Tea and Industries Ltd — APPELLANT

Vs

Regional Provident Fund Commissioner — RESPONDENT

**Date of Decision :** 03-08-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

**Citation :** (2017) 1 WBLR 718

**Hon'ble Judges :** I. P. Mukerji, J.

**Bench :** Single Bench

**Advocate :** Mr. Soumya Majumder and Mr. A.P. Gomes, Advocates, for the petitioner; Mr. Shiv Chandra Prasad, Advocate, for the Respondents

**Final Decision :** Disposed Off

## Judgement

I. P. Mukerji, J.—By its order dated 9th May, 2016, the appellate Tribunal directed that the respondents could not recover more than 50% of the assessed amount until further orders. The appeal was by the petitioner against an order under Section 14 (B) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The petitioner is aggrieved by this order.

2. The question is whether this order is sustainable.

3. In M/s. Shiv Harbal Research Laboratory v. Assistant P.F. Commissioner reported in 2016 LLR 55, a Supreme Court decision, Mr. Justice Altamas Kabir opined that the principles of Section 7-O of the said Act could not be incorporated by implication in the appeal provision relating to Section 14 (B). Section 14 (B) gave power to the authorities to impose damages as ""a warning to the employees not to commit a breach of statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries." There was no provision for a pre-deposit for preferring an appeal under Section 14(B) order. Hence, the appeal could be filed without any deposit.

 

4. Mr. Prasad, learned counsel submits that there is a difference between the admission of an appeal and grant of stay. Since the petitioner is asking for stay of the impugned order, it can only be granted subject to conditions, which includes pre-deposit. The impugned order of the learned Tribunal was correctly made.

5. In my opinion, this submission may not be fully correct. When an appeal is preferred against a Section 7A order, 75% of the assessed amount is to be deposited as a pre-condition. Once this pre-condition is fulfilled, then no further deposit is to be made if the appellant asks for stay of the impugned order.

6. Now, if an appeal, can be preferred under Section 14(B) without any pre-deposit and there is no provision in the statute for making a predeposit to obtain a stay, a condition in the nature of pre-deposit or 50% execution as the order in this case provides, cannot be made. The appellate authority may make an unconditional order of stay. Nonetheless the appellate authority always has the power to ensure that pending the appeal, the status quo is not altered by the appellant so that, in the event of his failure in the appeal, the authority will have no assets from where the demand can be recovered.

7. Considering all the circumstances, the order of attachment will continue subject to the following conditions. The Provident Fund authority shall not appropriate any amount or compel the Bank to remit any amount to them from the bank account/accounts for the time being. If the appellant wants to credit any receipt into their account, the Bank will allow them to do so.

8. The appellate Tribunal will dispose of the appeal within three months of communication of this order. Recovery by the Provident Fund Authority will depend on the order so passed by the appellant Tribunal.

9. All the papers are before this Court. Affidavits were not invited. The allegations contained in the writ petition are deemed not to have been admitted.

10. The writ application is thus disposed of.

 