
(2016) 01 CAL CK 0089
In the Calcutta High Court
Case No : W.P. No. 26326 (W) 2015

M/s. Gamuda WCT(I) Pvt. Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14-B, 70

Citation : (2016) 2 CalHCN 575

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J.

Bench : Single Bench

Advocate : Mr. Debasish Kundu, Mr. C. Fernandez and Mr. S. Banerjee, Advocates, for the Appellant; Ms. Aparna Banerjee, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Sambuddha Chakrabarti, J.—Let the Affidavit of service filed in Court today be kept with the record.

2. Heard Mr. Kundu, the learned Senior Counsel for the petitioners and Ms. Banerjee, the learned advocate for the Provident Fund authority.

3. The short and the only point involved in the present writ petition is with regard to the power of the Employees Provident Fund Appellate Tribunal, New Delhi to direct depositing a certain amount as a pre-condition for the grant of a stay.

4. Facts are not in dispute. The petitioner filed an appeal before the said Appellate Tribunal against an order passed under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the Act, for short).

5. Before the learned Presiding Officer of the Appellate Tribunal, a question cropped up whether the appellant was required to pre-deposit 75% of the assessed amount at the time of filing the appeal while challenging an order passed under those two provisions of law. After a contested hearing, the learned

Presiding Officer held in favour of the present writ petitioners. He had rightly held that a bare reading of Section 7-O of the Act revealed that it was mandatory for the appellant to deposit 75% of the assessed amount at the time of filing of an appeal if the order appealed against was passed under Section 7-A of the Act and not under Sections 14-B or 7-Q thereof.

6. However, the learned Presiding Officer of the Tribunal had held that a blanket stay in respect of an assessed dues should not be granted without directing the payment to deposit 50% of the amount so assessed.

7. By a subsequent order dated September 14, 2015, the learned Presiding Officer of the Tribunal had modified his earlier order to the extent that an amount of Rs. 6,95,619/- paid by the writ petitioners should be adjusted towards the amount of 50% of the amount assessed under Sections 14-B and 7-Q of the Act.

8. Mr. Kundu has assailed this order exclusively on the ground that an appeal against the order passed under Sections 14-B and 7-Q of the Act, does not require any pre-deposit of any amount. In support of his contention, he has relied on two judgements viz., *Old Village Industries Ltd. v. the Asstt. Provident Fund Commissioner, the Employees Provident Fund Organization & Anr.*, reported in 2005(2) LLJ 742 and *Sri Naga Nanthana Mills Ltd. v. The Presiding Officer, Employees Provident Fund Appellate Tribunal (W.P. (MD) No. 18195 of 2013 and W.P. (MD) No. 1 of 2013 respectively.*

9. In the first judgement, a learned Single Judge of the Delhi High Court had held that pre-condition of deposit by an employer of 75% of the demanded amount for entertaining an appeal did not apply to an appeal filed against an order under Section 14-B of the Act. His Lordship further held that there is nothing in Section 7(I) of the Act so as to extend its application to an order passed under Section 14-B of the Act. The pre-condition of deposit for entertainment of such appeal is not covered under Section 7-Q of the Act. The contention of the Provident Funds authorities was thus rejected.

10. In the case of *Sri Naga Nanthana Mills Ltd. (supra)*, a learned Single Judge in Madurai Bench of the Madras High Court relied on the judgement in the case of *Old Village Industries Ltd. (supra)* as well as a judgement of the Bombay High Court and held that for preferring an appeal against an order passed under Section 14-B of the Act, Section 7-Q of the Act is not applicable. The learned Single Judge further held that the Tribunal couldn't insist on pre-deposit as provided in Section 7-Q of the Act.

11. It appears that the learned Presiding Officer of the Tribunal has not held anything to the contrary of the ratio decided in these two judgements. Without even referring to any judgement, he had read the relevant provisions of the Act and rightly interpreted that for the purpose of entertaining an appeal under Section 7-I against an order passed under Sections 14-B and 7-Q of the Act, a pre-deposit was not a must and therefore, the Tribunal could not insist on the same.

12. To that extent, I do not find any relevance of those two judgements cited by the learned advocate for the petitioners for the present purpose. The learned Presiding Officer of the Tribunal had also not disputed the contention made by the appellant before him and accepted the same.

13. What, however, appears to be the point on which the petitioners are aggrieved is probably the result of a confusion between the direction to deposit 50% of the assessed amount as a condition precedent for the grant of stay and a direction to deposit 75% of the assessed sum as a pre-condition for the entertainment of the appeal. I quite agree with the view taken by the Appellate Tribunal that the grant of stay is always a matter of discretion. An appeal never operates as a stay of the operation of the order impugned. A Tribunal, or for that matter any Court having appellate authority, has to exercise this discretion in a judicial manner and has every authority to direct the appellant to deposit some amount as a pre-condition for grant of stay. The judgements relied on by the petitioners relate to the stage of entertaining an appeal and not beyond that.

14. Ms. Banerjee submits that the amount directed to be deposited by the writ petitioners was not for the purpose of admitting the appeal but for the grant of stay.

15. Obviously, in the present case, the appeal was entertained; otherwise there would not have been a question of granting stay. It does not mean or it cannot mean that once an appeal is entertained, the appellate Court has no authority to direct some amount to be deposited by way of security for the grant of stay of operation of the order impugned in the appeal. Order 41, Rule 5 of the Code of Civil Procedure requires that no stay shall be granted by a Court of appeal in respect of a money claim unless the decretal amount is deposited or secured. When an authority under the Act determines an amount to be paid by an establishment, it is in the nature of monetary obligation which is to be met by it. Even if the provisions of the Code of Civil Procedure does not ipso facto apply to a proceeding before the concerned appellate Tribunal, the order impugned being in the nature of a money claim the principles of an analogous law may safely be applied while granting stay of the operation of the order impugned. In such view of it, the Tribunal has every right and discretion to direct the petitioners who were appellants before it to direct deposit of 50% of the amount assessed as a pre-condition for the grant of an interim order of stay.

16. In view of what has been discussed above, I find no infirmity in the order passed by the Presiding Officer of the Employees Provident Fund Appellate Tribunal and the same does not call for any interference.

17. The writ petition is, thus, dismissed.

18. There shall be no order as costs.

19. Urgent Photostat certified copy of the order, if applied for, be supplied to the parties at an early date.