(2023) 07 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (C) No. 28035 Of 2022

M/s. Satyasai Engineering College, Balasore APPELLANT

Vs

BM, SBI, Mayurbhanj And Others RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 60
Employees? State Insurance Act, 1948 — Section 45G, 45G(2), 45G(3)(iv), 45G(3)(ix), 45G(3)(x)

Citation : (2023) 07 OHC CK 0021

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S. Mishra, M. Tripathy

Final Decision : Dismissed

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned advocate appears on behalf of petitioner. He submits, in respect of demand of determined contribution, garnishee order dated 26th May, 2022 was issued under section 45-G of Employees' State Insurance Act, 1948, to his client's banker. At that time the bank held three fixed deposits of his client, due to mature in future, on 8th June, 2023. The bank, purportedly in compliance with the garnishee order, caused premature encashment of the deposits and paid out aggregate Rs.50,19,934 to the Corporation. There was no reference to his client being depositor. The premature encashment could not have been done without authorization from his client. The deposits, not matured for withdrawal as on 26th May, 2022, could not be said they were money due from the bank to his client, to be paid pursuant to the garnishee order, for the bank obtaining discharge. He submits further, section 45-G does not mention fixed deposits to be prematurely encashed and paid out to the recovery officer. The bank having acted in the manner it did, prevented his client from challenging the garnish order and hence prayer for repatriation of the amount along with compensation.

2. Ms. Tripathy, learned advocate appears on behalf of the bank. She draws attention to the garnishee order, from where relied upon recitals are extracted and reproduced below.

“WHEREAS, I, Shri S. Pradhan (Recovery Officer), who is also the officer, authorized to section 45G of the ESI Act, 1948 as amended hereby, requires account with State Bank of India Gaddeulia Branch, Dist- Mayurbhanj-757482 to transfer forthwith an amount of Rs.50,17, 934 (Rupees Fifty Lakh Seventeen Thousand Nine Hundred Thirty Four) only which includes for interest upto 25.05.2022 on the contribution due thereon from and out of any account held by the defaulter / defaulting unit including Fixed/Termed deposit or any A/C by which ever name the same designated by the Bank by an a/c payee Demand Draft drawn in favour of Recovery Officer Corporation, Bhubaneswar, Separate orders with regard to interest till the date of payment any further cost, charges and expenses incurred in the recovery proceedings for realizing the arrear liable to be recovered under the ESI Act, 1948 read with Rule 5 of the Second Schedule of the Income Tax Act, 1961 shall be issued on the receipt of Demand Draft from the Bank.

xxx xxx xxx

WHEREAS, attention of the Branch Manager is invited to Section 45G (3) (ix) & (x) of the ESI Act, 1948 as amended, according to which, the Bank and also the Manager are liable to be deemed as Principal Employer in default and the amount due from the defaulter / defaulting unit is liable to be recovered from the deemed defaulter and further, non-compliance with this requirement is likely to result in invocation of Section 45G(3)(ix)/(x) of the Act. ”

(emphasis supplied)

She lays emphasis on the first recital having mentioned as included, fixed/term deposit as also the caution stated in the second quoted recital, on the bank deemed to be the principal employer in default. She submits, upon being served with the garnishee order, her client acted in accordance with law. She also relies on clauses (iv), (ix) and (x) under sub-section (3) in section 45-G.

3. It is true that sub-section (2) in section 45-G does not mention fixed deposit. It is not an amount exempt from attachment in execution of decree of a civil Court under section 60 of the Code of Civil Procedure, 1908. However, clause (iv) under sub-section 45-G (3) provides that in complying with a garnishee order, it shall not be necessary for, inter alia, any deposit receipt to be produced to the person served (in this case the bank) for purpose of any entry, endorsement or like being made before payment is made, notwithstanding, any rule, practice or requirement to the contrary. This mandate obviated the necessity of the bank from obtaining instructions to encash prematurely the fixed deposits, for payment in compliance of the garnishee order. Hence, there was no reference to petitioner in the compliance made by the bank.

4. For reasons aforesaid, no interference is warranted

5. The writ petition is dismissed.

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