

(2018) 03 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 1303 Of 2016

M/S. UNITY SECURITY FORCE AND TRAINING INSTITUTE,
NAGPUR, THR. PROPRIETOR, CHANDRASHEKHAR ADAMANE

APPELLANT

Vs

THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION, NAGPUR
AND ANOTHER

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

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

Citation : (2018) 03 BOM CK 0031

Hon'ble Judges : RAVI K. DESHPANDE, J

Bench : Single Bench

Advocate : Atul J. Pathak, R. S. Sundaram, U. R. Tanna

Final Decision : Dismissed

Judgement

R.K. DESHPANDE,J.

1.Rule made returnable forthwith.

2. Heard finally by consent of the learned counsel appearing for the parties.

3.The challenge in this petition is to the attachment of Current Account No. 31725043372 of the petitioner with the respondent No. 2, the State Bank

of India, Mahal Nagpur for recovery of an amount of Rs. 49, 63,692/- which is the liability of the damages determined under Section 14-B of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the said Act" for short).

4.Undisputed factual position is that a show cause notice in respect of proposed damages under Section 14-B of the said Act was issued to the

Petitioner on 31.01.2015 and ultimately, it was adjudicated on 20.04.2015,

determining the amount of Rs. 49,63,692/- payable towards damages. The appeal preferred by the petitioner before the Employees Provident Fund Appellate Tribunal, New Delhi was dismissed on 15.12.2015 and the Writ Petition No. 2027/2016 preferred before this Court, is pending for adjudication.

5. On 30th June, 2017, this Court passed order in Writ Petition No. 2027/2016 as under:—"Heard.

Notice, returnable on 13th June, 2017. The learned Advocate for the petitioner states that an amount of Rs. 10,00,000/- has been recovered from the petitioner towards damages and the respondent may recover further amount of Rs. 39,00,000/- from the petitioner towards damages.

It is directed that until further orders, there shall not be any further coercive recovery from the petitioner on the basis of the impugned order.

The said order is operating till this date.

6. Shri Pathak, learned counsel appearing for the petitioner has relied upon the decision of this Court in Navnit Motors Pvt. Ltd. Vs. Union of India &

anr. Reported in 2011(III) CLR 877 to urge that in absence of certificate of recovery under Section 8-B of the said Act, the attachment of the Bank

Account of the petitioner/employer with the respondent No. 2 - Bank on 16.02.2016 was without jurisdiction and authority. He has relied upon the

decision of the Madhya Pradesh High Court in case of M/s Ferro Concrete Construction (India) Pvt. Ltd. Vs. Regional Provident Fund

Commissioner, M.P., Indore and ors. Reported in 2002 LAB. I.C. 412 for the proposition that the provision of Section 8-F(3)

(vi) is mandatory and the same has not been complied with. For the same the proposition, he has also relied upon the another decision of the Orissa

High Court in case of Protection manufacturers (P) Ltd. & Anr. Vs. Regional Provident Fund Commissioner & ors. reported in 2006(I) CLR 320.

7. Dr. Sundaram, the learned counsel appearing for the respondent No. 1 has relied upon the provision of Section 8-F(3) of the said Act to urge that

issuance of certificate under Section 8-B of the said Act is not pre-condition for exercise of power under Section 8-F(3) of the said Act. He further

submits that though the provision of Section 8-F(3)(iii) require a copy of notice to be forwarded to the employer, the requirement is not mandatory, as

the provision is directed basically against the creditor of the petitioner and person holding money for or on account of the employer/petitioner. He

submits that the mandatory requirement of Section 8-F(3)(vi) has been complied with and there was no impediment in attachment of account.

8. Section 8-F(1) opens with the non-obstant clause "notwithstanding the issue of certificate to the recovery officer under Section 8-B", which indicate

that the certificate under Section 8-B is not a condition precedent for adopting the other modes of recovery contemplated under Section 8-F therein.

The procedure under Section 8-F is to be carried out against -

(i) the creditor or (ii) the person holding money for or on account of employer. Therefore, the requirement of forwarding a copy of it to the employer

under Section 8-F(3)(iii) cannot be held to be mandatory so as to vitiate further action taken against the creditor or person holding for or on account of

employer, for breach of it, though it is advisable, that the employer gets an intimation of such action initiated by the respondents.

9. The two decisions; one of Madhya Pradesh High Court and other of the Orissa High Court cited supra, are rendered in a petition filed by the

creditor of the employer. The same would therefore, be of no help to the petitioner. So far as the third decision of this Court is concerned in case of

Navnit Motors Pvt. Ltd. (supra), the provision of Section 8-F did not call for consideration. The Court was essentially concerned with the mode of

recovery under Section 8-B and was not concerned with the action taken under Section 8-F of the said Act. The said decision would also not be of

any help to the petitioner.

10. The respondent has withdrawn an amount of Rs. 10,00,000/- from the account of the petitioner held by the respondent No. 2 - Bank and therefore,

no fault can be found with the action impugned in the petition.

The petition is dismissed.