
(2017) 02 OHC CK 0033

In the Orissa High Court

Case No : Misc. Case No. 16115 of 2016 (Arising out of W.P. (C) No. 3164 of 2016 disposed of on 15.02.2016)

Orissa State Beverages Corporation Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

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

Citation : (2017) LabLR 663 : (2017) LabLR 486 : (2017) 2 LLJ 65

Hon'ble Judges : Shri Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : M/s. B. Dasmohaptra, and B.N. Bhol, Advocates, for the Petitioner; Mr. T.K. Satpathy, Advocate, for the Opp. Party No. 3; Mr. P.K. Parhi, Advocate, for the Opposite party No. 2

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—This case is listed today on Board for passing appropriate order in Misc. Case No.16115 of 2016, which has been filed by opposite party no.3 in the writ petition under the provisions of Chapter-VI, Rule 27-A of the Rules of the High Court of Orissa, 1948 for recall of the judgment dated 15.2.2016 passed in W.P.(C) No. 3164 of 2012.

2. This Court has gone through the averments made in Misc. Case No.16115 of 2016 and from its perusal it is evident that the instant Miscellaneous Application has been filed by opposite party no.3 pursuant to the order dated 13.9.2016 passed in W.A. No. 373 of 2016 filed against the order dated 15.2.2016 passed in W.P.(C) No. 3164 of 2012, which has been dismissed as withdrawn granting liberty to opposite party no.3 to file an application for recalling of the ex parte order passed by the writ court. This Court has further found from the averments made in the instant application that the ground taken for recall of the order dated 15.2.2016 is that the same has been passed without providing opportunity

of being heard to him and as such, the same is an ex parte order and thereby, he has seriously been prejudiced.

3. Learned counsel appearing for the writ petitioner, Orissa State Beverages Corporation Ltd. has vehemently opposed the prayer made on behalf of the learned counsel representing opposite party no.3 and has submitted that the application has been filed suppressing the material fact since it is incorrect to say that no notice has been issued prior to passing of the order in W.P.(C) No. 3164 of 2012 and as such, it is an ex parte order, while the fact is otherwise. He submits that the opposite party no.3, M/s. Panthar Security Service has been arrayed as opposite party no.3 giving address of its registered office at 153/4, Jessore Road, Damdam, Kolkata-7000074 and also its local office at Plot No. 532, Satya Nagar, Bhubaneswar and as such, steps have been taken for issuance of notice upon opposite party no.3 in pursuance to the order passed by this Court dated 11.12.2012 in both the addresses. He submits that the notice issued upon opposite party no.3 in the address at its local office at Bhubaneswar has been returned un-served, but the notice issued upon the registered office at Kolkata has duly been served. He has substantiated his argument by placing the acknowledgment receipt of local office at Bhubaneswar as well as the registered office at Kolkata, which bears the acknowledgment receipt of the person concerned giving therein the date of receipt as "17/2" and as such, the very ground taken for recall of the order dated 15.2.2016 is not correct and hence, on this ground alone, the instant application needs to be dismissed. He has further argued that from perusal of the averments made in the Miscellaneous Application although the same has been captioned as "recall of the judgment dated 15.2.2016 passed in W.P.(C) No. 3164 of 2012", having been filed under Chapter-VI, Rule 27-A of the Rules of the High Court of Orissa, 1948, but in the garb of a recall application, opposite party no.3 is seeking review of the judgment dated 15.2.2016, which is not maintainable under Chapter-VI, Rule 27-A of the Rules of the High Court of Orissa, 1948 since the provisions made under Chapter-VI, Rule 27-A provides a provision for filing of an application seeking an interim relief like stay, injunction, appointment of receiver, appointment of guardian, modification of order, analogous hearing, vacation of order of stay, discharge of guardian and for any other interim relief in civil cases. Since the relief sought for in the instant application is not coming within the parameters of the provisions as contained in Chapter-VI, Rule 27-A of the Rules of the High Court of Orissa, 1948, the instant application is fit to be dismissed. He submits that this Court has not gone into the merits of the issue, rather the order passed by the authority under Section 7B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter to be referred to as "Act, 1952", in short, has been quashed by establishing the locus of the petitioner with a declaration that it is an aggrieved party and as such, the authorities have been directed to decide the review application filed under Section 7B of the Act, 1952 in accordance with law without expressing anything on the merit of the claim of the petitioner and the authority concerned after receipt of the judgment dated 15.2.2016 has issued

notice to the opposite party no.3, but it is avoiding to appear before the authorities only in order to intentionally delay the matter and hence, the interest of the opposite party no.3 is in no way being prejudiced since the concerned competent authority, who is in seisin over the matter under Section 7B of the Act, 1952 is supposed to adjudicate the claim on merit and for that reason, the notice has been issued upon opposite party no.3 for its appearance and if it wants to say in its defence, it may appear before the authority and contest the case. But instead of doing so, it has filed the instant application.

4. Learned counsel appearing on behalf of the E.F.P. authorities has submitted that due notice has been issued upon opposite party no.3 to putforth its claim before the concerned competent authority and as such, its interest is in no way jeopardised. He submits that opposite party no.3 may be directed to appear before the authority so that the matter can be decided at an early date without any further delay.

5. This Court has heard the learned counsel for the parties and perused the judgment dated 15.2.2016 as also the averments made in the instant application. This application for recall of the judgment dated 15.2.2016 is not fit to be considered for the following reasons:

(i) The opposite party no.3 has filed writ appeal bearing W.A. No. 373 of 2016 against the judgment dated 15.2.2016 and vide order dated 13.9.2016 it is on the submission of the opposite party no.3, the writ appeal has been permitted to be withdrawn and accordingly, the writ appeal has been dismissed as withdrawn, however with liberty to file an application for recall of the ex parte order passed by the writ court.

The opposite party no.3 has filed the instant application on the strength of the order dated 13.9.2016 passed in W.A.No. 373 of 2016 invoking the jurisdiction of this Court as conferred under Chapter-VI, Rule 27(a) of the Rules of the High Court of Orissa, 1948 for recall of the order dated 15.2.2016. This Court has thought it proper to scrutinize the provisions as contained in Chapter-VI, Rule 27(a) of the Rules of the High Court of Orissa, 1948, which is being quoted herein below for ready reference.

"27.(a) A party seeking an interim relief like stay, injunction, appointment of receiver, appointment of guardian, modification of order, analogous hearing vacation of order of stay, injunction, appointment of receiver and discharge of guardian and for any other interim relief in civil cases and for release on bail, stay or any other interim relief in criminal cases is required to file separate petition for the same."

It is evident from a perusal of the provision as contained in Rule 27(a) that this Court has been conferred with the power to entertain the miscellaneous application, which is to be filed seeking for interim relief during pendency of the original application, meaning thereby when the writ petition or any original application has been decided finally, an application under Chapter-VI, Rule 27(a)

of the Rules of the High Court of Orissa, 1948 cannot be said to be maintainable. The submission of learned counsel for opposite party no.3 is that the recall application has been filed in terms of the order dated 13.9.2016 passed in W.A. No. 373 of 2016, but there is no direction of the Hon'ble Division Bench of this Court to file a recall application, rather the Hon'ble Division Bench has simply noted down the submission of the applicant, who has sought for prayer to withdraw the writ appeal with liberty to file an application for recall of the ex parte order passed by the writ court and accordingly, the writ appeal has been dismissed as withdrawn.

It is settled that when the final judgment is passed in an original proceeding, there cannot be any recall of the order, rather, there can be review of the order, if the order is ex parte or review has been sought for any other valid reasons and the provisions for filing the review application is under Article 226 of the Constitution of India read with Order 47, Rule 1, C.P.C. in case of writ petition but undisputedly not under the provisions of Chapter-VI, Rule 27(a) of the Rules of the High Court of Orissa, 1948 since the prayer sought for is not by way of an interim relief.

According to the considered view of this Court, the instant application filed under the Chapter-VI, Rule 27(a) of the Rules of the High Court of Orissa, 1948 is not maintainable.

(ii) The opposite party no.3 has taken ground that it is an ex parte order with specific averment in the miscellaneous application that no notice has been issued upon it and as such, without providing opportunity of being heard, the judgment has been passed on 15.2.2016, which is sought to be recalled on this ground.

This Court has examined this aspect of the matter and found that the details of opposite party no.3 in the writ petition is with two addresses, i.e., in the address of the registered office situated at 153/4, Jessore Road, Damdam, Kolkata-7000074 and also at its local office at Plot No. 532, Satya Nagar, Bhubaneswar. This Court has issued notice upon the opposite parties including opposite party no.3 and thereafter steps for service of notice has been taken by the petitioner on both the addresses of opposite party no.3, i.e. at its registered office as well as local office.

This Court has examined the acknowledgment receipt, which is on record, and it reveals that notice has been duly served upon opposite party no.3 at its registered office at Kolkata and there is no due acknowledgment of the notice at its local address. This Court has further found from the record that the notice issued at its registered office of opposite party no.3 at Kolkata has duly been received by giving date "17/2" and as such, it is evident that the notice upon opposite party no.3 at its registered office has duly been served.

It is necessary to state here that the office while giving note has not taken into consideration the due acknowledgment receipt of service of notice upon opposite party no.3 at its registered office at Kolkata and only took note of the

acknowledgment receipt in the local address of opposite party no.3 at Bhubaneswar. The office note has been given that the notice upon opposite party no.3 is returned un-served due to door lock as reported by the postal department and as such, it is necessary to direct the Registrar (Judicial) to take judicial notice of this fact.

This Court after examining the acknowledgment receipt of service of notice at Kolkata is of the considered view that the notice has sufficiently been served upon opposite party no.3 at its registered office at Kolkata and even thereafter, it has not chosen to appear before this Court. Hence, the ground taken by opposite party no.3 in the miscellaneous application that the judgment dated 15.2.2016 has been passed without providing opportunity of being heard, is contrary to the record and as such, the same is not acceptable and hence not accepted.

(iii) It has been submitted by the learned counsel appearing for the petitioner as well as E.P.F. authority that since this Court has only directed the concerned competent authority to pass order on the review application filed under Section 7B of the Act, 1952 and the moment this order has been communicated to the concerned authority, he immediately issued notice under Section 32, C.P.C. (Annexure-B/3 to the instant application). This Court on its examination has found that the opposite party no.3 has been directed to appear on several dates before the reviewing authority, i.e. 10.5.2016, 27.5.2016, 13.6.2016 and 28.7.2016 to represent the case against determination of dues in respect of the employees deployed in M/s.Orissa State Beverages Corporation Ltd., the petitioner of the original writ petition and also advised to bring documentary evidences in support of any payment made for the said period of inquiry, but none appeared on the dates fixed for hearing.

(iv) This Court is of the considered view that the reviewing authority is trying its level best to provide an opportunity of being heard to the opposite party no.3, but reasons best known to it, the opposite party no.3 is not putting forth its appearance before the authority and instead of doing so, it has filed the instant application for recall on the ground which is not factually correct.

6. This Court has passed the judgment on 15.2.2016 taking into consideration the legal aspect wherein the maintainability of the review application and establishing the locus of the petitioner as also on the ground that the quasi judicial authority is not expected to pass an order without any reason and while directing the concerned competent authority by quashing the order passed under Section 7B of the Act, 1952 to pass appropriate order in accordance with law in the application filed under Section 7B of the Act, 1952, which itself suggests that the reviewing authority is to adjudicate the issue on its own merit and this Court has specifically observed in the judgment dated 15.2.2016 that this Court has not gone into the merit of the case of the petitioner, which itself suggests that this Court has not exercised its mind on the merit of the claim of the petitioner and as such, there is no confusion in the matter that the reviewing authority is to adjudicate the issue on its merit and for that reason, notices have been issued

upon opposite party no.3 to put forth its appearance along with documentary evidence.

7. In view of the facts and circumstances, mentioned herein above, this Court is of the considered view the application filed by opposite party no.3 for recall of the judgment dated 15.2.2016 is fit to be dismissed and accordingly, the same is dismissed.

8. It is needless to say that the opposite party no.3, if wants to produce documents asked for, he may do so on the next date fixed, in that case the authority will take into consideration the materials brought on record by the parties and shall pass appropriate order in accordance with law.

This Court has been informed by the learned counsel for the E.P.F. authority that due to lackadaisical approach of the opposite party no.3, the matter has not yet been decided, however, the authority since conscious of the fact that the beneficiaries are ultimately suffering, hence, notice under Section 32 of C.P.C. has been issued in terms of the power conferred under Section 7A (2) of the Act, 1952 due to this reason eight weeks time provided by this Court in the order dated 25.2.2016 has expired, as such, prayer has been made to extend the period so granted, taking into consideration the submission, the concerned authority is directed to dispose of the application expeditiously preferably within further four weeks from the date of receipt of copy of this order.