(2019) 09 CAL CK 0162

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16731 (W) Of 2019

Pawan Kumar Ruia APPELLANT

Vs

Employees Provident Fund Organization & Ors RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A
Constitution Of India, 1950 — Article 226/li>

Citation : (2019) 09 CAL CK 0162

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Biswarup Bhattacharyya, Rittick Chowdhury, Jagriti Sengupta, Anil Kr. Gupta

Final Decision : Dismissed

Judgement

Shekhar B. Saraf, J

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the inaction on the part of the provident fund authorities from releasing money lying in an account of State Bank of India.

2 It is an admitted position that this is a joint account wherein there are four persons who are joint account-holders. By an earlier writ petition, an order dated April 29, 2016 passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to 'the said Act') was set aside with a direction to grant an opportunity to all the stake-holders and decide the matter afresh. This order was passed by the Division Bench on August 31, 2017.

3 Subsequently, hearing notices were given to the company being M/s. Falcon Tyres Ltd. and the other Directors of the company. It is to be noted that none of the Directors appeared in that matter though some replies were filed by some of the Directors. The respondent authorities subsequently passed the order on

December 14, 2017 and determined the amount payable to be Rs.4,19,43,881/-. Subsequent to passing the order dated December 14, 2017, no appeal was filed by any of the parties under the said Act.

4 One Mr. Ashok Kumar Poddar filed a writ petition in 2018 that was finally heard by the Single Bench and order was passed on February 21, 2019. The relevant portion of the order is delineated hereinbelow:-

"A strong objection has been raised by the respondent Provident Fund Authority with regard to maintainability of this writ petition on the ground of existence of efficacious alternative remedy in favour of the petitioner.

Considering the facts of the case, I find that this writ petition should be decided after considering the pleadings of the respective parties. It appears that the writ petition was filed on January 10, 2018 and the petitioner was unable to obtain any interim order in this application for this long time.

If, in the meantime, the Bank has not made the payment in terms of the impugned order dated December 14, 2017 it shall not allow any amount to be withdrawn from the aforementioned bank account during pendency of the writ petition.

Let, the respondent Provident Fund Authorities file their affidavit-in-opposition within four weeks from date; reply thereto, if any, be filed a week thereafter. The respondent bank shall also file the affidavit within a period of four weeks from the date of communication of this order.

Let the CAN 453 of 2019 appear on February 26, 2019."

5. Mr. Bhattacharyya, counsel appearing on behalf of the petitioner, submits that almost Rs.6.5 crores is lying in the account and this money has been deposited by the provident fund authorities to the account of his client. He submits that this money belongs to him and the provident fund authorities have no right to hold on to the said money. He further submits that in any event, the amount over and above Rs. 4.19 crores should be made available and released to his client.

6. Mr. Gupta, counsel appearing on behalf of the provident fund authorities, submits that this writ petition is not maintainable under any circumstances as an alternative efficacious remedy is available to the petitioner under the said Act. He further submits that this writ petition has been filed belatedly long after the limitation of filing an appeal under the said Act has expired.

7. I have gone through the entire petition and find that it is an admitted position that the petitioner is a party in the writ petition filed in 2018 as a respondent. It is admitted by the petitioner that he never appeared in that matter in spite of being served a copy of the writ petition on January 11, 2018.

8. It is also an admitted position by the petitioner that he has not filed appeal under the said Act. Furthermore, I do not find any averments in the writ petition that specifically state the reasons for not filing an appeal under the Act.

9. Furthermore, there are no averments on record to explain the delay in filing of the present writ petition. In fact, in my view, the argument being raised in this writ petition can very well be raised in the writ petition filed by Ashok Kumar Poddar as the writ petitioner is a respondent in that matter. Having not taken out any application in the said writ petition, this attempt to file a new writ petition, in my view, is mala fide and does not deserve any merit. Neither has the writ petitioner availed of the statutory remedy under the Act nor made any application in the earlier writ petition. I see no reason to entertain this writ petition at this stage.

10. Accordingly, W.P. 16731 (W) of 2019 is dismissed in limine.

11. Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

12. There will be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.