
(1994) 06 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 10395 of 1994

Rajco Spinning Mills

APPELLANT

Vs

Recovery Officer and Another

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1995) 70 FLR 260 : (1995) 2 LLJ 326

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : R. Muthukumaraswamy, for the Appellant;

Final Decision : Dismissed

Judgement

Abdul Hadi, J.—This writ petition by Rajco Spinning Mills is for quashing the order dated May 23, 1994 of the first respondent, the Recovery Officer, Employees' Provident Funds Organisation, Madras.

2. As per the said order, the petitioner has to pay a sum of Rs. 1, 18, 104 for the period April, 1992 to September 1992 as employees provident fund contribution together with family pension. According to the affidavit filed in support of the petition it appears, the petitioner-firm consists of only three partners and the persons who associated earlier with the firm and who have gone away from the firm have agreed to pay the said demand as per the release deed dated June 13, 1993 and hence the present petitioner is not liable. Further, it is also alleged in paragraph 6 of the affidavit as follows;

"While so, the second respondent issued a notice calling upon the petitioners to appear for an enquiry on May 6, 1994. The petitioners' representative appeared for the, enquiry to be conducted u/s 7-A of the Act on May 6, 1994. However, no enquiry was conducted on the said date and the matter was adjourned to July 8, 1994. While so, to the shock and surprise of the petitioners, the first respondent

has issued a notice of demand dated May 23, 1994 requiring the petitioner to pay a sum of Rs. 1, 18, 104."

3. But, I find from the communication sent by the second respondent dated May 16, 1994 a copy of which has been filed in the typeset that the petitioner was asked to attend the enquiry u/s 7-A, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, regarding the abovesaid employees' provident fund contribution due on May 6, 1994, and that nobody attended the said enquiry on the said date viz., May 6, 1994, and that hence the enquiry was adjourned to June 1, 1994. This document itself shows that what has been stated in paragraph 6 is factually not correct. While the aforesaid document says that nobody attended the enquiry on May 6, 1994 the petitioner makes a false averment in the affidavit stating that their representative appeared for the enquiry on May 6, 1994. That apart, the above referred passage in the affidavit states that after May 6, 1994, the enquiry was adjourned to July 8, 1994. But, actually as per the abovesaid document, the enquiry was adjourned to June 1, 1994, and not to July 8, 1994. Here again, there is a misstatement of fact. That apart, in the copy of the alleged release deed produced in the typeset, the second page is missing. When I asked for it, counsel could not give the missing page. Anyway, even though the third page of the release deed copy says that V. Subramaniam, A. Balakrishnan and Kulandai Raj were retired "partners", the affidavit states that they were not partners at all even originally. What is stated in the affidavit in paragraph 2 is that the abovesaid V. Subramaniam, A. Balakrishnan and Kulandai Raj were only "to associate with the firm and discharge the debts.... The said three persons had not been inducted as partners of the firm." This is again a false statement in the affidavit. That apart, the impugned order dated May 23, 1994, only states as follows:

"Please take notice that Certificate No. 33/TN/20297/ENP/MDU/93 dated June 18, 1993, has been forwarded by the authorised officer, Madurai, for the recovery of an amount of Rs. 1, 18, 104....."

4. So, it is clear that this notice of demand to the defaulter (petitioner) is pursuant to the aforesaid certificate dated June 18, 1993. So, it is clear that the demand that is made in the impugned order is with reference to a certificate of June, 1993. In this context, it has also to be seen that the copy of the order (that has been filed in the typeset) in W.M.P. No. 31180 of 1993 in W.P. No. 19971 of 1993 shows that the said writ petition has also been filed by the same writ petitioner, and in the said petition, interim stay has been given. But, though learned counsel for the petitioner states that the said writ petition was filed not with reference to the present demand of Rs. 1, 18, 104 but with reference to another earlier demand, it is not clear from the order in the said W.M.P. Nor such an allegation has been made in the affidavit in support of this petition. There is also no reference to the above referred to writ petition and W.M.P. No. 31180 of 1993 in the affidavit. In the above circumstances, in view of the aforesaid suppression and/or misrepresentation of material facts, the petitioner is not

entitled to relief under Article 226 of the Constitution of India.

5. That apart, sitting under Article 226, I cannot go into the question whether the present partners of the firm are liable or the former partners.

6. After I heard learned counsel for the petitioner at length and also pointed out to him the aforesaid suppression and/or misrepresentation, learned counsel wanted to withdraw the writ petition. But, in the light of what is narrated above, I am of the view this is a case where withdrawal should not be allowed, but order should be pronounced in the light of what has been observed. The abovesaid my view is consistent with the decision in *Shrimati Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma*, . There, a petition for writ of habeas corpus was presented before the Supreme Court by an advocate on behalf of one Vidya Verma against her father. The petition was neither accompanied by vakalatnama nor by any power of attorney. Moreover, the petition was filed against private detention and the question was, whether such a petition was at all maintainable. Further, even at an earlier occasion, a similar petition was filed in the High Court of Nagpur and when the court was against the same advocate, he withdrew the petition. Taking into account all these facts, the Supreme Court did not allow the advocate to withdraw the petition and dismissed it with costs. In the light of the abovesaid decision, I hold that the Court has power not to allow the petitioner or his advocate to withdraw the petition if it is satisfied that the petitioner is guilty of such suppression or misrepresentation.

7. Accordingly, in view of what is stated above, the writ petition is not admitted, but dismissed.