(2013) 10 GUJ CK 0139

In the Gujarat High Court

Case No : S.C.A. No. 11997 of 2012 with C.A. No. 3371 of 2013

State Bank of India APPELLANT

Vs

Assistant Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 139 FLR 1091 : (2014) 1 GLR 524 : (2014) LabIC 440 : (2013) LLR 1210

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Dharmishtharaval, for the Appellant; Niral Mehta, Advocate for Respondent Nos. 1 and 2 and Mr. N. Gandhi, Advocate, for the Respondent

Judgement

Paresh Upadhyay, J.—Heard learned advocates. The State Bank of India has moved this Court by this petition, challenging the action of the authorities of the Regional Provident Fund Commissioner, Surat declaring the Manager of the State Bank of India, Fort Songadh Branch, District: Tapi (Surat) as a deemed defaulter vide order dated 24.8.2012 and also notice dated 24.08.2012 as to why a warrant of arrest be not issued against the Manager of the State Bank of India.

2. This Court (Coram: Honourable Smt. Justice Abhilasha Kumari), vide order dated 5.9.2012, granted ad-interim relief in favour of the State Bank of India by staying the implementation and operation of the above referred order and notice dated 24.8.2012. The said ad interim protection continued from time to time and was confirmed vide order of this Court (Coram: Honourable Mr. Justice K.S. Jhaveri) dated 28.12.2012.

3. Serious grievance is made on behalf of the State Bank of India through learned advocate Ms. Rawal that, inspite of the protection granted by this Court, the authorities of RPFC, Surat, have continued to harass the Bank Officers by further issuing similar order and notice. This grievance is voiced in Civil Application No. 3371 of 2013 in Special Civil Application No. 11997 of 2012. The order dated 18.12.2012 issued by the Assistant Provident Fund Commissioner,

Surat against Branch Manager of the State Bank of India, Songadh, leading to issuance of show cause notice dated 26.2.2013 as to why the Branch Manager of State Bank of India be not declared as deemed defaulter, is placed on record of Civil Application.

4. During course of hearing of this petition as well as application, on behalf of the authorities of RPFC, Surat learned advocate Mr. Mehta has not been able to explain as to on the face of interim orders of this Court in favour of the State Bank of India, how order dated 18.12.2012 and notice dated 262.2013 for declaring the Bank as deemed defaulter; came to be issued.

5.1 Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, the controversy started with the authorities of RPFC, Surat initiating coercive actions against one J.K. Paper Limited under the provisions of The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (''the Act'', for short). Said company approached this Court by filing Special Civil Application No. 11167 of 2012 wherein this Court (Coram: Honourable Smt. Justice Abhilasha Kumari), on 17.8.2012, issued Notice as well as Notice as to interim relief, returnable on 24.8.2012. On 243.2012, on behalf of the authorities of RPFC, Surat, request was made to grant some time which was accepted by this Court as reflected in order dated 24.8.2012. The indulgence shown by this Court in favour of the authorities of RPFC, Surat, was misused since on the very same day, the authorities issued prohibitory order, declaration of deemed defaulter and notice as to why warrant of arrest be not issued, all against State Bank of India. Subsequently, coercive actions are stayed against J.K. Paper Limited also, by this Court but since that petition is pending, the same is not elaborated further. However, it is recorded that, inspite of the protection granted in favour of J.K. Pa per Limited, as well as against its Banker - the State Bank of India, the authorities of RPFC, Surat continued to arm-twist the authorities of the State Bank of India by issuing further order dated 18.12.2012 and notice dated 26.2.2013.

5.2 So far the order and notice dated 24.8.2012 which is impugned in the main petition is concerned, the same cannot be permitted to stand because the employer is also protected by this Court and therefore, the liability of its Banker i.e. the State Bank of India would not arise and there is no question of taking any coercive step against State Bank of India. For these reasons, the order dated 24.8.2012 (Annexure-F) and notice dated 24.8.2012 (Annexure-H), which are impugned in the main petition, need to be quashed and set aside.

6. There is one more serious dimension of the matter. The subject matter of the main petition is the order and notice dated 24.8.2012 as noted above, which for the reasons recorded above, need to be quashed and set aside, but during pendency of this petition, inspite of the interim protection in favour of the employer - J.K. Paper Limited in Special Civil Application No. 11167 of 2012 and interim protection in favour of the State Bank of India as well as ordered in this

petition i.e. Special Civil Application No. 11997 of 2012, the authorities of RPFC, Surat flouted the interim protection granted by this Court and issued order on 18.12.2012 and notice dated 26.2.2013 as to why the State Bank of India be not declared a deemed defaulter. Had this been a simple error due to inadvertence, the matter could have been closed like that, however, this Court has, over last few months, consistently come across number of matters, where it is alleged and found by this Court that, the authorities of Regional Provident Fund Commissioner, Surat and Vadodara, and of the two - more particularly from Surat, are acting in absolutely illegal, arbitrary and highhanded manner for the reasons, to say the least, unknown to law. Before recording further observations in this paragraph, which may appear to be very harsh, this Court has kept in view, the observations made and directions issued by this Court, in Special Civil Application No. 10357 of 2013 and cognate matter vide judgment and order dated 23.7.2013, in Special Civil Application No. 7017 of 2013 vide judgment dated 24.9.2013, in Special Civil Application No. 8429 of 2013 vide order dated 6.5.2013, as well as in Special Civil Application No. 6681 of 2013 dated 22.7.2013, which was after hearing the authorities of Provident Fund Organisation, and keeping all these aspects in view, this Court is constrained to observe that the highhandedness of the authorities of the Surat Region of RPFC, many a times, is akin to extortion from employers and, of the many tactics applied, the commonly practised modus operandi is, that in exercise of powers u/s 7A of the Act, an absolutely illegal order, with exorbitantly inflated claim, would be passed by the authorities against the employer, and if the same is challenged before the High Court, the argument of statutory alternative remedy of the Tribunal u/s 7I of the Act would be put forward and normally High Court would be slow to exercise discretion on the face of alternative statutory remedy, which would require the employer to deposit 75% of such ''exorbitantly inflated claim before the Tribunal, as required u/s 7O of the Act, resulting into liquidity crunch, and sometimes further resulting into potential economic death of the Unit. This is the tactic resorted to, to make the employers agree, to the wishes of the officers, which is certainly not legal consideration. The terror of the officers is to that extent, that in this exercise even the Banker of the employer is not spared. This arm-twisting tactic, which in number of cases is successfully applied by the authorities of RPFC, Surat, judicial cognizance of which is also taken by this Court in number of matters, reference to some of which is made above, is applied against Nationalized Bank also, as is done in the present case. Even on the face of stay order granted by this Court, the respondent authorities further ventured to pass the similar order and issue notice against the State Bank of India. Considering the totality, the order dated 18.12.2012 and notice dated 26.2.2013, which is placed on record of Civil Application No. 3371 of 2013, which is ex-facie contemptuous, not only need to be quashed and set aside, but exemplary cost is required to be imposed against the authorities, which, if the higher authorities so desire, may be recovered from the erring officer, in accordance with law. It is recorded that the matter could have been referred to the Division Bench for consideration as to whether contempt proceedings against erring officers for defiance of interim orders of this Court be initiated or not, however, since the main matter was pending before this Court, taking lenient view, I have restrained myself from opting for it and has thought it fit to impose cost in the matter. For this purpose, the observations of Honourable the Supreme Court of India in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), is also kept in view, which is to the effect that, judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party, unfortunately it has become a practice to direct parties to bear their own costs, such a practice also encourages the filing of frivolous suits, it also leads to the taking up of frivolous defences, further, wherever costs are awarded, ordinarily the same are not realistic and are nominal, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons thereof. Keeping these observations in view, in the facts of this case, I consider it to be the duty of this Court to impose cost against the respondent authorities. For the reasons recorded above, this petition as well as civil application both are allowed. The order dated 24.8.2012 and notice dated 24.8.2012 impugned in the petition are quashed and set aside. The order dated 18.12.2012 and notice dated 26.2.2013 which are impugned and are placed on record of Civil Application are also quashed and set. aside. For the reasons recorded in para: 7 above, the Central Provident Fund Commissioner, New Delhi - the Respondent No. 2, is directed to pay cost of Rs. 25,000 (Rupees Twenty Five Thousand) to the State Bank of India, within a period of two months from today. It would be open to the Central Provident Fund Commissioner, New Delhi, to recover the said amount from the erring officer(s) in accordance with law. Rule made absolute with costs as ordered above.