

(2012) 12 PAT CK 0018

In the Patna High Court

Case No : LPA No. 707 Of 2012 in CWJC No. 13666 of 2009

The Provident Fund Commissioner

APPELLANT

Vs

Nisheeth Jaiswal

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A,
8F(3)(i)

Citation : (2013) 1 PLJR 288

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Prashant Sinha, S.K. Sinha, for the Appellant; Vikas Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dated 24th November, 2011 passed by the learned single Judge in CWJC No. 13666 of 2009, the respondent-Employees Provident Fund Organization has preferred this Appeal under Clause 10 of the Letters Patent. Feeling aggrieved by the order dated 9th July, 2009 made by the Assistant Provident Fund Commissioner, Patna in exercise of power conferred by Section 8-F(3)(i) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") the debtor of the writ petitioner one Neeraj Agrawal was called upon to remit monthly rent of Rs. 1,00,000/- to the Provident Fund Office against the outstanding dues of Rs. 3,97,456/- of the writ petitioner. The said order was challenged by the writ petitioner under Article 226 of the Constitution in above CWJC No. 13666 of 2009.

2. The petition was contested by the appellants. The appellants filed counter affidavit and brought order dated 28th September, 2004 and 28th September, 2007 made u/s 7-A of the Act. According to the appellants, pursuant to the

aforesaid orders made u/s 7-A of the Act the above referred sum of Rs. 3,97,456/- was the outstanding dues of the Employees Provident Fund. Although, the writ petitioner had not challenged either of the aforesaid orders dated 20th September 2004 and 28th September 2007, the learned single Judge has, while examining the garnishee order under challenge, set aside the above referred orders dated 20th September, 2004 and 28th September, 2007 made u/s 7-A of the Act. Therefore, this Appeal.

3. Learned Advocate Mr. Vikas Kumar has appeared for the respondent-writ petitioner. He has submitted that the writ petitioner was not aware of the aforesaid order dated 28th September, 2007 nor he had opportunity to contest the proceeding initiated u/s 7-A of the Act.

4. Be that as it may, in absence of a challenge to the orders made u/s 7-A of the Act even after the orders were produced on the record alongwith counter affidavit, the learned single Judge has erred in setting aside the orders.

5. For the aforesaid reasons, Appeal is allowed. Impugned judgment and order dated 24th November, 2011 passed in CWJC No. 13666 of 2009 is set aside. CWJC No. 13666 of 2009 is rejected. We clarify that we have not examined the correctness or otherwise of the above referred orders dated 20th September, 2004 and 28th September, 2007 made u/s 7-A of the Act. If permissible, the writ petitioner will be at liberty to challenge the same in a substantive proceeding before the appropriate forum.