**(2013) 09 MAD CK 0288**

**In the Madras High Court**

**Case No :** Writ Petition No. 25341 of 2013 and M.P. No''s. 1, 2 and 3 of 2013

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| TI Metal Forming | APPELLANT |
| Vs | |
| The Regional Provident Fund Commissioner-II and Another | RESPONDENT |

**Date of Decision :** 06-09-2013

**Acts Referred:**

**Citation :** (2014) 140 FLR 676 : (2014) 1 LLJ 580 : (2013) LLR 1251

**Hon'ble Judges :** N. Kirubakaran, J

**Bench :** Single Bench

**Advocate :** Ravindran, for T.S. Gopalan and Co, for the Appellant; K. Gunasekaran, SCGSC, for the Respondent

## Judgement

N. Kirubakaran , J.—The petitioner is engaged in the manufacture of door frames for automotive sector and the company is covered under the provisions of EPF Act. The first respondent initiated proceedings against the petitioner claiming that there was short fall in payment of contribution. After contest the first respondent determined the contribution of Rs. 7,16,589 and the said order copy was issued on 17.8.2013. Even before the petitioner preferred as appeal, the first respondent issued an attachment order to the second respondent attaching the bank account of the petitioner with the second respondent. Challenging the same the petitioner has come before this court. Heard Mr. Ravindran for T.S. Gopalan and Co., learned counsel for the petitioner who would contend that the order dated 12.8.2013 was received only on 17.8.2013. The petitioner has got 60 days time to file an appeal before the Employees'' Provident Fund Appellate Tribunal, New Delhi, when that is the position, even before the expiry of 60 days, the first respondent issued the impugned notice on 4.9.2013, which is violative of section 7(1) of the Act.

2. Mr. K. Gunasekaran, the learned Senior Central Government Standing Counsel for the Respondents, would submit that even though 60 days appeal time is there, there is no prohibition for the first respondent to proceed as per that Act and recover the money.

3. Heard the parties. Notice is require to be given to the second Respondent who is only a garnishee.

4. No doubt. The contribution has been computed at Rs. 7,16,589. The order of the first respondent dated 12.8.2013, was received on 17.8.2013, by the petitioner. As per section 7(1), the petitioner has got 60 days time, i.e., upto 16.10.2013, to file an appeal before the Employees'' Provident Fund Appellate Tribunal, New Delhi.

5. A perusal of the order dated 12.8.2013, passed by the first respondent, would show that the petitioner has got a right of appeal before the Employees'' Provident Fund Appellate Tribunal, New Delhi u/s 7(1) of the Act. When the Act itself provides 60 days to file an appeal, the first respondent did not allow the said time to expire. Even before expiry of 60 days, attachment proceedings is taken and amounts are sought to be recovered. The right of statutory appeal available to the petitioner, cannot be curtailed by the act of the first respondent which is provided under the Act itself.

6. Though the amount has been quantified as on 12.8.2013, considering the fact that 60 days is available for the petitioner to file an appeal as per section 7(1) Act, the order dated 12.8-3013- could become effective only on expiry of 60 days. Therefore, the first respondent is not justified to pass the impugned order, which is in violation of the provisions of section 7(1) of the Act. In view of that, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

 