(1977) 12 CAL CK 0013

In the Calcutta High Court

Case No : Civil Revision No. 1760 of 1975

West Bengal Financial Corporation APPELLANT

Vs

Regional Employees Provident Fund Commissioner RESPONDENT

Date of Decision : 08-12-1977

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 8
State Financial Corporations Act, 1951 — Section 31, 32

Citation : (1977) 1 CALLT 95 : 82 CWN 195 : (1977) 2 ILR (Cal) 677

Hon'ble Judges : M.M. Dutt, J;D.C. Chakravarti, J

Bench : Division Bench

Advocate : P.N. Chunder, for the Appellant;S.C. Bose and Taher Ali for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This Rule is at the instance of the West Bengal Financial Corporation and it is directed against the order of the learned District judge, Howrah, dated April 21, 1975, dismissing the application of the Petitioner under Sections 51 and 32 of the State Financial Corporations Act, 1951.

2. The opposite party No. 2, Howrah Engineering Concern Pvt. Ltd., mortgaged the buildings, machinery and other assets belonging to it in favour of the Petitioner by a registered indenture dated April 19, 1962, in respect of the advance made by the Petitioner to the opposite party No. 2 of a sum of Rs. 1,50,000. The opposite party No. 2 failed to pay the said loan to the Petitioner and accordingly, the Petitioner made an application under Sections 31 and 32 of the Act to the District Judge, Howrah, praying for attachment and sale of the mortgaged properties. After the properties were attached and directed to be put up for sale, the opposite party No. 1, Regional Employees Provident Fund Commissioner, West Bengal, made an application for realisation of his dues from the opposite party No. 2 in respect of the employer''s and employees'' contribution to the provident fund under execution in the certificate proceedings

filed by it against the opposite party No. 2. It was contended on behalf of the Petitioner at the hearing of the said application of the opposite party No. 1 that the Petitioner''s dues would get priority over all other dues including those of the opposite party No. 1. On the other hand, it was contended on behalf of the opposite party No. 1 that the dues on account of provident fund in respect of both the employer''s and employees contribution thereto should have priority over the dues of the Petitioner. It was contended on behalf of the Petitioner that the priority would relate only to that portion of the dues which was the employees'' part of contribution and not the employer''s part, because the employer had not contributed any amount till then. That contention of the Petitioner was rejected by the learned District Judge and he took the view that the dues x of the opposite party No. 1, the Regional Employees Provident Fund Commissioner, would get priority over those of the Petitioner. Accordingly, it was directed by him that the Receiver who was appointed earlier would, out of the sale proceeds of the attached properties, pay to the opposite party No. 1 a sum of Rs. 1,29,220-15 on account of its dues for the employer''s and employees contribution of the opposite party No. 2, the Howrah Engineering Concern Pvt. Ltd. Hence, this Rule.

3. Mr. Chunder, learned Advocate appearing on behalf of the Petitioner, has urged before us that the dues of the opposite party No. 1, the Regional Employees Provident Fund Commissioner, will get precedence only in so far as it relates to the employees'' contribution and not to the employer''s contribution. It is, however, contended by Mr. Bose, learned Advocate appearing on behalf of the opposite party No. 1, that u/s 8 of the Employees'' Provident Funds Act, 1952, the dues of the opposite party No. 1 will get precedence over that of the Petitioner. Section 8, inter alia, provides that the amount in arrears may be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him by notification in the Official Gazette, in this behalf, in the same manner as an arrear of land revenue. u/s 8, the amounts in arrears are not arrears of land revenue and cannot be treated as such. But all that Section 8 provides is that the arrears may be recovered in the same manner as arrears of land revenue. In our view, the opposite party No. 1 cannot invoke the provisions of the Public Demands Recovery Act and contends that its dues will have priority over the dues of other secured creditors. There is a wide difference between the amount being treated as arrears of land revenue and its recovery in the same manner provided for the recovery of arrears of land revenue. Such recovery as conferred by Section 8 does not make the amount in arrears as arrears of land revenue and accordingly, such amount cannot be treated as the first charge on the properties of the defaulting employer. The same view has been expressed by the Madhya Pradesh High Court in State Bank of Indore Vs. Regional Provident Fund Commissioner and Others, .

4. In the above circumstances, we are of the view that, so tar as the employer''s contribution is concerned, there is no question of priority of the dues of the opposite party No. 1 over those of the Petitioner. The order of the learned District

Judge is, therefore, modified to this extent only that, as far as the employees'' contribution is concerned, the opposite party No. 1 will get priority over the dues of the Petitioner, but so far as the employer''s contribution is concerned, the dues of the opposite party No. 1 will be subject to the mortgage dues of the Petitioner.

5. This Rule is disposed of as above.

6. There will be no order as to costs.

D.C. Chakravorti, J.

7. I agree.

