



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Thursday the 8th day of April, 2021)

APPEAL No.261/2018

(Old No.A/KL-39/ 2017)

Appellant : M/s. Cochin Restaurant,
Cochin Residency Building,
Vadacode P.O
Kangarappady
Kochi-6820 21.

By Adv. John Mani. V

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

By Adv. Sajeev Kumar K.Gopal

This case coming up for final hearing on 09/03/2021
and this Tribunal-cum-Labour Court on 08/04/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR / KCH/
21560 / Damages / 2016-17 / 15574 dt. 02/02/2017 assessing
damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to
as 'the Act'.) for belated remittance of contribution for the period

from 03/2004 to 10/2012. The total damages assessed is Rs. 3,32,900/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is engaged in restaurant business. The appellant was facing lot of financial difficulties and heavy debts to the tune of crores to various banks. The appellant establishment is closed since long time as the appellant could not pay the salary of the employees. The respondent initiated proceedings against the appellant for belated remittance of contribution. The respondent authority without giving a reasonable and fair opportunity issued the impugned orders. No notice of hearing was issued to the appellant before passing the impugned orders. From the impugned orders it can be seen that the last date of proceedings as 29/05/2014. The notice for the said date of hearing was not communicated by the respondent. It can be seen that the respondent mechanically issued an order after a lapse of three years.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of statutory contributions from 03/2004 to 10/2012. Belated remittance of contribution will attract damages U/s 14B of the

Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant U/s 814B on 07/04/2014 to show cause with documentary evidence why penal damages shall not be levied for belated remittance of contribution. A detailed damages statement was also enclosed alongwith the notice. The notice was received back with postal remark 'unclaimed'. The enquiry was therefore adjourned to 07/08/2014 and 09/12/2014. Since the summons was returned by the postal authority with the remark 'unclaimed' it was assumed to have been served on the appellant. There was a typographical error in the impugned order where the damages levied in account one is shown as Rs.20,331/- instead of 2,03,311/-. The reason 'unclaimed' cannot be taken as a reason for non-appearance as the appellant or any person in the establishment has purposefully failed to claim this summons. Under Rule V 19 A (2) of CPC when an acknowledgement purporting to be signed by the defendant or his agent is received back with an endorsement made by a postal employee to the effect to the defendant or his agent had refused to take delivery of the postal article when tendered to him, the authority issuing the summons shall declare that the summons had been duly served to the defendant. In ***Vinod Shivappa Vs.***

Nanda Belliappa, 2006 (3) KLT 94 SC the Hon'ble Supreme Court held that when a notice send by registered post is returned 'unclaimed' it could very much be treated as valid and proper service. In this case the appellant failed to accept the notice of hearing. Hence the appellant cannot accuse respondent of not having provided an opportunity of being heard. Further the claim of financial constraints is not a reason for waiving or reducing damages U/s 14B. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 held that financial problems cannot be an excuse to escape the liability U/s 14 B. The copies of challans available in the office would clearly show that the appellant is a chronic defaulter. The appellant also cannot escape the mandate of Para 30 and 38 of EPF Scheme to remit the monthly contribution payable within 15 days of close of every month. The liability of the employer under the Act arise the movement the wages are earned by the members irrespective of whether it is actually paid or not. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the expression damage occurring in Sec 14B of the Act is in substance the penalty imposed on the employer for breach of statutory obligation. In

Maharashtra State Co-operative Bank Vs APFC, 2009 (10)

SCC 123 the Hon'ble Supreme Court held that the expression of any amount due from an employer shall include the liability of the employer to pay interest and damages, if there is a default in making contribution to the fund.

4. The learned Counsel for the appellant pointed out that the appellant never received a notice before the impugned orders levying interest and damages were issued. According to the learned Counsel for the respondent the postal authorities returned the summons with an endorsement that it is 'unclaimed'. According to the learned Counsel for the respondent when the notice is not claimed by the party after intimation to that effect from the postal authorities, it amounts to refusal and therefore it is a valid delivery of notice to the appellant. All three notices issued to the appellant were returned by the postal authorities with the same endorsement that the communication is "unclaimed" by the appellant. Another contention raised by the learned Counsel for the appellant is that the orders were issued after three years of the last hearing. According to the learned Counsel for the respondent the delay in issuing the impugned orders will not in way cause any prejudice to the appellant and

therefore it cannot be pleaded as a ground for interfering with the impugned orders. The third ground pleaded by the appellant is with regard to financial difficulties of the appellant during the relevant point of time. According to the learned Counsel for the respondent no documents were produced before the respondent authority to substantiate their claim of financial difficulties. The Hon'ble High Court of Delhi in ***Kee Pharma Ltd Vs APFC***, 2017 LLR 871 held that the appellant shall produce documents before the respondent authority to substantiate their claim of financial difficulties. If the appellant failed to do so his claim for reduction of damages on financial ground cannot be accepted. **In Assistant PF Commissioner Coimbatore Vs EPF Appellate Tribunal**, New Delhi and **M/s. Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd**, WPC No 4633/2012 the Hon'ble High Court of Madras held that if the appellant company failed to produce documents to substantiate their claim any reduction of damages is in violation of Sec.14B. **In Sreekamakshy Agency (P) Ltd Vs EPF Appellate Tribunal**, WP(C) No. 10181/2010, the Hon'ble High Court of Kerala held that when the employer pleads financial difficulty as a reason for delayed payment of contribution and produces supporting documents to substantiate

the same, the authority U/s 14 B shall consider the same while deciding the quantum of damages. In ***Elston tea Estate Vs. RPFC***, WP(C) No. 21504/2010, also the Hon'ble High Court of Kerala held that financial constrains have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as a mitigating factor for lessening the liability. As already stated, the appellant failed to produce any document to substantiate their claim of financial difficulties before the respondent authority as well as in this appeal. In the absence of any such evidence the claim of the appellant for reducing the damages on the ground of financial difficulties cannot be considered. Having failed to produce any documents to substantiate the financial difficulties even in this appeal it is not possible to accept the claim of financial difficulties as a mitigating circumstance for reducing or waiving damages. The only valid ground raised by the learned Counsel for the appellant is with regard to non service of the summons on the appellant before the impugned orders were issued. As rightly pointed by the learned Counsel for the respondent when the notice/Summon remain "unclaimed" it amounts proper service of notice. However considering the fact that appellant establishment

remains closed and the impugned order imposes damages on the appellant for belated remittance of contribution and in view of the claim of the learned Counsel for the appellant that had the appellant been given an opportunity he could have proved that there was no delay in remittance of contribution, it is felt that the appellant can given an opportunity for hearing before the order for assessing damages is finalized.

5. Considering the facts, circumstances and pleadings in this appeal I am inclined to set aside the impugned order U/s 14B of the Act to facilitate the appellant to plead his case properly before the respondent.

6. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7(O) of the Act. On perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPF**, AIR 2014 SC 295 held that no appeal is provided U/s 7(I) from an order issued U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, WP (C) No. 234/2012 the Hon'ble High Court of Kerala also held that no appeal can be filed from an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed the impugned order U/s 14B is set aside and the matter is remitted back to the respondent to reassess the damages within a period of 6 month from date of receipt of this order after issuing notice to the appellant. The appeal against 7Q order is dismissed as not maintainable. If the appellant fail to attend the hearing, the respondent may finalise the assessment as per rules.

Sd/-

(V. Vijaya Kumar)
Presiding Officer