

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7844 OF 2008

Arjunwadkar Engineering
Associates Pvt. Ltd. & Ors.Petitioners.

V/s

Employees' Provident Fund
Organization & Anr.Respondents.

Mr. A.D. Patwardhan for the petitioners.
Ms. S.V. Bharucha for respondent Nos. 1 and 2.
Mr. Y.A. Sakhare i/b M/s YKS Legal for respondent No.3.

CORAM: V.M. KANADE, J.
DATE : 24TH JUNE, 2009

P.C:-

1. Heard the learned Counsel for the petitioner, the added respondent No.3 and the learned Counsel appearing on behalf of respondent Nos. 1 and 2.

2. The learned Counsel appearing on behalf of respondent Nos. 1 and 2 submits that she would like to file further affidavit. The short issue involved in this petition is, whether the Provident Fund Authorities have a charge over the amount received by respondent No.3 by selling the assets of the

petitioner – Company. The learned Counsel for the petitioner submits that the property is auctioned by respondent No.3 pursuant to the decree passed by the competent court. The Provident Fund Authorities would have a priority over the amount which is due and payable to them. It is submitted that Respondent No.3 has already paid an amount of Rs 12 lacs to the Provident Fund Authorities. However, balance amount of Rs 4,93,061.37 is not paid. The learned Counsel appearing on behalf of respondent No.3, however, disputes this fact and submits that the said claim of the Provident Fund Authorities is subsequent to the sale of the property by respondent No.3 and, therefore, the said amount is not due and payable by respondent No.3.

3. Ms Bharucha, the learned Counsel appearing on behalf of the Provident Fund Authorities, however, submits that the interest under section 7Q has not been calculated and the amount which is mentioned in the notice is provisional amount which is payable under section 7Q.

4. In my view, ratio of the Division Bench Judgment of this Court dated 23/06/2005 in the case of Janata Sahakari Bank Ltd. vs. Asst Provident Fund Commer and Recovery Officer

and orders in Writ Petition No.639 of 2005 is squarely applicable to the facts of the present case and, therefore, the Provident Fund Authorities would have prior claim and charge over the property sold in auction. However, since there is a dispute regarding the actual amount due and payable, at the moment respondent No.3 shall deposit an amount of Rs 4,93,061.37 with the Provident Fund Authorities. Respondent No.3 to deposit the said amount within a period of two weeks from today. However, this payment shall be subject to the final orders that may be passed in this writ petition.

5. Hence, rule. Counsel appearing on behalf of respondent Nos.1 and 2 waives service. Counsel appearing on behalf of respondent No.3 waives service. Rule is made returnable after three weeks. In the meantime, no coercive action shall be taken by respondent Nos. 1 and 2 in view of the direction given by this Court to respondent No.3 to deposit balance amount of Rs 4,93,061.37. Writ Petition shall be disposed of on the adjourned date.

(V.M. KANADE, J)