

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO. 33093 OF 2023

M/s. Royal Education Trust, Nashik Cambridge  
School .. Petitioner

**Versus**

Assistant Provident Fund Commissioner, EPFO,  
Regional Office .. Respondent

- .....
- Ms. Samiksha Kanani a/w. Mr. Paresh Waghmare and Mr. Prasanna Pawar, Advocates for Petitioner.
  - Ms. Sonali Humane, Advocate for Respondent No.1.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : DECEMBER 06, 2023.**

**P.C.:**

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** Heard Ms. Kanani, learned Advocate for Petitioner and Ms. Humane, learned Advocate for Respondent No.1.
- 3.** Perused the praecipe dated 06.12.2023 and Writ Petition.
- 4.** This Writ Petition takes exception to the order passed by the Assistant Provident Fund Commissioner under Section 14-B of the Employees' Provident Fund and Miscellaneous Provision Act, 1952 (for short '**the said Act**').
- 5.** At the outset, Ms. Kanani would submit that the period for which summons under 14-B of the said Act was issued is from

01.09.2019 to 31.03.2022 with respect to delay in remittance. Though the Petitioner would submit that the amount of Rs.13,16,206/- as determined under Section 7Q of the said Act has already been deposited, in so far as the liability under Section 14-B of the said Act is concerned, it is pleaded by the Petitioner that there were mitigating circumstances due to the onslaught of Covid and necessary documentary evidence was infact placed before the Competent Authority for consideration by the Petitioner which has not been considered. The impugned order proceeds on the basis that the Petitioner is a habitual defaulter in payment of Provident Fund and allied dues and / or salary and wages.

**6.** However, the explanation and subsequent evaluation of the Petitioner's defence of overall financial uncertainty related to delay in payment of the Provident Fund dues during the Covid period and financial stress suffered by the Petitioner ought to have been considered as *prima facie* it is seen that the delay in payment cannot be categorized as willful, predetermined or intentional during the Covid period.

**7.** Considering the fact that the amount determined under Section 7Q of the said Act has been already been paid, Ms. Kanani expresses apprehension that coercive steps may be taken by the Respondent to recover the determined amount under Section 14-B of

the said Act and hence seeks urgent intervention of the Court.

**8.** In view of the above, *prima facie* case is made out for grant of ad-interim relief by the Petitioner.

**9.** I am also informed by Ms. Kanani that the statutory Appeal against the impugned order has been filed before CGIT-II, Mumbai alongwith the stay Application but as noted by this Court in several other orders CGIT-I as well as CGIT-II both are vacant at present.

**10.** It is clarified that Respondent shall not write to the banker of the Petitioner and / or attach bank account of the Petitioner and shall not seek transfer of any monies from the bank account of the Petitioner with respect to the aforementioned liability under the impugned order.

**11.** Ms. Humane, appears for Respondent No.2. Respondent No.2 is directed to file Affidavit-in-Reply within a period of four (4) weeks from today.

**12.** Ms. Humane makes a submission across the bar that in the event if this Court is inclined to grant stay on the impugned order, Petitioner should be directed to deposit 50% of the amount determined under Section 14-B of the said Act.

**13.** In view of the facts of the present case which are noted and alluded to hereinabove and after perusing the impugned order, the

oral request made by Ms. Humane is rejected.

**14.** In view of the above, Respondent is directed not to take any coercive steps in pursuance of the impugned order dated 28.09.2023 against the Petitioner.

**15.** Liberty to apply.

**16.** Stand over to 10<sup>th</sup> January, 2024.

[ MILIND N. JADHAV, J. ]

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