



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 20<sup>TH</sup> DAY OF FEBRUARY 2025 / 1ST PHALGUNA, 1946

W.A.NO.1488 OF 2023

AGAINST THE JUDGMENT DATED 12.06.2023 IN W.P.(C)NO.35151

OF 2011 OF THE HIGH COURT OF KERALA

APPELLANT/PETITIONER IN THE WRIT PETITION:

JANATHA TILE WORKS LIMITED  
REPRESENTED BY ITS CHAIRMAN, SRI.VISWANATHAN V.P.,  
MOONIYOOR P.O., TIRURANGADI, MALAPPURAM DISTRICT, PIN  
- 676311

BY ADV B. SAJEEV KUMAR

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION:

- 1 EMPLOYEES PROVIDENT FUND ORGANIZATION,  
REPRESENTED BY THE ASST. PROVIDENT FUND COMMISSIONER,  
BHAVISHYA NIDHI BHAVAN, SUB REGIONAL OFFICE,  
PB.NO.1806, ERANHIPALAM P.O., KOZHIKODE, PIN - 673006
- 2 THE RECOVERY OFFICER  
EMPLOYEES PROVIDENT FUND ORGANIZATION, BHAVISHYA  
NIDHI BHAVAN, SUB REGIONAL OFFICE, P.B.NO.1806,  
ERANHIPALAM P.O., KOZHIKODE, PIN - 673006
- 3 THE EPF APPELLATE TRIBUNAL  
REPRESENTED BY ITS REGISTRAR, 7TH FLOOR, SKYLARK  
BUILDING, 60 NEHRU PLACE, NEW DELHI

BY ADV ABRAHAM P. MEACHINKARA, SC, EPFO

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.02.2025,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Anil K. Narendran, J.**

The appellant filed W.P.(C)No.35151 of 2011, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P4 order dated 03.05.2011 of the 3<sup>rd</sup> respondent Employees Provident Fund Appellate Tribunal and a declaration that the appellant-petitioner is not liable to pay damages and interest pursuant to Ext.P2 order dated 17.05.2006 of the Assistant Provident Fund Commissioner, Calicut regarding levy of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Ext.P2(a) order dated 17.05.2006 demanding payment of interest under Section 7Q of the said Act. That writ petition ended in dismissal by the impugned judgment dated 12.06.2023 of the learned Single Judge, which is one rendered relying on the judgment of the Apex Court in **Horticulture Experiment Station Gonikoppal, Coorg v. The Regional Provident Fund Organisation [(2024) 4 SCC 516]**.

2. Feeling aggrieved, the appellant-petitioner is before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.



3. On 24.08.2023, when this writ appeal came up for admission, this Court issued notice on admission to respondents 1 and 2 by speed post, returnable within two weeks. The notice to the 3<sup>rd</sup> respondent Appellate Tribunal was dispensed with. This Court passed an interim order dated 24.08.2023. Paragraphs 2 and 3 of that order read thus;

"2. It is submitted by Sri.B.Sajeev Kumar, learned counsel appearing for the appellant, that the Appellant-Company is now in a financially dire state and the previous owners had entrusted the ownership and management of the Appellant-Company to the workers and the workers are running it. Hence, it is urged that, the present impugned action for damages, as per Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, due to non-payment of PF arrears to the workers by the Management, is to be interdicted.

3. Taking note of the said submission, it is ordered that further coercive steps, in pursuance of the impugned Ext.P2 and P2(a), shall be kept in abeyance. This interlocutory direction will be in force for a period of four weeks."

4. The interim order dated 24.08.2023, which was extended from time to time, is still in force.

5. Heard the learned counsel for the appellant-petitioner and the learned Standing Counsel for Employees Provident Fund Organisation for respondents 1 and 2.



6. The issue that requires consideration in this writ appeal is as to whether any interference is warranted on the impugned judgment of the learned Single Judge dated 12.06.2023 in W.P.(C)No.35151 of 2011.

7. Before the learned Single Judge, the specific contention taken by the learned Standing Counsel for Employees Provident Fund Organisation was that the second proviso to Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act does not require any further interpretation in view of the law laid down by the Apex Court in **Horticulture Experiment Station Gonikoppal, Coorg [(2024) 4 SCC 516]**.

8. Having considered the pleadings and materials on record and also the submissions made at the Bar, we notice that as held by the Apex Court in **Horticulture Experiment Station Gonikoppal, Coorg [(2024) 4 SCC 516]** any default or delay in the payment of Employees' Provident Fund Contribution by the employer is *sine qua non* and sufficient for imposition of damages. *Mens rea* or *actus reus* is not essential for imposing the penalty of damages for the breach of civil obligations or liabilities. Once default in payment of contribution is admitted, damages



are consequential, and the employer is liable to pay damages for the delay in payment of Employees' Provident Fund Contribution. Therefore, the learned Single Judge cannot be found fault within declining interference on Exts.P2 and P2(a) orders issued by the Assistant Provident Fund Commissioner, Calicut.

9. The learned counsel for the appellant would submit that the previous management of the company - Janatha Tile Works Ltd. - had transferred the ownership and management of the company to its workers and now, the workers are running the company. Hence, the proceedings based on Exts.P2 and P2(a) orders issued by the Assistant Provident Fund Commissioner, Calicut, has to be interdicted.

10. We find absolutely no merits in the aforesaid contention raised by the learned counsel for the appellant since it is well settled that a company registered under the Companies Act, 1956, or the Companies Act, 2013, is a legal person, separate and distinct from its individual members. Its property is not the property of the shareholders. A shareholder has merely interest in the company, arising under its Articles of Association, measured by a sum of money for the purpose of liability and by



a share in the profit. Therefore, a company is an independent juristic entity distinct from its Directors and Shareholders.

In the above circumstances, we find no reason to interfere with the impugned judgment dated 12.06.2023 of the learned Single Judge in W.P.(C)No.35151 of 2011. This writ appeal fails and the same is accordingly dismissed.

Sd/-

**ANIL K. NARENDRAN, JUDGE**

Sd/-

**MURALEE KRISHNA S., JUDGE**

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**APPENDIX OF WA 1488/2023**

**PETITIONER ANNEXURES**

**ANNEXURE A1        TRUE COPY OF THE LIST OF SHARE HOLDERS OF  
THE APPELLANT COMPANY**

**ANNEXURE A2        TRUE COPY OF THE PROFIT AND LOSS STATEMENT  
FOR THE FINANCIAL YEARS 2016 - 2017 TO  
2022-2023.**

**ANNEXURE A3        TRUE COPY OF THE NOTES ON ACCOUNTS FOR THE  
YEAR ENDED 31/03/2023 PREPARED BY THE  
CHARTERED ACCOUNTANT OF THE APPELLANT  
COMPANY**