

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 3342-43 of 2007

EMPLOYEES PROVIDENT FUND ORGANISATION

Appellant(s)

VERSUS

THE GOVERNMENT OF ANDHRA PRADESH

Respondent(s)

O R D E R

We have heard learned counsel for the parties. The question involved is singularly whether the dues towards provident fund under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the 1952 Act') would get priority over debts. Reference has been placed by the appellant on decisions of this Court in Maharashtra State Cooperative Bank Limited Vs. APFC and Others [(2009) 10 SCC 123] and Maharashtra State Cooperative Bank Ltd. Vs. Kannad Sahakari Sakhar Karkhana Ltd. And Ors. [(2014) 14 SCC 456].

The appellant had questioned the provisions contained in Section 12-A(9) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the 1964 Act') as amended by virtue of Amendment made in the year 2003.

Section 12-A(9) of the 1964 Act is extracted hereunder:

"The proceeds realised from the transfer of assets

or assets and liabilities, in whole or in part, of the society concerned, shall be applied in discharge of the liabilities of such society in the following order of priority, namely:

(i) all expenses incurred for preservation and protection of the assets;

(ii) (a) dues payable to workmen and employees;

(b) debts payable to secured creditors according to their rights and priorities inter se;

(c) dues payable to provident fund or other authorities which are protected under a statute by a charge on the assets;

(iii) debts payable to ordinary creditors;

(iv) share capital contributed by the members of the society:

Provided further that the debts specified in each of the categories shall rank equally and be paid in full, but in the event of the amount being insufficient to meet such debts, they shall abate in equal proportions and be paid accordingly:

Provided also that the question of discharging and liability with regard to a debt specified in a lower category shall arise only if a surplus fund is left after meeting all the liabilities specified in the immediately higher category."

The provision of Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is also relevant and the same is extracted hereunder:

"11. Priority of payment of contributions over other debts.-

(1) ****

(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employees' contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts.

The conjoint reading of the aforesaid provisions contained in Section 12-A(9)(ii) of the 1964 Act and Section 11(2) of the 1952 Act makes it clear that the dues payable to workmen and employees towards Provident Fund would get first priority.

The High Court has held that the dues payable to workmen and employees would be covered within the provision of Section 12-A(9)(ii)(a) though the item 'provident fund' is not specifically mentioned in Section 12-A(9)(ii)(a) but in Section 12-A(9)(ii)(c) of the 1964 Act. However, in order to harmonize the provisions, the provident fund which is specifically mentioned in the aforesaid provision [Section 12-A(9)(ii)(c)] has been taken to be part of Section 12-A(9)(ii)(a). Thus, the interpretation made by the High Court is appropriate and there is no other way in which the provisions can be harmonized.

Thus, Section 12-A(9)(ii)(c) has to be taken as redundant and such dues has to be taken to be covered under the provisions of Section 12-A(9)(ii)(a).

The item at serial no. 12-A(9)(i) is not a debt as it is expenses incurred for preservation and protection of the assets. The dues of the provident fund have to be treated as dues payable to workmen and employees. The second proviso shall not operate as against such dues. Thus, the Provident fund would get priority is the only permissible mode and it is the Court's duty to harmonize the

provisions.

We find no error committed by the High Court.

In view of the above clarification, we find no ground to interfere in the impugned order passed by the High Court.

The civil appeals are accordingly disposed of.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

NEW DELHI;
MAY 12, 2017.

ITEM NO.2
(Regular Matter)

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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Date : 12/05/2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
 HON'BLE MR. JUSTICE NAVIN SINHA
 [VACATION BENCH]

For Appellant(s) Ms. Arti Singh, AOR
 Ms. Pooja Singh, Adv.

For Respondent(s) Ms. Prerna Singh, Adv.
 Mr. Guntur Prabhakar, Adv.

 Mr. P. Venkat Reddy, Adv.
 Mr. Prashant Tyagi, Adv.
 For M/s Venkat Law Associates

 Mr. Mohanprasad Meharia, AOR

UPON hearing the counsel the Court made the following

O R D E R

The civil appeals are disposed of in terms of the signed order.

(Meenakshi Kohli)
Court Master (SH)

(Tapan Kumar Chakraborty)
Court Master (NS)

[Signed order is placed on the file]