



Niti

## IN THE HIGH COURT OF BOMBAY AT GOA

### APPEAL FROM ORDER NO.7 OF 2022

Regional Provident Fund  
 Commissioner  
 Employees P.F. Organization,  
 having its office at Bhavishya Nidhi  
 Bhawan, 24, Patto Plaza,  
 Panaji, Goa 403 001,  
 Through Mr Amiya Bhaskar,  
 R.P.F.C., age 32. ....Appellant

#### *Versus*

- 1) Mrs. Madeline Pereira,  
 Major, widow, Indian National,  
 Business person, having her Office  
 At Pereira chambers,  
 Vasco-da-Gama, Goa  
 Authorized person in respect of  
 final Adjustment of the dissolved  
 Society, Namely Mormugao Handling  
 Agents' Association, Vasco-da-Gama,  
 a society registered under Societies  
 Registration Act, 1860, Having its office  
 at Pereira Chamber,  
 Vasco-da-Gama, Goa
- 2) Gomantak Mazdoor Sangh Union,  
 registered under the Trade Unions Act,  
 1926, having its office at Kamakshi  
 Nivas, Ponda, Goa.

Represented through its General Secretary, Puti Gaonkar, major, married, Indian National, resident of Shetye Sankul, 3<sup>rd</sup> Floor, Tisk, Ponda, Goa.

- 3) The Mormugao Waterfront Workers, Union, the Trade Unions Act, 1926, having its office at Mukund Bldg., 2<sup>nd</sup> Floor, P. O. Box. No. 90, Vasco-Da-Gama, Goa and represented through its General Secretary, Shri Salu Fernandes, major, married, Indian National, resident of Cortalim, Goa.
- 4) Regional Provident Fund Commissioner, Sub Regional Office, 5<sup>th</sup> Floor, Junta House Annexe, Panaji, Goa - 403 001
- 5) Regional Labour Commissioner (Central), Shramraksha Bhawan, Shivsrushti Road, Eastern Express Highway, Sion, Mumbai - 400 022
- 6) Asst. Labour Commissioner (Central), Municipal Bldg., Upper Floor, Vasco-da-Gama, Goa - 403 802.
- 7) The District Registrar and Head of Notary Services, Panaji, Goa - 403 001.
- 8) The Mormugao Port Trust, Momugao Harbour, Vasco-da-Gama, Goa represented Through its Chairman, having its Office at Mormugao, Harbour, Vasco-da-Gama, Goa.
- 9) The Sahakar Credit Co-operative Society Ltd., Reg. No.8-Res-(a)57/South Goa/92 Shop No. 54, II F1, Apna Bazar, Vasco-da-Gama, Goa 403 802.

- 10) Dr. B. R. Ambedkar Co-operative Credit Society Ltd., DU1, Suvidha Complex, Near Tilak Ground, Vasco-da-Gama.
- 11) The Vasco Urban Cooperative Credit Society Ltd., No.3, Commerce Centre, Vasco-da-Gama, Goa.
- 12) M/s. AGENCIA COMERCIAL MARITIMA Stevedoring Clearing & Forwarding & Steamer Agents, having their registered office At Parkot House, Ground Floor, Swatantra Path, Post Box No. 22, Vasco-da-Gama, Goa 403 802, through Shri. Vinod Parkot, Partner.
- 13) M/s. Agencia Ultramarine Private Ltd., having their registered office at Swatantra Path, Post Box No. 42, Vasco-da-Gama, Goa 403 802, through Shri. V. S. Manerkar, Managing Director.
- 14) M/s. Kamat & Co., Handling Agents, Having their office at Old Accounts Office, Room No. 5, Mormugao Harbour, Mormugao, Goa 403 802. ....Respondents

Mr Kisan Surjuse, Advocates for the Appellant.

Mr Shivan Desai with Ms T. Menezes, Advocate for Respondent No.1.

Mr Amey Salgaonkar and Ms S. Khadilkar, Advocates for Respondent No.8.

Mr Vinayak K. Narvekar, Advocate for Respondent No.9.

Mr Vithal Naik, Advocate for Respondent No.11.

Mr Mandar Naik, Advocate for Respondent No.12.

Ms S. Bangera, Advocate for Respondent No.13.

**CORAM: M. S. SONAK, J.**

**DATE: 14<sup>th</sup> MARCH 2024**

**ORAL JUDGMENT:**

- 1.** Heard Mr Surjuse for the appellant, Mr Shivan Desai for respondent no.1, Mr Amey Salgaonkar for respondent no.8, Mr Vinayak Narvekar for respondent no.9, Mr Vithal Naik for respondent no.11, Mr Mandar Naik for respondent no.12 and Ms S. Bangera for respondent no.13.
- 2.** Rule. The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.
- 3.** This appeal challenges the order dated 07.07.2020 made by the Adhoc District Judge-1, FTC-I, South Goa, Margao, in Civil Suit No.1/1999, restraining the appellant from recovering any amounts from Mrs Madeline Pereira towards employer contribution for provident fund, damages, etc.
- 4.** Mr Surjuse contended that the issue of coverage had already been decided by the Regional Provident Fund Commissioner, Goa, under Section 7-A of the Employees Provident Funds and Misc. Provisions Act, 1952, by his order dated **28/05/1998**. He submitted that once this position was decided, there was no question of entertaining any civil suit, and, in any case, there was no question of granting relief to the

Corrections  
carried out as per  
order dated  
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MCA  
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Sd/-  
PS

Regional Provident Fund Commissioner from discharging statutory functions of recovering this amount from the petitioner.

**5.** Mr Surjuse, on the last date, handed over a copy of the Regional Provident Fund Commissioner's order dated ~~22.12.1998~~ **28/05/1998** to Mr Desai, the learned Counsel for Mrs Madeline Pereira, i.e. the plaintiff in Civil Suit No.1/1999.

**6.** The matter was adjourned to enable Mr Desai to consider the plaintiff's position.

**7.** Mr Desai, on instructions, states that several subsequent developments have occurred since the order was made on ~~22.12.1998~~ **28/05/1998**. He submits, on instructions, that the plaintiff would now file an application for review in terms of Section 7-B of the Employees Provident Funds and Misc. Provisions Act, 1952, seeking a review of the order dated ~~22.12.1998~~ **28/05/1998**.

**8.** Mr Desai states that such a review application will be filed within four weeks of today. If the application is indeed filed within four weeks from today, the Regional Provident Fund Commissioner, Goa, must consider the same in accordance with law and dispose of such application within two months of its filing.

**9.** It is clarified that all issues regarding maintainability, limitation, merits, etc., are specifically kept open to be decided by the Regional Provident Fund Commissioner. In fact, all contentions of all parties are explicitly kept open.

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**28/05/1998**

**10.** If the order dated ~~22.12.1998~~ is reviewed, then the impugned order dated 07.07.2020 will have to be sustained and upheld. However, if the order dated ~~22.12.1998~~ is not reviewed, the impugned order dated 07.07.2020 shall stand modified. The modification shall be that the plaintiff will deposit the entire demanded amount within four weeks of the decision of the Regional Provident Fund Commissioner, should the review be dismissed. If this amount is not deposited within four weeks, the injunction granted by the appeal Court by its order dated 07.07.2020 shall stand vacated without the necessity of any further orders from the Court. However, if the plaintiffs deposit the amount, the injunction shall stand confirmed and operate during the pendency of the suit.

**11.** The above order is made because we are concerned with workers' dues in this case, so the balance of convenience favours the workmen and the statutory authorities are now restrained without any conditions. The authorities are now paying the workmen without being recouped this amount by the Appellant. Besides, orders restraining recovery of amounts, mainly when such amounts are the provident fund dues of workmen and damages, should not be made without imposing conditions for deposit. The Plaintiff had not even disclosed the order dated ~~22.12.1998~~ on the issue of coverage. The Civil Court could not have sat in appeal over this order. Despite all this, the Trial Court has granted an unconditional stay, which, at least in the facts of the present case, does not appear to be proper.

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**12.** The contention that the Society has deposited an amount of ₹45,00,000/- (Rupees Forty-five Lakhs only), which has now increased to ₹1.5 crores with interest, is a matter that the Trial Court has not considered. Unless there is any other restraint, the Regional Provident Fund Commissioner should consider applying to the Liquidator and recovering this amount. However, that is not a good enough reason to grant the plaintiff an unconditional stay.

**13.** This appeal is accordingly disposed of in the above terms.

**14.** There shall be no order for costs.

**M. S. SONAK, J.**