

**(2009) 07 CAL CK 0087**

**Calcutta High Court**

**Case No:** G.A. No. 1550 of 2009 and A.P.O. No. 119 of 2009 and W.P. No. 1153 of 2008

Shaw Wallace and Co. Ltd.

APPELLANT

Vs

Regional Provident Fund

RESPONDENT

Commissioner-II

**Date of Decision:** July 1, 2009

**Acts Referred:**

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A

**Citation:** (2010) 2 LLJ 394

**Hon'ble Judges:** K.J. Sengupta, J; Abdul Ghani, J

**Bench:** Division Bench

**Judgement**

K.J. Sengupta and Abdul Ghani, JJ.

We find that without admitting the appeal some interim order was passed on previous occasion and the Division Bench has stayed the judgment and order of the learned Trial Judge impugned herein. After hearing Mr. Ratanko Banerji, learned advocate appearing for the petitioner and Dr. S.K. Patra, learned advocate appearing for the respondents, we think that there should have been prayer (b) also.

2. By consent of parties, we treat the appeal as on the day's list along with the stay application. The appeal arises against the judgment and order of the learned Trial Judge whereby and whereunder His Lordship has been pleased to set aside the order passed in the proceeding u/s 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The learned Trial Judge after analysing all facts and circumstances and hearing the parties, came to conclusion that the order passed u/s 7-A by the Commissioner is in violation of the principles of natural justice. The learned Trial Judge has set aside such order. Against the order offsetting aside, no cross-objection nor separate appeal has been filed. While questioning the order of the learned Trial Judge asking the appellant before us to furnish a Bank Guarantee to secure a sum of Rs. 2 crores and odd. Being aggrieved by the

aforesaid portion of the order, the present appeal has been preferred. Mr. Banerji has rightly said that after setting aside the order the learned Trial Judge ought not to have saddled the appellant with liability of furnishing Bank Guarantee. We understand from his argument that when there is no lis pending with the order being set aside there is no liability. Dr. Patra, appearing for the respondents submits that there is a huge liability and unless such liability is secured it would be difficult to recover such amount. We are of the view that we cannot prejudge the issue when the learned Trial Judge in his wisdom thought it fit to send back the matter to the Commissioner for fresh hearing. If any condition is put in course of hearing, then this amounts to prejudging the issue as there is no provision in the Act for furnishing security pending hearing of the matter. The Bank Guarantee can always be furnished when there is a strong *prima facie* case of pecuniary liability under expressed legal provision.

3. We are told that although there is no stay of hearing of the matter, the Commissioner has not been able to decide the matter as yet. We, therefore, set aside the portion of the order asking the appellant to furnish a Bank Guarantee. We direct the Commissioner to decide the matter in terms of the order of the learned Trial Judge within four weeks from the date of communication of this order. If any material or documents are relied on by the Commissioner then the same must be supplied to the appellant/petitioner. It would be open to the Commissioner to decide the matter in absence of appellant, in the event it fails to appear despite notice of hearing.

4. There will be no order for costs.

Supplementary affidavit filed in Court be kept on record.

All parties are to act on a signed xerox Copy of this order upon putting in requisition for drawing up and completion of the order and obtaining certified copy thereof.