

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

**M.A. NO. 2364 OF 2018 IN CIVIL APPEAL NO. 2591 OF
2006**

THE KELVIN JUTE CO. LTD.
WORKERS PROVIDENT FUND
AND ANR.

... APPELLANT(S)

VERSUS

KRISHNA KUMAR AGARWALA AND OTHERS ... RESPONDENT(S)

WITH

**M.A. NO. 2363 OF 2018 IN CIVIL APPEAL NO. 2593 OF
2006**

ORDER

1. The following are the prayers in M.A. No. 2363 of 2018 (previously I.A. No. 6 of 2016) in C.A. No. 2593 of 2006 and M.A. No. 2364 of 2018 (previously I.A. Nos. 9 and 10 of 2016) in Civil Appeal No. 2591 of 2006.

Prayer in I.A. No. 6 of 2016 in C.A. No.2593/2006

“a) pass appropriate directions in terms as prayed

for in Para 10 hereinabove; and

b) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice;"

Para 10 of said I.A. reads as follows :-

"10. The applicant most humbly submit that order dated 21.1.2016 passed in C.A. No. 2593 of 2006 be modified to the extent of directing disbursal, if any only from such amount which are in excess of funds, not identified or related to the members of the applicant or such order/s as deemed fit and proper in facts and circumstances of the case may be passed."

Prayer in I.A. 9 of 2016 in C.A. No.2591/2006

"a) order dated 21.01.2016 be modified and directions be passed in terms of para 9 hereinabove; and

b) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

Para 9 of said I.A. reads as follows :-

"9. The instant application, under the circumstances, is being preferred before this Court, seeking appropriate directions and/or modification of order dated 21.01.2016, passed by this Court. A copy of the said order dated 21.01.2016 passed by this Court in C.A. No. 2591/2006 is annexed hereto and marked as Annexure A-3. Trust not having any amount in its accounts for

making payments, necessary directions be given to the new company for making of such payment, on terms, as deemed fit and proper in facts and circumstances of the case."

Prayer in I.A. No. 10 of 2016 in C.A. No.2591/2006

"a) necessary direction be issued modifying the order dated 21.01.2016 passed by this Hon'ble Court in Civil Appeal No.2591 of 2006 with Civil Appeal No. 2593 of 2006, by directing payment of only the principal amount of Rs.1.95 crores, to be paid in installments, in such a manner as this Hon'ble court may deem fit and proper, in full and final settlement of claim of Respondent; and

b) pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

2. The judgment dated 21.01.2016, which is sought to be modified, reads as follows:

"1. After having extensively heard Mr. Dushyant Dave and Mr. Jayant Bhushan, learned senior counsel appearing for the appellants and Mr. Sudhir Chandra, Mr. Bhaskar P. Gupta and Mr. Krishnan Venugopal, learned senior counsel appearing for the respondents, we see no ground to interfere with the well reasoned order passed by the learned Single Judge of the Calcutta High Court, as affirmed by the Division Bench of the High Court, since the High Court has mainly proceeded on undisputed facts.

2. Mr. Krishnan Venugopal, learned senior counsel, has submitted that the Kelvin Jute Company Ltd. has since merged into Trend

Vyapaar Ltd. in 2001 under a scheme framed by BIFR. We see from the Judgment that the direction for payment of the provident fund dues is to the Trust as well as to the Company.

3. In the unlikely event of the Trust not able to meet the payment as directed by the High Court, it would be open to the new company referred to above to approach this Court for appropriate directions.

4. Since the matter has been pending before this Court since 2006 and as there was an order of stay of the Judgment of the High Court, we grant further period of three months for payment of the amount as directed by the High Court.

5. In view of the above, the Civil Appeals are dismissed with no order as to costs.”

3. The appeal leading to the judgment above arose from the judgment of the Calcutta High Court dated 16.02.2006 in APO-258/2002 and APO-238/2002. The Division Bench affirmed the judgment dated 15.03.2002 in Writ Petition No. 4312 of 1993. Paragraphs 26.1 and 26.2 of the judgment dated 15.03.2002 of the Single Bench containing the operative portion, reads as follows:

“26.1 In the circumstances, the Kelvin Trust shall transfer the amount of Rs.2,00,98,363.02 as stood on June 30, 1986 together with the interest accrued on the said amount at the statutory rate till the date of transfer to the Waverly Trust. In case the Trust is short of fund, the Kelvin, which has utilized the funds of the Trust, shall pay the same to Kelvin Trust, which will in turn transfer the same to

Waverly Trust. All these actions have to be undertaken and completed within three months from date. In default, the RPFC shall cancel the exemption and shall take custody and possession of all the funds and securities at the hands and assets and bank accounts of Kelvin Trust. In case there is any shortage, assets, funds, securities, capitals and bank accounts of Kelvin shall remain attached until the fund is available in Kelvin Trust. It will be open to RPFC to take appropriate steps and pass appropriate order enforcing transfer of the said fund and recovery of the amount from Kelvin Trust and Kelvin respectively, in terms of section 17B or otherwise including recovery and also to take steps for the penal consequences, as the case may be. Let a writ mandamus do issue accordingly to each of the respective respondents severally and jointly.

26.2 Until the amount is so transferred, the Kelvin Trust and the Kelvin is restrained from dealing with or disposing of its funds, assets and securities and from withdrawing any money from their respective Bank Account except in usual course of business and in discharge of payment of its statutory liabilities and wages payable to its workers without leaving a balance of a sum of Rs.3 crores.

In the result, the writ petition succeeds and is allowed to the above extent.”

4. While the Interlocutory Applications were pending before this Court, in view of the dispute on the amounts due, this Court on 10.05.2016, issued a direction to the Provident Fund Commissioner to determine the outstanding amounts.

The order reads as follows:

“Pending disposal of these applications, we

direct the Provident Fund Commissioner, acting through its jurisdictional delegate, to determine the outstanding amounts due from the respondents and submit a report to this Court within three months.

In the meanwhile, we direct the 7th respondent - Trend Vyapar Ltd. (applicant in I.A. No.10) to deposit an amount of Rs.1.95 crores before the Provident Fund Commissioner within a period of three months from today, without prejudice to all contentions available in the pending cases...”

5. The Assistant Provident Fund Commissioner, accordingly, passed an order dated 26.08.2016 under Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. The Provident Fund Commissioner determined the amount due as Rs.1,94,98,363.00. The determination was made on the basis of the available records.

6. In the meanwhile, M/s Trend Vyapaar Ltd. deposited an amount of Rs.1.95 crores with the Provident Fund Commissioner in terms of the order dated 10.5.2016.

7. At one stage, after hearing both sides for quite some time, this Court felt that it would be in the interest of all to put an end to the litigations, invoking its jurisdiction under Article 142 of the Constitution of India and close the litigations by treating the remittance of Rs.1.95 crores as full and final

settlement of all the dues from M/s Trend Vyapaar Ltd. Order dated 26.10.2016 reads as follows:

“Having regard to the prolonged litigation and after hearing learned senior counsel appearing for both sides, we are of the view that it is high time to give a quietus to the disputes.

As per our direction, M/s. Trend Vyapar Limited has deposited an amount of Rs.1.95 Crores with the Provident Fund Commissioner.

We are also informed that ever since M/s. Trend Vyapar Limited took over the Company, they are in regular payment of the Provident Fund to its workers. Be that as it may, in view of the background of the cases which have been dealt with in detail by the High Court while disposing of the appeals, we have taken the view that no interference was called for since the facts were not disputed.

In the above circumstances, we are *prima facie* of the view that this is an eminently fit case where this Court should invoke its discretion under Article 142 of the Constitution of India and give a quietus to all other disputes by treating the remittance of Rs. 1.95 Crores as full and final settlement of all the dues without any further liability on the part of M/s. Trend Vyapar Limited either by way of interest or by way of damages.
...”

8. The non-applicants have submitted that they are not willing for such a settlement and insisted on disposal of the applications on merits.

9. Mr. Krishnan Venugopal, learned Senior Counsel has led the arguments on behalf of M/s Trend Vyapaar Ltd..

According to the learned Senior counsel, the applicant had made a provision, at the time of takeover only for a sum of Rs.1.95 crores, as a contingent liability. It is also submitted that the non-applicants had not raised any objection before the BIFR. Learned Senior Counsel has also made a forceful submission on an alleged fraud played by the non-applicants before the High Court. To quote from the written submission:

“15.... The writ petition admits that Kelvin Broadloom was covered by Kelvin’s S.17 EPF Act exemption. Instead of taking a fresh exemption, Hooghly renamed the Kelvin Broadloom division that it bought from Bajoria Group in 1986 its “Waverly Jute Mill Company” unit only to take advantage of the 22.6.1961 exemption to an entirely different company of that name. From S.2A of the EPF Act read with the definition of “exempted establishment” in S.2(fff), it is clear that a company cannot utilize an exemption granted to some other company.

16. In Weaverly’s, the fraud is even more brazen. While the Civil Appeal was pending before this Hon’ble Court, in 2011, Hooghly sold its Waverly Jute Mill Company Unit to a company “Weaverly Jute Mills Pvt. Ltd.” newly incorporated in 2011 only to take over the unit by adding letter “e” after “a” in “Waverly”. This was obviously done only to continue to take advantage of the exemption dated 22.6.1961 in favour of the original Waverly Jute Mills Company Limited, Titagarh, 24 Parganas...”

It is also submitted that in the case of a non-exempted

establishment, only a beneficiary employer can stake a claim and in the instant case, no beneficiary has ever made a claim.

10. The arguments in the written submission have been completed by submitting that:

“35. In view of the capping of Trend Vyapaar’s liability at Rs.1.95 crores under the BIFR Scheme in terms of S.18(8) of SICA and the amount of Rs.1.95 crores having been deposited with the RPFC as per this Hon’ble Court’s order dated 10.05.2016, it is respectfully prayed that no further liability to pay interest should be fastened on Trend Vyapaar Ltd. Trend Vyapaar Ltd should also be relieved of any liability under paragraph 28 of the Appendix to the EPF Scheme to make good any deficit in Kelvin Trust’s accounts if Kelvin Trust is directed to pay interest to Waverly Trust.

36. In any case, in view of RPFC’s finding that Waverly Trust is not an exempted trust after the transfer of Kelvin Broadloom unit first to Hooghly and then to Weaverly, under the provisions of paragraph 27AA of the EPF Scheme read with paragraph 29 of the Appendix thereto, Waverly Trust is not entitled to claim any money by way of EPF dues from Trend Vyapaar Ltd or Kelvin Trust. ...”

11. Shri Sudhir Chandra, learned Senior Counsel, who led the arguments on behalf of the writ petitioner before the High Court (non-applicant herein), has submitted that the issues

before the High Court having become final, the same cannot be reopened otherwise than in accordance with law. To quote

from the written submission :

“17... It is submitted with great respect that the question that Trend Vyapaar Ltd. was in regular payment of Provident Fund dues to its workers was of no consequence at all in the case because the amount of Rs.1.95 Crores with statutory interest from 30.06.1986 till payment was payable by the Kelvin Trust to the Waverly Trust. It did not matter whether Trend Vyapaar Ltd. was paying its workers or not. The finding of Hon’ble Single Judge is that the management of Kelvin Jute Co. Ltd. had utilized the funds for its own purposes (in obvious collusion with the trustees of Kelvin Trust). It is submitted that this amounts to defalcation and/or embezzlement by the management of the Kelvin Jute Co. Ltd. of the PF accumulations liable to be transferred from the Kelvin Trust to the Waverley Trust. As such, the question of this Hon’ble Court issuing directions under Article 142 of the Constitution of India could not arise.

18. Appln. Nos. 6, 9 and 10 are nothing but abuse of the process of Court at the behest of the erstwhile management of Kelvin/Trend Vyapaar Ltd., i.e., the Nathani Group.

19. The PF accumulations alongwith statutory interest due thereon is the amount due under the decree of the Hon’ble High Court, affirmed by this Hon’ble Court, as payable by the Kelvin Trust to the Weaverly Trust, failing which, by the Kelvin Jute Co. Ltd./Trend Vyapaar

Ltd. to the Waverly Trust.

20. None of the said IA Nos. 6, 9 and 10/2016 are review applications, nor is there any ground of review.

21. The issue in respect of transfer of the said admitted amount of Rs.1.95 crores with statutory interest thereon from 30.06.1986 is between the Kelvin Trust and the Waverly Trust, failing which, the Kelvin Jute Co. Ltd. has to transfer the amount to the Waverly Trust. The workers do not come in the picture.”

12. The Regional Provident Fund Commissioner has taken a stand before this Court that Section 7A, Section 14B and Section 7Q are not applicable in the present case, being a private Trust. But the fact remains that the non applicants did not produce any records before the Commissioner for enabling him to determine the dues, as directed by this Court.

13. We have also heard the learned Senior Counsel and other Counsel appearing for other applicants, intervenors and non-applicants.

14. Having regard to the judgment dated 15.03.2002 passed by the learned Single Judge of the High Court in Writ Petition No. 4312 of 1993, which has been affirmed by the Division Bench of the Calcutta High Court and by this Court in the judgment dated 21.01.2016, we are afraid any application for

recall/modification which has the effect of reviewing the original judgment in the Writ Petition cannot be entertained by this Court. The main contention of the applicants seem to be that writ petitioners had played fraud on Court and that the basis of the judgment of the High Court has been obtained by misleading that Court. If that be the position, nothing prevents the applicants from approaching the High Court and seeking a review of the judgment. We make it clear that in the event of such a review being filed on the ground of fraud, the High Court will be free to examine the same and the judgment of this Court dated 21.01.2016 shall not stand in any way of the High Court looking into that aspect of the matter. Without prejudice to such liberty and making it further clear that such applications may not be dismissed on the ground of delay in case they are filed within thirty days from today, M.A. No. 2363 of 2018 (previously I.A. No. 6 of 2016) in C.A. No. 2593 of 2006 and M.A. No. 2364 of 2018 (previously I.A. Nos. 9 and 10 of 2016) in Civil Appeal No. 2591 of 2006 are dismissed.

15. We make it clear that we are not otherwise expressing any opinion on the merits of the applications or their objections. It will be open to both sides to take all available

contentions before the High Court.

16. The amount of Rs.1.95 Crores deposited with the Provident Fund Commissioner pursuant to order dated 10.05.2016 along with accrued interest shall be transferred to the non-applicant Trust without prejudice to the contentions available to the parities. However, we make it clear that the transfer as above shall be subject to any orders which may be passed by the High Court in the review petitions.

.....J.
[KURIAN JOSEPH]

.....J.
[R. F. NARIMAN]

**NEW DELHI;
OCTOBER 25, 2018.**