

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. OF 2019

IN

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD.

.... PETITIONER

Versus

EMPLOYEES PROVIDENT FUND

AND ANOTHER

.... RESPONDENTS

WITH INTERLOCUTORY APPLICATION NO. OF 2019

(An application for stay of operation of impugned judgment)

WITH INTERLOCUTORY APPLICATION NO. OF 2019

(An application seeking oral hearing of the Review Petition)

WITH INTERLOCUTORY APPLICATION NO. OF 2019

(An application seeking exemption from filing certified copy of the impugned judgment)

PAPER BOOK

FOR INDEX: KINDLY SEE INSIDE

Advocate for the petitioner: **GAGAN GUPTA**

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IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. _____ OF 2019
IN _____

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD. PETITIONER

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

**MEMO OF PARTIES IN REVIEW PETITION ARISING FROM
CIVIL APPEAL NO.3965-3966 of 2013**

BETWEEN

IN REVIEW PETITION

Surya Roshni Ltd.
J-7, 8 and 9
Malanpur, Industrial Area
Bhind (Madhya Pradesh)
Through: Vice President (Legal
and Commercial)

Petitioner

Versus

1. Employees Provident Fund
Through: Regional Provident
Fund Commissioner
INDORE (Madhya Pradesh)

Contesting Respondent no.1

2. Assistant Provident Fund
Commissioner,
Employees Provident Fund,
Jayendraganj,
Sanjay Complex
Lashkar
GWALIOR (Madhya Pradesh)

Contesting Respondent no.2

MEMO OF PARTIES IN CIVIL APPEAL NO.3965-3966 OF 2013

BETWEEN

**IN REVIEW
PETITION**

Surya Roshni Ltd.
J-7, 8 and 9
Malanpur, Industrial Area
Bhind (Madhya Pradesh)
Through: Vice President (Legal
and Commercial)

Appellant

Versus

1. Employees Provident Fund
Through: Regional Provident
Fund Commissioner
INDORE (Madhya Pradesh)

**Contesting
Respondent
no.1**

2. Assistant Provident Fund
Commissioner,
Employees Provident Fund,
Jayendraganj,
Sanjay Complex
Lashkar
GWALIOR (Madhya Pradesh)

**Contesting
Respondent
no.2**

**REVIEW PETITION ON BEHALF OF APPELLANT UNDER
ARTICLE 137 OF THE CONSTITUTION OF INDIA READ WITH
ORDER XLVII RULE 1 OF THE SUPREME COURT RULES,
2013, AND ORDER XLVII RULE 1 OF THE CODE OF CIVIL
PROCEDURE, 1908, SEEKING REVIEW OF THE JUDGMENT
DATED 28.02.2019 PASSED BY THIS HON'BLE COURT IN
CIVIL APPEAL NO.3965-3966 OF 2013**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES
OF THE SUPREME COURT OF INDIA

The humble Review Petition of the Petitioner named above:

MOST RESPECTFULLY SHOWETH:

1. This Review Petition is directed against judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal No.3965-3966 of 2013 whereby this Hon'ble Court has dismissed the appeal. A copy of judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013 is annexed herewith and is marked as **Annexure A-1 (Page Nos.**
2. That it is most humbly and respectfully submitted that along with the Review Petition, the petitioner is filing an application for oral hearing in the interest of natural justice. The application is being filed to ensure that the petitioner gets a full and complete opportunity to bring to the notice of the Hon'ble Court the facts which are essential for just adjudication of the matter. Grave prejudice would ensue to the petitioner if the application for oral hearing of the Review Petition is not allowed.
3. That this Hon'ble Court vide its judgment dated 28.02.2019 passed by a Learned two Judge Bench, in a batch of Civil Appeals, including Civil Appeal No. 3965-3966 of 2013 filed by the present Petitioner, has been pleased to dismiss the appeals filed by the employers and to allow the Civil Appeal No. 6221 of 2011 filed by The Regional Provident Fund

Commissioner (II) West Bengal versus Vivekananda Vidyamandir and Others, holding therein to the effect that any bifurcation of total emoluments paid to an employee would amount to subterfuge by an employer to reduce his PF liability and even the allowances and payments specifically excluded under clause (ii) of Section 2(b) and not included in Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred 'the Act'), Act, would attract PF contribution liability.

4. That it is most humbly submitted that the judgment passed by the Hon'ble Court, dismissing the appeals of the Petitioner, has inadvertently altered the long standing position of law, as laid down by a six Judge Bench of this Hon'ble Court in the case of Bridge and Roof Co.(India) Ltd. Vs. Union of India, (1963) 3 SCR 978, which has been consistently followed by the employers and the employees as well as the PF Department, through the various circulars/guidelines issued not only by the CPFC but also the Govt. of India in exercise of the statutory powers of the Government under the Act, to issue directions for removing difficulties, wherein inter alia, compensatory allowance; special allowance; personal allowance - pay over and above the "basic wages" and DA for skill, efficiency or past good records; subsidy paid to workers

in lieu of canteen facilities along with washing allowance had been specifically mentioned as excluded payments not amounting to "basic wages" and dearness allowance. Further as per information supplied by the EPFO dated 03 Oct., 2010 under RTI Act, 2005 which is at page 44 of the additional documents filed by the petitioner, in I.A. No. 109673 of 2018, as per definition of "basic wages" given under Section 2(b) of the Act, HRA; Education allowance; Conveyance allowance; Washing allowance; Canteen or Food allowance; and some other allowances have been specifically stated to be excluded from "basic wages" and not attracting payment of PF contribution except dearness allowance and retaining allowance under Section 6 of the Act. The excluded allowances/payments were, therefore, not being included in "basic wages", dearness allowance and retaining allowance, if any, by all the employers, for payment of the PF contribution in the Fund. However, they would now be required to be treated as "basic wages" for paying PF contribution in the Fund on the said allowances/amounts also.

5. The judgment has caused grave prejudice to not only the employers at large and literally held the Petitioner to be an unscrupulous employer whereas the PF Department had itself

awarded the best employer's certificate to the Petitioner, as mentioned in Annexure P-3, but has also placed an intolerable burden on the employees, who would now be required to deposit their equal share of PF contribution in the Fund even on the specifically excluded allowances/payments under the Act, thereby reducing their take home income, for meeting even their bare family needs.

6. The judgment suffers from mistakes or errors apparent on the face of the record and there exist other sufficient reasons also for review of the judgment in the interest of justice, on account of, inter alia, the following:-

GROUND

- i) In para 2 of the judgment, setting out briefly the individual facts of each appeal, in Civil Appeal No. 3965-66 of 2013 filed by the present Petitioner, it has been noted that the present Petitioner was paying basic wages + variable dearness allowance (VDA) + house rent allowance (HRA) + travel allowance + canteen allowance + lunch incentive, but was not deducting PF on the special allowances. The authority under the Act, held that only washing allowance was to be excluded from the basic wages. The High Court partially allowed the writ petition by excluding lunch incentive from basic wage and review petition was dismissed.

From the above, it seems that house rent allowance (HRA) was also one of the special allowances on which the PF contribution was determined as payable by the 7A authority and the High Court.

However, this observation of the Hon'ble Court suffers from a patent mistake/error apparent on the face of the record, as the petitioner had been paying PF contribution in the fund, not only on basic wages but also on variable dearness allowance (VDA) and in fact the authority under the Act, had not made any claim at all and passed any order under Section 7A against the petitioner, for PF contribution on house rent allowance (HRA) also, which, in fact has been specifically excluded from the definition of "basic wages" in clause (ii) of Section 2(b) of the Act, which clause reads as follows and unlike dearness allowance, has not been included under Section 6 of the Act for deposit of PF contribution in the Fund.

"2(b)(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar

allowance payable to the employee in respect of his employment or of work done in such employment.”

- ii) That similarly, the Hon’ble Court with regard to the Civil Appeal Nos. 3969-70 of 2013 and Civil Appeal Nos. 3967-68 of 2013 has noted that the petitioner were not deducting PF contribution on house rent allowance, special allowance, management allowance and conveyance allowance by excluding it from basic wage and the authority under the Act had held that the allowances had to be taken into account as basic wage for deduction and review petition filed by the petitioner were dismissed by the High Court.

In this regard, it is most respectfully submitted that incase PF contribution has been demanded from the petitioner in the said two appeals on HRA, which demand has been upheld by the Hon’ble High Court as well as by this Hon’ble Court vide its judgment dismissing the appeals, the judgment is patently and palpably based upon an inadvertent mistake or error apparent on the face of the record, since house rent allowance, along with overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such

employment, is specifically excluded under clause (ii) from “basic wages”.

This Hon.ble Court in the case of Bridge & Roof (supra), has categorically held, while, examining clause (ii) of Section 2(b) of the Act that, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concerns is taken out of the definition of “basic wages”, even though the basis of payment of house rent allowance where it is paid is the contract of employment.

Accordingly, the judgment of the Hon’ble Court holding that PF contribution is payable on house rent allowance is clearly contrary to the specific definition of “basic wages” contained in Section 2(b) of the Act, as well as the law declared by this Hon’ble Court in the case of Bridge & Roof (supra).

- iii) That the Hon’ble Court, in its judgment has also inadvertently committed a mistake/error apparent on the face of the record, in holding, while following the judgment in the case of Bridge & Roof (supra), that one of the factors to show that allowance in question being paid to its employees is not “basic wages”,

is that it must not be paid across the board in a particular category.

However, the judgment in Bridge & Roof (supra), has categorically laid down that the excluded allowances are those allowances which are not earned in all concerns or by all employees of a concern, without making any distinction of not being paid across the board to all employee in a "particular category". Therefore, the judgment to the extent it restricts the excluded allowances to only those which are not paid across the board to all employees in a particular category is clearly contrary/inconsistent with the judgment in the case of Bridge & Roof (supra).

- iv) The further observation of the Hon'ble Court that, "In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in", is also clearly inconsistent/contrary to the provisions of Section 2(b) read with Section 6 of the Act as also the judgment of this Hon'ble Court in the case of Bridge & Roof (supra), as it has inadvertently overlooked that clause (ii) of Section 2(b), excludes house rent allowance, overtime allowance, bonus

commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment, without any qualification whatsoever of the allowances/payment being excluded only if they are paid for extra amount of work beyond normal work which he was otherwise required to put in. In fact, this Hon'ble Court, in the case of Bridge & Roof (supra) while discerning one basis for the diversified exceptions contained in clause (ii) from the definition of "basic wages", even though they are earned by employees in accordance with the contract of employment, has categorically held that "It seems that the basis for the inclusion in S.6 and exclusion in cl. (ii) is that "Whatever is payable in all concerns and is earned by all permanent employees is included for the purposes of contribution under S.6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution." Accordingly, as per well settled law, except for dearness allowance, the other specifically excluded payments in clause (ii) like house-rent allowance, commission and other similar allowances, even if they are paid to all employees in a concern, for the normal work which the employee is required to put in, cannot automatically be included in the definition of "basic wages" merely because

they are not for extra amount beyond normal work an employee is otherwise required to put in.

The concept of quota and higher 'norm' had arisen in the case of Jay Engineering Works Ltd. Vs. Union of India 1963 SCR (3) 995, in the peculiar facts of that case, where instead of typical production bonus scheme where the worker is not bound to produce more than the base or standard; a scheme was enforced in the Petitioner company which provided that the worker cannot stop at quota; he must produce up to the norm on pain of being charged with misconduct in the shape of go-slow and liable to be dismissed and as such it was held that any payment for production above norm would be real production bonus under the scheme enforced in the company. Therefore, no law of invariable application has been laid down by this Hon'ble Court that all the excluded allowances/payments, would be treated as excluded only, if they are paid for beyond normal work which an employee is required to be put in and the basis of exclusion, remains, as held in the case of Bridge & Roof (supra), that all payments which are not payable to the employees in all concerns and are not earned by all the employees even in a concern, are

excluded from the definition of “basic wages” in view of clause (ii) of Section 2(b) of the Act.

- v) The Hon’ble Court in its judgment has also inadvertently ignored/overlooked that Section 2(b) of the Act, which defines “basic wages” has been held by this Hon’ble Court in the case of Bridge & Roof (supra), as excluding in the main part itself, the payments made by an employer to an employee, which is not earned by the employee in terms of his employment. It has been held in the judgment, that S. 2(b), excludes those things which were a reward for labour but arose out of other considerations like profit or attendance and the main part of the definition is subject to exceptions in cl. (ii) and those exceptions clearly show that they include even the price for labour arising out of the contract of employment. Accordingly, since in the case of the Petitioner, even the primary 7A authority had accepted in its 7A order dated 22/04/08 , which was filed as Annexure P-4, that there is no specific chart or criteria to decide quantum of special allowance of the employees and it is factually on individualist assessment and not linked to basic wages or dearness allowance , it clearly showed that the special allowance, which was separate from contractual annual increments, was not earned by any

employee as part of his contract of employment but was clearly a variable payment made solely at the discretion of the employer to some of the employees based upon an individualist assessment of their work and conduct during the previous year. Hence it did not fall within the main part of the definition of "basic wages" under Section 2(b) of the Act. Accordingly, the question of further considering as to whether it was an excluded payment under clause (ii) of Section 2(b) of the Act, did not arise and no PF contribution could have been determined as 'special allowance' .

- vi) This Hon'ble Court while considering the special allowance which was being paid by the employer in Civil Appeal No. 6221 of 2011, on the basis of a settlement between the employer and the employee, which therefore, became a part of the contract of the employment and hence was included in the main part of the definition of "basic wages" and the employer was not paying any separate dearness allowance and the special allowance as per agreement was periodically revised upward and hence was in the nature of dearness allowance, which though excluded in clause (ii) had been specifically included for the purpose of PF contribution to the Fund under Section 6 of the Act and holding the such allowance to be

part of "basic wages", has inadvertently ignored the fact that the 7A authority in the case of the Petitioner had arrived at a categorical finding rejecting the contention of the Enforcement Officer that the special allowance paid by the Petitioner to some of its employees was in the nature of dearness allowance and hence the original Calcutta High Court, judgment dated 13.01.2005, which has been upheld by this Hon'ble Court, did not apply to the case of the Petitioner. As such, the holding of the special allowance in the case of the Petitioner, as "basic wages" for the purpose of payment of PF contribution in the Fund, is based upon a misapprehension of the true state of circumstances applicable in the case of the Petitioner.

- vii) That similarly, the attendance incentive which is not mentioned in the judgment, regarding the facts of payment in Civil Appeal No(s). 3965-66 of 2013, but had been included by the 7A authority for claiming PF contribution on the same, even though in the 7A order there is only reference to canteen allowance, lunch incentive and some other allowances, without deciding the nature of payment of attendance incentive to some of employees only, not as per their contract of employment, but as a purely discretionary payment by the employer, which did not fall within the main part of the

definition of “basic wages” under Section 2(b) of the Act and hence no PF contribution could have been determined on the attendance incentive paid to some of the employees, included this payment also for PF contribution liability. The Appellate Tribunal, Hon’ble High Court as well as this Hon’ble Court, have also completely ignored the nature of attendance incentive, resulting in a mistake/error apparent on the face of the record in requiring the Petitioner to pay PF contribution on attendance incentive payment also.

- viii) That this Hon’ble Court in its judgment, has also inadvertently, overlooked the fact that the 7A order as well as the order of the Appellate Tribunal, had merged in the impugned final judgment and order of the Hon’ble High Court and the Hon’ble High Court, had not given any finding against the Petitioner, that the allowance being paid by it to the employees, were a mere camouflage to reduce/avoid PF contribution liability on the such allowance. In fact, while observing that it would examine the nature of the payment of the allowances, the High Court, by way of a perverse observation that admittedly conveyance allowance was being paid to all the employees, whereas there was no such admission before any forum, had held the conveyance to be part of the “basic wages”. In fact

the 7A authority, had accepted that it was being given to the employees, to defray the expenses incurred by the employee from home to the establishment and for return, accordingly being a similar allowance to house-rent allowance (HRA), which is a payment for reimbursement to an employee for the rent being paid by him for his residential accommodation and accordingly, house rent allowance being specifically excluded under cl.(ii) along with other similar allowance, conveyance allowance was also liable to be held as an excluded payment not attracting PF contribution liability. The such consideration has been completely ignored by this Hon'ble Court, resulting in a mistake/error which is apparent on the face of the record of the judgment dated 28.02.2019.

- ix) That this Hon'ble Court has also mistakenly mentioned in the brief facts relating to Civil Appeal No. 3965-66 of 2013, filed by the Petitioner, that the High Court had only excluded lunch incentive from "basic wages" whereas in fact the High Court in its impugned judgment dated 24.3.2011 had interchangeably referred to canteen allowance being optional amount, hence not being included in "basic wages" and the Petitioner company being not entitled to deduct PF under the head lunch allowance. Accordingly, not only the lunch incentive, but also canteen allowance had been specifically

excluded by the Hon'ble High Court from "basic wages", not attracting PF contribution liability of the Petitioner. This fact had been recognized even by the Respondent, EPFO in the order dated 16.04.2012 pursuant to the High Court judgment, passed by the RPFC, wherein it had been specifically held that the Hon'ble High Court had partly allowed the Petition to the extent that the amount of canteen and lunch allowance shall not be treated as part of "basic wages" for working out the PF and the allied dues.

- x) That the basis for dismissing the Civil Appeal No(s) 3965-66 of 2013 of the Petitioner regarding no material having been placed by the establishment to demonstrate that the payment in controversy did not amount to "basic wages" as defined under Section 2(b) of the Act, and did not attract PF contribution liability under Section 6 of the Act, is also an inadvertent omission on the part of the Hon'ble Court as the entire relevant material/information had been placed before the 7A authority, in the report of the Enforcement Officer as well as in the replies filed by the Petitioner to the 7A show cause notice and it was on the basis of the material before the 7A authority, that the authority had held that special allowance is being paid to almost all the employees (not all the employees) and that it was being paid by the employer

not under any scheme providing any criteria but based upon individualist assessment of the work and conduct of the employee during the previous year and similarly conveyance allowance was in the nature of reimbursement to the employees for coming from their home to the establishment and going back. Therefore, at least, in the case of the Petitioner, the finding that no material had been placed by the establishment to demonstrate that the allowance in question did not amount to "basic wages" is based upon a misapprehension of the true state of circumstances. In fact, relevant material/information to show that special allowance and attendance incentive payment, were not earned by the employees as per their contract of employment and therefore, did not fall within the main part of the definition of "basic wages" under Section 2(b) of the Act and the conveyance allowance was not paid to all the employees and was even otherwise a similar allowance to house rent allowance and was therefore, specifically excluded from the definition of "basic wages" by virtue of cl. (ii) of Section 2(b) of the Act, had been duly placed before all the forums, including by way of additional documents filed before the Hon'ble High Court along with Review Petition as

well as additional documents filed before this Hon'ble Court vide I.A. No. 109673 of 2018.

- xi) That the further observation contained in the judgment that the authority and the Appellate Tribunal had arrived at a factual conclusion that the allowances in question were essentially a part of the "basic wages" camouflaged as allowances so as to avoid deduction and contribution accordingly to the PF account of the employees, firstly does not apply to the case of the Petitioner, as the very definition of "basic wages" under Section 2(b) of the Act clearly contemplates that there may be certain emoluments which may not be earned by an employee as per his contract of employment and even out of the emoluments earned by an employee under a contract of employment, various payments/allowances have been specifically excluded, therefore, bifurcation of the total emoluments is envisaged in the very nature of the definition of "basic wages" under Section 2(b) of the Act and accordingly, the Enforcement Officer, of the 7A authority having merely stated that the Petitioner was bifurcating the total emoluments into allowances also, could not have led to a finding that the allowances in question, which are not prohibited and in fact are permissible as per the definition of "basic wages" under

Section 2(b) of the Act, without anything more, were a camouflage to reduce PF liability. In fact, the legislature, itself having provided in the definition of "basic wages" that certain payments made to the employees not as per the contract of employment and even out of those paid as per contract of employment, some allowance being excluded from the definition of "basic wages" and of the excluded allowances, only dearness allowance having been included in Section 6 of the Act, the necessary implication is that the liability to pay PF contribution in the fund, as a consequence of the Section 2(b) read with Section 6 of the Act, has been deliberately reduced by the legislature. Hence, it cannot be claimed that mere payment of excluded allowances to an employee, would amount to camouflage on the part of the employer in reducing its PF contribution liability. In fact, if the 7A authority had held that the allowances were only a camouflage, then it would not have considered the nature of the payment of various allowances separately and the Appellate Tribunal which only referred to certain portions of a Karnataka High Court judgment, had also not arrived at any conclusion finding that by bifurcating the total emoluments into some allowances, the Petitioner had committed any camouflage.

A Karnataka High Court judgment had been challenged by M/s G4 Security Vs. Regional PF Commission by filing a SLP No. 12318/04 before this Hon'ble Court, which was disposed of vide its order dated 23.07.2014, by stating that it being only order of remand passed by the High Court, was not inclined to interfere with the observations made by the Division Bench in its order should not be taken as conclusive but as tentative only and the authorities would be at liberty to decide the matter in accordance with law on its merits without being influenced by them.

The M.P. High Court, had not even considered any aspect of the allowance being only a camouflage by the Petitioner to reduce its PF liability but had considered the nature of the special allowance, conveyance allowance as well as the lunch incentive and wrongly held that only lunch incentive and canteen allowance did not attracting any PF contribution liability, which would not have been the case had all the allowances been treated a mere camouflage to reduce PF contribution liability.

- xii) That the Hon'ble Court in its judgment, has also inadvertently omitted to consider that in accordance with the judgment of

this Court in the case of Food Corporation of India Vs. PF Commissioner, (1990) 1 SCC 68 , it was the duty of the 7A authority to have exercised all its powers given under the Act, to identify the actual employees/beneficiaries, regarding whom the extra PF contribution liability was being determined and it could not have made the 7A determination only on an abstract basis to fill the coffers of the PF Department. Therefore, the matter was liable to have been remanded back to the 7A authority for making a proper determination by identifying the actual employees/beneficiaries.

- xiii) That lastly, but not less importantly than the above mentioned grounds, this Hon'ble Court while passing its judgment, has inadvertently failed to consider that since the Petitioner, had been complying with its PF contribution liability in accordance with Section 2(b) read with Section 6 of the Act, as per judgment of this Hon'ble Court, in the case of Bridge & Roof (supra), as well as the guidelines/instructions issued by not only the CPFC but also the Government of India, like all other employers in India and no employee had any grievance against non consideration of excluded allowance, as "basic wages", which would have increased the equal PF contribution liability of the employees and in the present

appeal this Hon'ble Court vide its order dated 12.4.2013, had been pleased, inter alia, to direct that the Petitioner will join two of their employees to represent the employees, had impleaded two employees as Respondent Nos. 3 and 4 and Shri Ajay Singh Kushwava, Respondent No. 4 had even filed a short counter affidavit, through his Advocate, supporting the factual stand of the Petitioner, which short counter affidavit had completely been ignored by the Hon'ble Court, on account of the change in the well settled position of long standing by virtue of the present judgment, it would have been in the interest of justice that the judgment may have been declared to have prospective effect only, so as to avoid causing any unbearable financial burden upon the employer as well as administrative chaos.

7. That the other grounds pleaded by the present petitioner in their Civil Appeal before this Hon'ble Court may very kindly be treated as part and parcel of the present Review Petition as the same are not being repeated herein for the sake of brevity.
8. It is most humbly and respectfully submitted that there are errors apparent on the face of the record and the above-mentioned aspects of the matter, may kindly be re-considered

by this Hon'ble Court and the appeal of the petitioner may very kindly be allowed.

9. That the Review Petitioner has not filed any other petition seeking review of the judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013.

PRAYER

In view of the aforesaid, it is, most respectfully prayed that this Hon'ble Court may kindly be pleased to pass orders:

- (a) review the judgment dated 28.02.2019 passed by this Hon'ble Court in CIVIL APPEAL NO.3965-3966 OF 2013 and allow the Civil Appeal;
- (b) pass any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Review Petitioner.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND EVER SHALL PRAY.

Drawn and Filed By:

(GAGAN GUPTA)
Advocate for the Petitioner

Date:
Filed on:

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. OF 2019
IN
CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD. PETITIONER

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

CERTIFICATE BY ADVOCATE-ON-RECORD

It is certified that the captioned Review Petition is the first application for review of judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013 and is based on the grounds admissible under the Rules. No new ground which was not pleaded or urged in Civil Appeal no.3965-3966 of 2013 has been pleaded in the Review Petition.

NEW DELHI

(GAGAN GUPTA)

Dated:

Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. OF 2019

IN

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD.

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EMPLOYEES PROVIDENT FUND AND ANOTHER

.... RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is within time.
2. The Petition is barred by time and there is delay of days in filing the same against the judgment Dated 28.03.2019 and petition for condonation of days' delay has been filed.
3. There is delay of ____ days in re-filing the petition and petition for condonation of ____ days delay in re-filing has been filed.

BRANCH OFFICER

New Delhi

Dated:

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

I.A.NO. OF 2019

IN

REVIEW PETITION (C) NO. OF 2019

IN

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD. PETITIONER

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

APPLICATION ON BEHALF OF THE PETITIONER FOR STAY OF OPERATION OF THE IMPUGNED JUDGMENT

To
The Hon'ble Chief Justice of India
and His Companion Judges
of the Supreme Court of India.

The humble application of the petitioner above named:

Most respectfully showeth:

1. That the petitioner is filing a petition seeking Review of the final order dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013. The contents of the Review Petition may kindly be read as part of this application as the same are not being repeated herein for the sake of brevity.

2. That the petitioner has a prima facie good case in its favour and balance of convenience also lies in its favour.
3. That the petitioner shall suffer irreparable loss and injury in case ex parte ad interim stay is not granted on the operation and effect of the impugned judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no. 3965-3966 of 2013.

P R A Y E R

On the foregoing submissions, it is most respectfully prayed that this Hon'ble Court shall be most graciously pleased to:

- (a) Grant ad interim ex parte stay of the operation of the impugned judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013.
- (b) Pass any other further order, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND
EVER SHALL PRAY.

Drawn and Filed by:

(GAGAN GUPTA)

Advocate for the petitioner

Drawn On :
Filed on:

(CIVIL APPELLATE JURISDICTION)

IN

TN

IN THE MATTER OF:

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

APPLICATION ON BEHALF OF THE PETITIONER FOR ORAL HEARING OF THE REVIEW PETITION

To
The Hon'ble Chief Justice of India
and His Companion Judges
of the Supreme Court of India.

The humble application of the petitioners above named:

Most respectfully showeth:

1. That the petitioners are filing a petition seeking Review of the judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013.
2. That the facts of the case are such as would necessitate an oral hearing of the Review Petition.
3. That this application is being made bonafide and in the interest of justice.
4. That the present application is being filed to ensure that the Review Petitioner gets a full and complete opportunity to bring

to the notice of the Hon'ble Court the facts which are essential for just adjudication of the matter. Grave prejudice would ensue to the Review Petitioner if the application for oral hearing of the Review Petition is not allowed.

PRAYER:

The Petitioner, therefore, most humbly and respectfully prays that this Hon'ble Court shall most graciously be pleased to:

- A) grant oral hearing in the Review Petition;
- B) pass any other order or direction as this Hon'ble Court deems fit and proper, in the facts of this case and in the interest of justice, in favour of the petitioner.

AND FOR THIS ACT OF KINDNESS OF YOUR LORDSHIPS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn and Filed by:

(GAGAN GUPTA)

Advocate for the petitioner

Drawn On :

Filed on :

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

I.A.NO. OF 2019

IN

REVIEW PETITION (C) NO. OF 2019

IN

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD. PETITIONER

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

**APPLICATION ON BEHALF OF THE PETITIONERS FOR
EXEMPTION FROM FILING CERTIFIED COPY OF THE
IMPUGNED JUDGMENT**

To
The Hon'ble Chief Justice of India
and His Companion Judges
of the Supreme Court of India.

The humble application of the petitioners above named:

Most respectfully sheweth:

1. That the petitioner is filing a petition seeking Review of the judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013.
2. That along with the Review Petition, the petitioner is filing true copy of the impugned judgment as available on the website of this Hon'ble Court.

3. That there is an urgency in filing the Review Petition, thus the petitioner has been unable to file certified copy of the impugned judgment with the Review Petition.
4. That the petitioner undertakes to file certified copy of the impugned judgment as and when this Hon'ble Court directs it to do so.

P R A Y E R

On the foregoing submissions, it is most respectfully prayed that this Hon'ble Court shall be most graciously pleased to:

- (i) exempt the petitioner from filing certified copy of the impugned judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013; and
- (ii) Pass any other further order, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS AS IN DUTY BOUND EVER SHALL PRAY.

Drawn And Filed by:

(GAGAN GUPTA)

Advocate for the petitioner

Drawn On:

Filed on:

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO. _____ OF 2019
IN _____

CIVIL APPEAL NO.3965-3966 OF 2013

IN THE MATTER OF:

SURYA ROSHNI LTD. PETITIONER

Versus

EMPLOYEES PROVIDENT FUND
AND ANOTHER RESPONDENTS

AFFIDAVIT

Affidavit Of Rajeev Kothari Son Of Sh.S.P.Maheshwari, Vice President-
Legal And Commercial, Surya Roshni Ltd., Padma Tower-I, Rajendra
Place, New Delhi 110008

I, the above named deponent, do hereby solemnly affirm and declare as under:

1. That I am the Vice President-Legal and Commercial of the petitioner Company in the present petition and being well conversant with the facts of the case, and having been duly authorized by the petitioner Company, I am competent to depose this affidavit.
2. That the accompanying Review Petition against the judgment dated 28.02.2019 passed by this Hon'ble Court in Civil Appeal no.3965-3966 of 2013 has been drafted under my instructions. I have gone through the contents of the Review Petition and of the Interlocutory Applications, which have also been read over and explained to me, and having fully understood the same, I depose that the facts stated therein

are true and correct to my knowledge derived from the records of the case as maintained by the petitioner Company. Legal submissions are true and correct to the information and advice received from counsel and believed to be true. Annexures A-1 to the Review Petition are true copies of their respective originals.

(DEPONENT)

Verification: Verified at _____ on _____ that _____ the contents of paras 1 and 2 of my above affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

(DEPONENT)