

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO.7243-44/2005**

% **Date of Decision: 27.01.2009**

SH.PARDEEP AGGARWAL & ANR. Petitioners

Through Mr. Ashok Aggarwal and Mr.Anuj
Aggarwal, Advocates

Versus

SH.S.K.SINHA, RECOVERY OFFICER & ORS. Respondents

Through Ms.Deepshikha Bharti, Advocate for
ESI.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

1. Whether reporters of Local papers may be allowed to see the judgment?NO
2. To be referred to the reporter or not?NO
3. Whether the judgment should be reported in the Digest?NO

V.K.SHALI, J. (Oral)

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1. I have heard the learned counsel for the parties and perused the record and with their consent, I dispose of the matter finally.

2. By virtue of the present writ petition, the petitioners are challenging the notice of demand dated 18th January, 2005 issued to the petitioners Mr.Pardeep Aggarwal and his wife Ms.Sapna Aggarwal on the ground that they are the principal employers in respect of M/s Microlam India Ltd. The demand is for a sum of Rs.61,489/-. The main contention of the petitioners in the writ petition is that they are not the principal employers as they were only the promoters/Directors initially

of the Limited Company which was floated in 1993 and subsequent to that in the year 1997, they had surrendered their shareholding. The respondent Nos. 1 to 3 have filed two separate sets of counter affidavits one on behalf of respondent no.1 and the other on behalf of the remaining respondents. In the counter affidavit of the respondents No. 2 and 3, it has been contested that the petitioners are not the principal employers.

3. Section 75 (1) (d) of the Employees' State Insurance Act, 1948 lays down that if any question or dispute arises as to the person who is or was the principle employer in respect of any employee then such a question or dispute subject to the provisions of 2A shall be decided by the Employees Insurance Court in accordance with the provisions of this Act. In addition to this, Section 75(1)(g) is very wide in its ambit and the ESI Court has the power to decide any other matter or dispute between the principle employer and the Corporation also. The exact language of the said Section is as under :

“75. Matters to be decided by Employees' Insurance Court.—(1) If any question or dispute arises as to--

- (a) xxxxxxxxxxxxxxxx
- (b) xxxxxxxxxxxxxxxx
- (c) xxxxxxxxxxxxxxxx
- (d) the person who is or was the principal employer in respect of any employee, or
- (e) xxxxxxxxxxxxxxxx
- (ee) xxxxxxxxxxxxxxxx
- (g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act,

[or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act],”

4. In the instant case, essentially, the petitioners have a statutory remedy of filing an appeal against the impugned notice dated 18th January, 2005 before a designated Court which is an ESI Court. However, without availing of that alternative efficacious remedy, the petitioners have chosen to move the writ jurisdiction of this Court. As a matter of practice and prudence, this has been the general practice of the Courts that wherever there is an alternative efficacious remedy available to a party, such a party shall be relegated to first avail of that statutory remedy. In addition to this, the adjudication of the statutory authority will give an occasion to the High Court also to appreciate the facts of the case better in case eventually a party feels aggrieved by the order of designated alternative authority which in the instant case happens to be ESI Court. Reliance in this regard is placed on Thansingh Nathmal & Ors. Vs. A.Mazid, Superintendent of Taxes AIR 1964 SC 1419, wherein it has been observed that as under:-

“The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subjected to any restriction But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain well imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy of relief which may be obtained in a suit or other mode prescribed by the statute. Ordinarily, the court will

not entertain a petition for a writ under Article 226 where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by a statute for obtaining relief.”

5. In view of the aforesaid facts as the petitioner has an alternative efficacious remedy available to him under Section 75 of The Employees’ State Insurance Act, 1948 by way of an appeal before the ESI Court, accordingly, the present writ petition is not maintainable.

6. Learned counsel for the petitioner has on this being pointed out given his consent to withdraw the writ petition with liberty to file an appeal before the ESI Court. However, the learned counsel for the petitioner has contended that an appeal under Section 75 can be entertained by the ESI Court provided the same is filed within three years from the date on which the cause of action accrues as contemplated under Section 77(1)(a) of the ESI Act, 1948.

7. Learned counsel for the respondent has no objection in case the petitioners withdraws the writ petition and seeks alternative efficacious remedy of appeal available to him under Section 75 of the Act. Learned counsel for the respondent has also agreed that the respondents 1 to 3 would not raise any objection with regard to the limitation if the appeal is filed by them within four weeks from today.

8. In the light of the aforesaid facts and circumstances, the present writ petition is dismissed as withdrawn with liberty to the petitioner to

file an appeal before the ESI Court within four weeks from today and in case such an appeal is filed within the time stipulated above, no objection with regard to the limitation would be taken by the respondent and the ESI Court shall decide the appeal on merits as expeditiously as possible.

9. Interim order which has been granted by this Court against the impugned order dated 18.1.2005 shall continue for a period of four weeks or till such a prayer is considered by the ESI Court on filing of an application.

No order as to costs.

File be consigned to the record room.

January 27th, 2009
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V.K.SHALI, J.