

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS (OS) No.312/2005**

Judgment reserved on: 10th February, 2009

% Judgment decided on : 8th April, 2009

Maharishi Solar Technology Pvt. Ltd. Plaintiff
Through : Mr. M.A. Niyazi, Adv. with
Mr. Ravi Ranjan, Adv.

Versus

I.C.I.C.I. Bank & Ors. Defendants
Through: Mr.Ateev Mathur, Adv. for Defendant
No.2
Mr. Atul Kumar, Adv. for Defendant
No.3
Mr. K.P. Mavi, Adv. for Defendant
No.6

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit for permanent and mandatory injunction and in the alternative for recovery of Rs.29,58,954.67 with prayer to pass a decree for permanent injunction restraining defendants 1 to 5 from releasing any amount to Defendant No.6 with respect to the alleged Recovery Notice No.K/CO/CP2-2574-21-17499-90 dated 7th March, 2005 or freezing any account of the plaintiff company with respect to the said recovery notice and also

restraining defendant No.6 from recovering any amount against the notice of demand dated 7th March 2005 as well as for permanent injunction against him.

2. Issues in this matter were framed on 11th December, 2007 and as per the said order Issue No.1 was treated as preliminary issue. The said Issue No.1 reads as under:-

- i) Whether the suit is not maintainable in view of the provisions of Section 75(3) of the Employees' State Insurance Act, 1948 ?

3. I have heard learned counsel for the parties on this issue. The brief facts are that the Plaintiff Company Maharishi Solar Technology Pvt. Ltd. was incorporated under the provisions of the Companies Act, 1956 and is engaged in the manufacture, production, development, import/export etc of all instruments, machines and appliances for use with solar energy or any other conventional energy. Defendants No.1 to 5 are the bankers of the Plaintiff Company. A letter dated 7th March, 2005 was issued by defendant No.1 stating that Defendant No.1 has marked a debit freeze with regard to Account No. 004605001120 amounting to Rs.29,52,954.67/-. The Defendant No.6 has issued the alleged recovery notice No.K/CO/CP2-2574-21-17499-90 dated 7th March, 2005 to Defendant No.1 for recovering alleged dues of Rs. 68,80,200/- from the Company Maharishi Ayurved Products Ltd.

4. The Plaintiff Company asserts that it has no connection or relation with the above mentioned Company.

5. The Plaintiff Company alleges that Defendant No.1 has issued Pay order No.121910 dated 7th March, 2005 of Rs.29,52,954.67/- from Plaintiff Company's account in favour of Defendant No.6 without seeking the Plaintiff's permission. The Plaintiff claims that the release order was issued to Maharishi Aurved Poducts Ltd/Shri Anand Srivastava and not to the Plaintiff Company.

6. Admittedly, the registered office of the two companies is the same, i.e. A-14, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044. The Plaintiff, however, avers that both are completely separate and have not even one common director.

7. The Plaintiff claims to have unearthed the fact of a dispute between Maharishi Ayurved Products Ltd and Defendant No.6 with regard to recovery of Rs.36,00,000/- in the financial year of 1998-99 whereby the said Maharishi Ayurved Products Ltd claimed that it was also being harassed by Defendant No.6.

8. As per the provisions of Employees' State Insurance act, 1948, mandatory requirements have not been fulfilled by the Defendant No.6 while allegedly issuing prohibitory notices to the defendant banks.

9. The burden of this issues lies upon Defendant No.6 who has alleged in the written statement that M/s. Maharishi Ayurved Products Ltd and M/s. Maharishi Solar Technology (P) Ltd are sister concerns as proved by various evidences like the Articles and Memorandum of Association of both companies, the account opening form and the name of signatories authorized to operate both accounts. These indicate not

only that both the companies are not only related but are in fact, the same.

10. In case there is any dispute with regard to the contribution payable by the principal employer and the answering defendant, the remedy lies before the Employees' State Insurance Court u/s 75 of the Employees' State Insurance Act and no civil Court has jurisdiction to decide this dispute, as per the provisions of Section 75(3) of the said Act.

11. Defendant No.6 further avers that the Branch Manager of Oriental Bank of Commerce, Overseas Branch, Greater Kailash-II informed the former that an undertaking had been given by Maharishi Ayurved Products Ltd admitting that M/s. Maharishi Solar Technology (P) Ltd is its sister concern. Also, the directors of the two companies are related as Sh. Ajay Prakash Srivastava is the brother of Sh. Anand Prakesh Srivastava.

12. The account books of Maharishi Ayurved Products Ltd for April 1989 to March 1997 were inspected and a contribution of a sum of Rs.36,07,647/- was found payable on omitted wages. Notices were issued but Maharishi Ayurved Products Ltd did not appear and made various excuses for non payment. After giving sixth opportunity to the company, the competent officers determined the ESI contribution u/s 45 of the Employees' State Insurance Act, 1948 vide order dated 20th January 2000. The company then paid a part payment of Rs.1,68,559/- towards its liability to the defendant.

13. Defendant No.1 in his written statement averred that the said defendant has acted in compliance with defendant No.6. Defendant No.2 is a perfunctory party. Defendant No.3 states that it has not frozen any account at the behest of defendant No.1 and is not a proper and necessary party in the present proceedings. Defendant No.5 states that it has not received any notice from Defendant No.6.

14. Learned counsel for the plaintiff has argued that the Civil court jurisdiction is only barred when the dispute occurs between the principal employer and ESI Corporation. According to him, the principal employer in the present case is M/s. Maharishi Ayurved Products Ltd and not M/s. Maharishi Solar Technology Pvt. Ltd. He has further argued that the plaintiff has nothing to do with M/s. Maharishi Ayurved Products Ltd and has been made a scapegoat. Learned counsel states that since the plaintiff is not a principal employer, therefore, Section 75 of the Employees' State Insurance Act is not applicable.

15. Learned counsel for Defendant No.6 has argued that the said provision is definitely applicable to the facts and circumstances of the present case due to the following admitted reasons:-

- (i) That M/s. Maharishi Ayurveda Products Ltd. and M/s. Maharishi Solar Technology Pvt. Ltd. are the sister concerns as both are having account with Oriental Bank of Commerce Ltd.
- (ii) That both the companies have shown their registered address and are functioning at A-14, Mohan Cooperative Industrial Estate, New Delhi. The documentary evidence pertaining to the Articles and Memorandum of Association of both the Companies, Account opening forms and names of

the signatories authorised to operate both the accounts, papers executed by both the companies for seeking credit of the overdraft are lying with the Oriental Bank of Commerce, the Directors of both the companies i.e. Ajay Prakash Srivastava and Anand Prakash Srivastava are the real brothers. According to Defendant No.6 it is clear that the two companies are one and the same and since there is a dispute in respect of the contribution payable by the principal employer and the Defendant No.6 the remedy lies before the ESI Court under Section 75 of the Employees' State Insurance Act, therefore, under Section 75(3) of the said Act no suit is maintainable.

- (iii) The plaintiff has admitted to the extent that the two companies M/s. Maharishi Ayurveda Products Ltd and the plaintiff M/s. Maharishi Solar Technology Pvt. Ltd. have their registered office at the same address. The plaintiff has also admitted that both the companies are having account with the Oriental Bank of Commerce Ltd. However, it is denied that the two companies are sister concerns or there is any documentary evidence that both the companies account opening forms and the names of the signatories authorised to execute the papers by the companies for seeking credit/overdraft lying with the Oriental Bank of Commerce.
- (iv) It is not in dispute that every company is a distinct legal entity. It is also not in dispute that in the present case both the companies have a different set of directors and there is not even a single director who is common in both the companies although Ajay Kumar Srivastava, director of one company is the brother of Anand Prakash Srivastava, director of another company.

16. It is also contended by the plaintiff that the plaintiff company has no factory or establishment or office within the jurisdiction of defendant No.6. It appears from the pleadings that the defendant No.6 has recovered the alleged amount payable by M/s. Maharishi Ayurveda Products Ltd from the account of M/s. Maharishi Solar Technology Pvt Ltd.

17. The contention of the plaintiff is that defendant No.6 has without authority recovered the said amount from the account of the plaintiff company despite the admitted fact that the plaintiff company has no liability towards Defendant No.6.

18. It is also denied that the two companies are one and the same company in the replication filed by the plaintiff. Along with the suit, the plaintiff also filed an application for interim injunction being I.A.No.1855/05 in which an ex parte ad interim injunction was granted restraining Defendant No.6 from effecting any recovery from the plaintiff or its bankers i.e. defendants 1 to 5 with regard to ESIC dues recoverable from M/s. Maharishi Ayurveda products Ltd. The payment already received by way of pay order from Defendant No.1 will be subject to further orders from this court. The plaintiff's bank account with defendants 1 to 5 shall also remain operational till the next date of hearing subject to the condition that in one of the Bank's at the choice of the plaintiff, an amount in the sum of Rs.40 lakhs shall be retained. The said interim order passed by the court still continue to be in force.

19. In view of the above facts and circumstances of the present case, since the evidence of the parties is yet to be recorded, it is not appropriate at this stage to pass any order on merit as it will effect one of the parties adversely at the time of trial if the Issue No.1 is decided on merit. But, prima facie it appears that the suit filed by the plaintiff is maintainable. It is made clear that the defence raised by Defendant No.6 is still open and it would be considered along with the other issues after the trial. It is ordered accordingly.

20. The parties are directed to file the list of witnesses within four weeks from today. The plaintiff shall produce the evidence by way of affidavits within six weeks from today. List this matter before the Joint Registrar on 1st July, 2009 for directions for fixing a date of cross examination of the plaintiff's witnesses.

MANMOHAN SINGH, J

APRIL 08, 2009
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