IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.267 of 2009

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1. Employees State Insurance Corporation, ESIC Bhawan Bailey Road, Patna-1
2. The Regional Director, Employees State Insurance Corporation, ESIC Bhawan J.N.U. Bailey Road, Patna-1
3. The Deputy Director, Employees State Insurance Corporation, ESIC Bhawan J.N.U. Bailey Road, Patna-1

………..Appellant/s

Versus

1. Nalanda Sale Corporation, Exhibition Road, Patna presently known as M/S Usha International Ltd. 1st Floor Sahi Bhawan, Exhibition Road, Patna-800001.
2. Divisional Manager, Nalanda Sale Corporation, Exhibition Road, Patna presently known as M/S Usha International Ltd. 1st Floor Sahi Bhawan, Exhibition Road, Patna-800001.
3. Senior Executive Director, Usha International Limited, New Delhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rabindra Kumar Choubey
Mr. Sudhir Kumar Bippuria

For the Respondent/s : Mr. Anil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-10-2015

Heard learned counsel for the appellants and learned counsel for the respondents.

This appeal has been filed against the order dated 23/1/2009 passed by Employees Insurance Court (herein after mentioned as E.I. Court) in Case No. 1 of 1993 whereby and whereunder the court below has quashed the demand made by the E.S.I. Corporation through requisition, vide Ext.-C(Annexure-7) and Ext.-D(Annexure-7/1), to the tune of Rs.35,011/-.

It appears that Nalanda Sales Corporation situated at Exhibition Road, Patna carries on business of marketing Usha Electric

Fans, Sewing Machines, Diesel Engines, Auto parts etc. admittedly covered under the E.S.I. Act. Time to time, the Inspector of the E.S.I. visited the said establishment and found no error or fault in depositing the contribution amount under the Employees' State Insurance Act 1948 (herein after mentioned as ESI Act). The Regional Deputy Director also visited the establishment on 20th August 1995, but no inspection report pointing out deficiency was given to the Establishment. It appears that a contribution amount was demanded and later on, the said demand was sent to the District Certificate Officer, Patna, vide Revenue Case No. 3/1991-92 with respect of requisition of Rs. 35,011/. When the respondent-Nalanda Sales Corporation received the notice, it approached the E.I. Court, vide E.S.I. Case No.1/1993 thereby challenged the demand made by the E.S.I. Corporation. E.S.I.C. has appeared and challenged the maintainability of the application itself on the ground of limitation and also made a submission that the demand is related to loading and unloading of materials related to Nalanda Sales Corporation. It has further been said that for the first time, notice for depositing the contribution amount was given by the E.S.I. Corporation by different letters starting from 6th January 1987, 21st August 1988 and lastly the demand was made by the Corporation by letter dated 28th February 1991.

The E.I. Court has framed the issue whether the applicant has been able to make out the case, as disclosed in the main application or made out the demand of E.S.I. is bad, illegal and unjustified. He has discussed the evidence led by the parties and arrived to a conclusion that there is no delay in filing the application before the E.I. Court as well as the demand that has been made, does not furnish any reason thereon and on that score only, quashed the demand made by the Corporation without examining the merit of the case. Section 77 (1-A) of the E.S.I. Act provides that every such application shall be made within a period of three years from the date on which the cause of action arose.

The E.I. Court while deciding the issue of limitation, has recorded that three years will be counted from the date of knowledge of the claim, not from the date of cause of action. At the same time, decided the case on merit recording the finding that no material on behalf of E.S.I.C. that knowledge was given to Company (Respondent). The court below has not discussed the oral and documentary evidence as has been produced by the E.S.I.C., set aside demand holding determination of contribution is non-speaking and unreasoned. The Labour Court while deciding the question of limitation, was required to look into the materials that were brought with regard to cause of action, so much so, the court below was required to examine the oral and documentary evidence brought by both sides, as it appears, the contribution is related to the employee attached to the loading and unloading. The court below has not discussed any material by a cryptic finding has set side the demand.

This Court finds that the order of the court below suffers from illegality while deciding the issue of limitation as well as on the merit of the case. Accordingly, the same is set aside and the matter is remanded back to the court below to decide the question of limitation as well as decide the case on its merit after examining the material available on record within a period of six months from the date of receipt/production of a copy of this order. Accordingly, this appeal is allowed to the aforesaid extent.

The Office is directed to remit back the record of the case to the court below.

(Shivaji Pandey, J)

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