

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2018 OF 2013
IN
FIRST APPEAL NO.619 OF 2013**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.T.R.Yadav for the applicant

Mr.Shailesh Pathak for the respondent nos.1
and 2

CORAM : K.K.TATED, J.
DATED : 11/03/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by original applicant restraining respondent Corporation from executing or recovering any amount from the applicant pursuant to the oral judgment dated 4.9.2012 passed by Employees Insurance Court, Pune in Application (ESI) No.44 of 2006.
- 3 The learned counsel for the applicant submits that the Trial Court erred in coming to the conclusion that applicant had engaged more than 10 employees for working in their establishment. He submits that when the Inspector visited the

premises and prepared note dated 18.12.2004 Exhibit 'C 8/I' he has not taken statement of all the persons those who were working there. Therefore the judgment and order passed by trial court is against justice, equity and good conscious and same is liable to be set aside. He submits that the respondent as per Recovery Certificate dated 27.09.2006 demanded sum of Rs.3,22,726/- from the applicant. He submits that at the time of filing application under section 75 of the ESI Act, 1948 challenging the recovery notice as well as order passed by Authority under section 45-A, they deposited sum of Rs.60,000/-. Hence, the respondent may be restrained from recovering remaining amount as per recovery certificate dated 27.9.2006.

3 On the other hand, the learned counsel for the respondent Corporation vehemently opposed the present Civil Application. He submits that as on today, admittedly, the application filed by the applicant under section 75 of the ESI Act 1948 is rejected by the Employees Insurance Court at Pune by oral judgment dated 4.9.2012. In view of these facts, the applicants are liable to pay remaining amount as per recovery certificate dated 27.09.2006.

4 I have heard both the sides at length. It is to

be noted that in the present proceeding, the Employees Insurance Court, Pune by oral judgment dated 04.09.2012 held that the applicant is an establishment under section 2 of the ESI Act, 1948 and therefore, ESI Act is applicable. Not only that, initially, the respondent Corporation issued recovery certificate dated 27.09.2006 for recovery of sum of Rs.3,22,726/-. Considering the fact that the application filed by the applicant under section 75 of the ESI Act stands rejected, following order is passed:

a) Pending the hearing and final disposal of the First Appeal respondent Corporation is restrained by an order of injunction from acting on the basis of Recovery Certificate dated 27.09.2006 till the hearing and final disposal of the First Appeal on the condition that applicant to deposit remaining amount in this court within 6 weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

b) If amount is not deposited within within stipulated time as stated hereinabove, respondent Corporation is free to take appropriate action against the applicant for recovery of amount.

c) If amount is deposited within stipulated time as stated hereinabove, Registry is directed to invest the said amount in fixed deposit account of any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till hearing and final disposal of the appeal.

d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)