

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

RP.No. 477 of 2015 () IN CRP.649/2014

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AGAINST THE ORDER IN CRP 649/2014 of HIGH COURT OF KERALA ARISED FROM
O.S. NO. 76/13 OF SUB COURT, PERUMBAVOOR**

REVIEW PETITIONER(S):

1. T.C.JOSE, S/O. SAKARIA, AGED 58 YEARS,
THEKKUMPURAM HOUSE, DUNDOOR, KARARA P.O.,
AGALI VILLAGE, ATTAPPADY, PALAKKAD DISTRICT, PIN - 678581.
2. LEELAMMA JOSE, W/O. JOSE, AGED 52 YEARS,
THEKKUMPURAM HOUSE, DUNDOOR, KARARA P.O.,
AGALI VILLAGE, ATTAPPADY, PALAKKAD DISTRICT, PIN - 678581.
3. JOJU S/O. JOSE, AGED 29 YEARS,
THEKKUMPURAM HOUSE, DUNDOOR, KARARA P.O.,
AGALI VILLAGE, ATTAPPADY, PALAKKAD DISTRICT, PIN - 678581.

**BY ADVS.SRI.K.G.CLEETUS
SRI.K.P.POULOSE MURIMATTOM**

RESPONDENT(S):

1. THE MANAGING DIRECTOR,
KITEX GARMENTS LTD., KIZHAKKAMBALAM P.O.,
KIZHAKKAMBALAM VILLAGE, PIN:683562.
2. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY CHAIRMAN AND MANAGING DIRECTOR,
VYDUTHI BHAVAN, THIRUVANANTHAPURAM.
3. ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE KERALA STATE ELECTRICITY BOARD,
MAJOR CIRCLE, KIZHAKKAMBALAM P.O.,
KIZHAKKAMBALAM VILLAGE, PIN 683562.
4. ASSISTANT ENGINEER,
OFFICE OF THE KERALA STATE ELECTRICITY BOARD,
KIZHAKKAMBALAM VILLAGE, PIN 683562.

BY SRI.P.THOMAS GEEVERGHESE

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09-06-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.BHAVADASAN, J.

R.P. No. 477 of 2015

in

C.R.P.No. 649 of 2014

Dated this the 09th day of June, 2015

ORDER

This review petition is directed against the order dated 03.02.2015, whereby, this Court allowed the revision petition and directed the legal representatives of the employee to approach the Employees' State Insurance Court and this Court made it clear that if the legal representatives of the employee approached the proper forum, the fact that they have been prosecuting the matter under different forums shall be taken into consideration and time taken for prosecuting the matter shall be excluded.

2. The facts are narrated in detail in the C.R.P..

A person by name Joemon died of electrocution while working in the premises of the respondent herein. He was an employee of the respondent. He first approached the authority under the Workmen's Compensation Act for

compensation wherein the employer entered appearance and contended that being an accident during the course of employment, Workmen's Compensation Act will not apply and the Employees' State Insurance Scheme applies. Accordingly, Workmen's Compensation claim was closed. Instead of going to the ESI Court, the respondents in the C.R.P. went to the Human Rights Commission wherein the matter was elaborately considered and the Human Rights Commission too was of the view that the matter is covered by the Employees' State Insurance Act. Even after the observation made by the Human Rights Commission, the petitioners herein did not see wisdom. They went to Civil Court and laid suit for compensation.

3. The revision petitioner, before this Court, entered appearance in the suit and pointed out that the suit is not maintainable in view of the provisions under the various Acts and the matter is covered by the Employees' State

Insurance Act.

4. The respondent challenged the very maintainability of the suit and wanted it to be tried as a preliminary issue. The court deferred a decision feeling that it is a complicated question of law and fact also. It was that order that was challenged by the employer in the C.R.P.No. 649/2014.

5. This Court after elaborately considering the various provisions of the Act felt that there was no mixed question of law and facts involved and that the matter seems to be covered by Employees' State Insurance Act and that the proper forum to be approached is the Employees' State Insurance Court. Accordingly, the C.R.P. was allowed after referring to the provisions of Sections 51, 53, 61 and 75 (3) of the Employees' State Insurance Act, Section 2(8) namely the definition of employment injury and also after referring to the relevant provisions of Employees'

Compensation Act. After having considered all these aspects, this Court felt that proceedings in a Civil Court may be quite ill-advised and misconceived and the proper forum is the authorities under the Employees' State Insurance Act and C.R.P. was accordingly allowed as already mentioned.

6. In the review petition filed by the respondents in C.R.P., it is pointed out that ESI Corporation has rejected the claim of the respondents and therefore, suit is the only remedy.

7. This Court, while disposing of the C.R.P., had specifically referred to Section 75(3) of the Employees' State Insurance Act. In spite of being cautioned about the considerable risk in continuing with the proceedings in the Civil Court, the learned counsel appearing for the review petitioner contended that suit is perfectly maintainable and he does not want to approach the ESI Court.

8. Well, so advised, if the review petitioners are adamant upon that aspect, it is only proper that they take their chance before the court below regarding the maintainability of the suit.

For the above reason, this review petition is allowed and the order already passed is set aside and the C.R.P. is dismissed. The court below may proceed with the same in accordance with law.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge