

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

W.P.No.11041 of 2012

and

M.P.No.1 of 2012

Shalimar Tanning company,
Footwear Division,
C.Unit No.15/1, Kandrampalli Road,
Thuthipet, Ambur - 635811,
rep. by its Managing Partner,
A.Mubeen Ahmed. .. Petitioner

vs.

- 1.Regional Director,
Employees State Insurance Corportion.
- 2.Authorised Officer,
Employees State Insurance Corporation.
- 3.Recovery Officer,
Employees State Insurance Corporation,

All having office at
No.143, Sterling Road, Chennai - 34. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from recovering any amount from the petitioner pursuant to the Recovery Certificate No.C-19-51-00-070138-000-0202 dated 10.02.2012 towards E.S.I. contribution due from F & F Company, 15/1, Kandrampalli Road, Thuthipet, Ambur - 635 811.

For petitioner : Mr.G.Jawaharlal
For respondents : Mr.G.Bharadwaj,
Standing Counsel for ESI

ORDER

Heard the learned counsels appearing on behalf of the parties concerned.

2. At this stage of the hearing of the Writ Petition, the learned counsel appearing on behalf of the respondents, Mr.G.Bharadwaj, had submitted that the petitioner is liable to pay

the amount mentioned in the notice issued by the respondent Corporation, dated 22.02.2012, as the petitioner had purchased the property, from the erstwhile, M/s. F and F Company, situated at SF No.15/1, Kandrampalli Road, Thuthipet, Ambur. The said company had not discharged its liability of paying the Employees' State Insurance contribution, as per the provisions of the Employee's State Insurance Act, 1948. However, the learned counsel appearing on behalf of the respondents had submitted that the petitioner ought to have raised the dispute before the Employee's Insurance Court, by filing an Application, as per Section 75 of Employee's Insurance Act, 1948. The petitioner had not chosen to avail the efficacious alternative remedy available under the Act. It is a settled principle of law that, when an efficacious alternative remedy is available, ordinarily, such a remedy must be availed by the aggrieved party. In support of his contention, the learned counsel appearing for the respondents, has relied on the Judgment of the First Bench of this Court, dated 26.4.2005 made in Writ Appeal No.828 of 2005 [Tuticorin Thermal Power Station Industrial Co-operative Society Ltd., Vs. The Deputy Regional Director etc., & others (D.B.)], reported in 2005 Writ L.R. 332.

3. In view of the submissions made by the learned counsel appearing on behalf of the respondents, and in view of the decision of the First Bench of this Court, reported in 2005 Writ L.R.332 supra, it is noted that the petitioner ought to have raised the issue relating to the notice issued by the respondent Corporation, dated 22.2.2012, before the Employee's Insurance Court, under Section 75 of the Employee's State Insurance Act, 1948.

4. In such circumstances, as an efficacious alternative remedy is available to the petitioner, as stated above, the Writ Petition stands dismissed. No costs. Connected M.P.No.1 of 2012 is closed. However, the petitioner is permitted to make an Application, under Section 75 of the Employee's State Insurance Act, 1948, within one month from today. On such Application being filed, the Employee's Insurance Court would hear the parties concerned and pass appropriate orders on merits, in consonance with the relevant provisions of the Employee's State Insurance Act, 1948.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

asvm

To

1.Regional Director,
Employees State Insurance Corportion,
No.143, Sterling Road, Chennai - 34.

2.Authorised Officer,
Employees State Insurance Corportion,
No.143, Sterling Road, Chennai - 34.

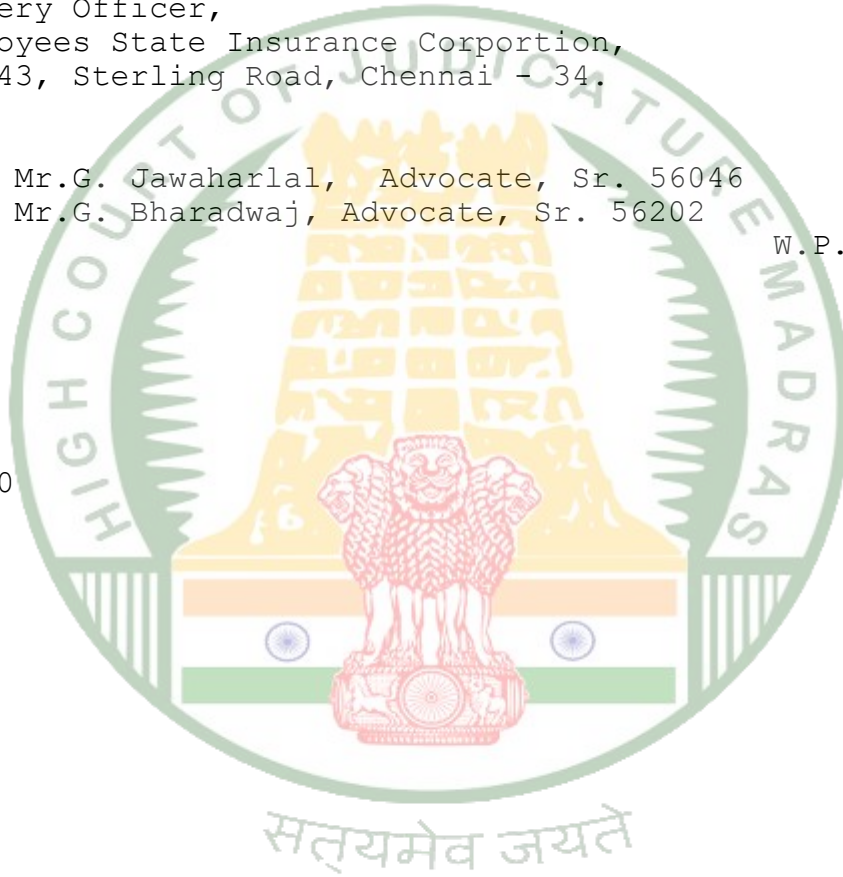
3.Recovery Officer,
Employees State Insurance Corportion,
No.143, Sterling Road, Chennai - 34.

1 cc to Mr.G. Jawaharlal, Advocate, Sr. 56046

1 cc to Mr.G. Bharadwaj, Advocate, Sr. 56202

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