

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 278 OF 1997

Anantbhushan Murlidhar Kanade,
Age 40 years, Occ. Legal Practitioner,
R/o 'Vishal' Bungalow, Behind
Darling Hotel, Kranti Chowk,
Aurangabad.

..Petitioner

Versus

1. The Union of India

2. Assistant Regional Director,
Sub Regional Office,
Employees' State Insurance
Corporation, Panchdeep Bhavan,
Ganesh Peth, Nagpur.

3. The Recovery Officer,
Sub Regional Office,
Employees' State Insurance
Corporation, Panchdeep Bhavan,
Ganesh Peth, Nagpur.

..Respondents

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Advocate for Petitioner : Shri S.M.Godsay h/f Shri V.H.Dighe
Advocate for Respondent 1 : Shri D.G.Nagode

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016

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ORAL JUDGMENT :-

1. The petitioner has assailed the order dated 19.11.1996
passed by respondent No.2 - Assistant Regional Director, Employees'
State Insurance Corporation.

2. This petition was admitted by order dated 24.5.1997 and the impugned order was stayed in terms of prayer clause (D).

3. I have heard Shri Godsay, learned Advocate for the petitioner and Shri Nagode, learned Standing Counsel on behalf of respondent No.1. None appeared for respondents 2 and 3 on 6.10.2016, 13.10.2016 and even today.

4. It appears that the notice of hearing for recovery of an amount of Rs.1953/-, was issued to the petitioner along with the management of the establishment, namely, M/s Orchids Restaurant. The petitioner, who happens to be the husband of the Proprietor of the establishment, had no connection with the business of the establishment. He is a practicing lawyer and merely because he is the husband of the Proprietor, the notice of hearing dated 31.1.1997 was issued to him.

5. Notwithstanding the above, none appeared for the establishment before respondent No.2 for a hearing under the Section 45-A proceedings. No fault can be found on account of the non-appearance of the petitioner since he was not concerned with the said proceedings. However, the non-appearance of the

establishment, despite opportunities cannot be countenanced.

6. The impugned order dated 19.11.1196 is passed against the establishment, but in so far as the recovery of the amount is concerned, the liability was fastened on the petitioner purportedly for being “One of the principal employers”. As such, the impugned order to the extent of fastening the liability on the petitioner herein deserves to be quashed and set aside.

7. Learned Advocate for the petitioner fairly submits that the establishment has paid an amount of Rs.4660/- on 29.4.2005, which includes interest and damages. The receipt executed by the Recovery Inspector of the ESIC, dated 29.4.2005, is placed on record, which is marked as Exhibit “X” for identification.

8. Considering the above, this petition is partly allowed and the impugned order dated 19.11.1196 is quashed and set aside to the extent of the petitioner herein for the reasons recorded above. Needless to state, in the event the respondents have any grievance or recovery to be made against the establishment, this order would not operate as an embargo, inasmuch as, the said establishment, which is said to have been closed down, would be at liberty to raise all contentions as may be available in law.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d