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FA-565-1994
(sr. no.213)
Wednesday, 5.5.2016

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 565 OF 1994

Employees State Insurance Corporation,
ESIC Building, Colaba, Bombay-400 005.

....Appellant

Vs.

M/s. Madhu Art Printery,
63 Evergreen Industrial Estate, Shakti
Mill Lane, Mahalaxmi, Bombay-400 001

.....Respondent

* * * * *

Mr. P.M. Palshikar, Advocate for the appellant.

Coram :- Smt. R.P. SondurBaldota, J.

5th May, 2016.

JUDGMENT :-

1). This appeal preferred by the Employees State Insurance Corporation challenges the order dated 29th August, 1992 passed by the Employees State Insurance Court, Bombay allowing the application filed by the respondent under Section 75 of the Employees State Insurance Act, 1948.

2). The brief statement of facts concerning the appeal is as follows :-

. The respondent is carrying on business of printing, designing and block making. It has its factory and office at Evergreen Industrial Estate,

Shakti Mills Lane, Mahalaxmi, Bombay. The work of pasting of printed material required to be done on the cartons for packing is entrusted by the respondent to various contractors who are engaged by the other printers also. According to the respondent, this work was never done on the premises of the printing press of the respondent and there was no supervision and control over the work of pasting done by the Contractors through their employees. It appears that the Inspector of the appellant visited the premises of the respondent on 10th September, 1980. He inspected the records maintained by the respondent and found that the Accounts showed the payment made to pasting contractor, Mr. Krishna Bhagat for folding of cartons and pasting of the printed material. The workers of the contractors were doing the work in front of the gate outside the premises of the respondent. They were sitting 5 to 6 ft away from the gate of the factory folding and pasting the cartons. At the time of the visit, the contractor was also present and he had informed the Inspector that, he was working for the respondent. On the basis of that information, a demand was made on the respondent for contribution for the workers of the contractor treating them as the employees of the respondent.

3). In the application, only two witnesses were examined. They were the respondent himself and the Inspector of the appellant who had visited the respondent's premises. The respondent state in terms that, printing and block making are the activities done in his printing press and the work of binding and packing is not done. He prints outer covers and its cartons of the powder products. After the printing is done, the cartons are cut and the pasting work is given on contract basis. The workers engaged by the contractor collect the printing material from the premises of the respondent and return the cartons after doing the

pasting work. He deposed that, he engages 2 to 3 contractors and has specifically named them including Krishna Bhagat. According to his evidence, the contractors had their own premises where they carried out the work of pasting. His further evidence is that, they do the work for others also. There is no cross-examination of the respondent on this evidence. There is no material on record to indicate that the Contractor through whom the Inspector received the information i.e. Krishna Bhagat was exclusively working with the respondent. The deposition of the witness of the appellant also indicates the same inference. In his cross-examination, he clearly stated that the Contractor did not tell him that he was solely working for the respondent and he could not say whether the contractor was solely working for the appellant.

4). Mr. Palshikar, the learned Advocate for the appellant submits that, the Court however has not allowed the application of the respondent on the basis that the Contractor was not exclusively working for the respondent. He submits that the application was allowed on the ground that, there was nothing on record to show that the employees who are found doing the work of pasting through Contractor were working either on the premises or outside the premises of the respondent's factory. The submission is meritless since the observation is a reason on the basis of which the inference of the relationship of employer and employee would be drawn. According to the Employees Insurance Court it was the duty of the Corporation to prove satisfactorily that the place where the employees of the Contractor were sitting were premises of the respondent's factory and the appellant had failed to do so. Mr. Palshikar, submits that the Insurance Court has erred in holding that the place where the workers of the Contractors were working i.e. outside the gate of the factory of the respondent was not "precinct" of the

premises of the respondent. He argues that more than proximity to the factory what is required to be seen is the activity undertaken. If the activity is connected to the activity of the employer, the place of activity would be covered by the definition of Section 2(9) of the Employees State Insurance Act. Even if it is a branch office located elsewhere and even if the employee actually working for the establishment has to be transport the goods throughout the country anywhere outside, it would be covered by the definition. He submits that the test is, in fact, of nexus or connection with the work of the establishment. If the employee is doing the work of the establishment, then he ought to be treated as covered by the Act. Although, it is not disputed by the respondent that the workers of the contractors were doing work for him, there is material on record which indicates that they were not exclusively working for the respondent. In that case, Mr. Palshikar submits that it was for the respondent to establish that the contribution on behalf of the workers of the contractors was either being paid by the Contractor himself or by any other establishment for whom the contractor worked. Since the contractors of the employees were sought to be covered by the appellant by collecting information through the Inspector, it was necessary for the Inspector himself to collect the entire information as regards the functioning of the Contractor. Thus, in my opinion, there is no merit in the appeal. Hence, the First Appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)