HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1059 OF 2008

Dated 1-8-2016

Between:

The Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Hyderabad and another.

..Appellant.

And:

M/s.Ashok Leyland Limited, Ductron Casting Unit, Industrial Development Area, Uppal, R.R.District, represented by General Manager and another.

..Respondents.

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JUDGMENT:

This appeal is preferred against order dated 8th September, 2004 in E.I.Case No.46 of 2001 on the file of Industrial Tribunal-I, Hyderabad.

Brief facts leading to this appeal are as follows:

Appellants herein demanded a sum of Rs.1,38,031-40ps as arrears of E.S.I. Contribution for the period from March, 1983 to July, 1986 payable by M/s. Fluid Systems Private Limited from M/s Ashok Leyland Limited, questioning the said demand, 1st respondent herein approached E.I.Court Court contending that they have purchased only immovable property and had not taken business of M/s. Fluid Systems Private Limited and therefore, not liable to pay any contribution of employees of M/s. Fluid Systems Private Limited. Industrial Tribunal Circle-I conducted enquiry during which one witness was examined and eight documents are marked on behalf of M/s.Ashok Leyland Limited and one witness is examined and 11 documents are marked on behalf of Employees State Insurance Corporation and on an overall consideration of oral and documentary evidence, Industrial Tribunal recorded a finding that M/s Ashok Leyland Limited is not liable to pay any contribution to the Employees State Insurance Corporation which was due from M/s. Fluid Systems Private Limited. Questioning the said order, the Employees Insurance Corporation preferred the present appeal.

Heard both sides.

The main contention of advocate for appellants is that the findings of the Industrial Tribunal that M/s.Ashok Leyland Limited is not entitled to pay contribution and that the Employees' State Insurance Act payable by M/s. Fluid Systems Private Limited is not tenable under Section 93 A of the Employees' State Insurance Act.

Advocate for appellants mainly contended that the Industrial Tribunal has not examined provisions of Section 93A of the Employees' State Insurance Act fully, it only read part of Section and recorded a finding, therefore, order of Industrial Tribunal-I, Hyderabad is not sustainable.

On the other hand, advocate for M/s.Ashok Leyland Limited submitted that Industrial Tribunal-I has rightly applied Section 93 of the Employees' State Insurance Act as the first respondent herein has not taken company or business of M/s. Fluid Systems Private Limited and therefore, there is no liability to pay any contribution.

Now the point that would arise for my consideration in this appeal is whether the finding of Employees Insurance Court that the petitioner is not liable to pay contribution under Employees Insurance Act payable by M/s. Fluid Systems Private Limited is sustainable in law in view of Section 93(A) of the Employees' State Insurance Act?

POINT:

As seen from the material, Andhra Pradesh State Financial Corporation, Hyderabad advanced loan to M/s. Fluid Systems Private Limited and when the said M/s. Fluid Systems Private Limited committed default in payment of loan, A.P.State Financial Corporation took over the assets and management of said Company and seized entire building. Thereafter, A.P.State Financial Corporation, sold the property so seized in auction, the same was purchased by M/s Ashok Leyland, Limited for Rs.42.50 lakhs on 9-4-1990 and the property was delivered to them under a panchanama. According to M/s.Ashok Leyland Limited, they only purchased property and they have not taken over business of M/s. Fluid Systems Private Limited and purchased property is being used only as godown to stock the goods of M/s Ashok Leyland Limited. Admittedly, the claim of Employees State Insurance Corporation is under Section 93 A of the Employees' State Insurance Act. According to advocate for appellants, Industrial Tribunal-I has applied the section partly and it has not considered the entire provision. It may be useful to refer Section 93 A and also proviso of the Employees' State Insurance Act.

Section 93A of the said Act reads as follows:

> *"Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:*
>
> *Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."*

From a plain reading of the above provision, it is clear that where a factory or establishment is so transferred, the purchaser and seller shall jointly and severally liable to pay contribution payable under this Act in respect of periods upto the date of such transfer.

Admittedly, the claim in this case is for the period from March, 1983 to July,1986 during which period, M/s. Fluid Systems Private Limited alone conducted business.

Factory is defined in Section 2 (12) of Employees State

Insurance Act, which reads as follows:

> *"2.Definitions.-In this act, unless there is anything repugnant in the subject or context,-*
>
> *(1) xxx*
> *(2) xxx*
> *(3) xxx*
> *(4) xxx*
> *(5) xxx*
> *(6) xxx*
> *(7) xxx*
> *(8) xxx*
> *(9) xxx*
> *(10) xxx*
> *(11) xxx*
>
> *(12) 'factory' means any premises including the precincts thereof-*
>
> *(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or*
>
> *(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (Act No.35 of 1952) or a railway running shed;)*

From a reading of above provision, to attract definition of 'factory' carrying on manufacturing process is a must. One Abdul Gafoor Insurance Inspector (Legal) is examined as witness on behalf of appellants herein who clearly stated in the evidence that they do not know whether State Financial Corporation has sold the land and building only to M/s Ashok Leyland Limited. He also assertively stated that they do not know whether the machinery, raw material, stocks etc., were not sold to M/s.Ashok Ley Land Limited by the State Financial Corporation Limited. One V.M.Chari, Senior Manager of Ashok Leyland Limited who is examined on behalf of that company deposed that they purchased only land and building from State Financial Corporation under

Ex.P.2 and that they do not know even the nature of manufacturing activity carried on by M/s. Fluid Systems Private Limited. He assertively stated that no manufacturing activity of their company has been carried out in the premises purchased under Ex.P.2 and that they are using the same to keep their stocks. He deposed that they are stocking the castings manufactured by them in the premises purchased by them from State Financial Corporation. So, from a perusal of evidence of these two, it is clear that no manufacturing process is carried in the building and premises purchased by Ashok Leyland Limited from State Financial Corporation which was sold for non-payment of dues from M/s. Fluid Systems Private Limited.

Industrial Tribunal-I on a consideration of material, held that section 93 A has no application to the case on hand as there is no direct transfer, sale or gift by M/s. Fluid Systems Private Limited to Ashok Leyland Limited and on that ground held that demand made by Employees' State Insurance Corporation for contribution is not tenable and I do not find any wrong in the findings of Industrial Tribunal and it has rightly applied the provisions of Section 93 of the Employees' State Insurance Act but while extracting the provisions, it only extracted the relevant portion without extracting the entire provision, therefore, the objection of the appellants is not tenable.

For these reasons, I am of the view that the appeal is devoid of merits and accordingly dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 1-8-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs