

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3620 OF 1995

1. Shiv Laminating and Coating
Private limited - a Company
incorporated under the Companies
Act, 1956 having its registered
office at E-35, Chikhalthana,
Industrial Area, Aurangabad.

2. Brij Mohan Shamsundar Khanna
of Bombay, Indian Inhabitant
residing at 11B, Manek / 2D,
Ruparel Marg, Bombay 400 006.

..Petitioners

VERSUS

1. Union of India

2. The joint Regional Director
of the Employees State
Insurance Corporation,
Sub-Regional Office,
Panchadeep Bhavan,
Ganeshpeth, Nagpur 440018.

3. The Dy.Regional Director
of the Employees State
Insurance Corporation,
Sub-Regional Office,
Panchadeep Bhavan,
Ganeshpeth, Nagpur 440018.

4. Manager,
Union Bank of India
Bombay, Samachar Marg Branch,
66/80, Bombay Samachar Marg,
Fort, Bombay 400 023.

..Respondents

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Advocate for Petitioner : Smt. C.S.Deshmukh
Advocate for Respondent 1 : Shri Bhushan B. Kulkarni
Respondents 2 to 4 : Served

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 19, 2017

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ORAL JUDGMENT:-

1. The petitioners are aggrieved by the orders dated 11.10.1994 and 16.12.1994, as well as the order of the Recovery Officer, ESIC, Nagpur dated 11.7.1995.

2. Ad-interim relief in terms of prayer clause (EE) was granted by this Court on 3.8.1995 and the recovery order dated 11.7.1995 was stayed.

3. Consequent to the above, this Court by order dated 12.3.1997, admitted this petition and directed the petitioners to deposit the assessed amount of Rs.54,395/- in installments. The said amount has been deposited in this Court by installments.

4. By order dated 11.3.2004 passed on Civil Application No.7053 of 2002, the respondent / ESIC authorities were permitted to withdraw the deposited amount by submitting a bank guarantee of Rs.55,000/-.

5. The order dated 11.10.1994 is a notice issued by the ESIC Nagpur directing the petitioners to show cause why damages to the

extent of the percentage mentioned in the notice should not be recovered from them. The said amount of damages was Rs.17,889.80. The impugned order dated 16.12.1994 was an order under Section 85B of the ESIC Act levying damages totalling an amount of Rs.36,000/-. By the impugned order dated 11.7.1995, the total amount recoverable from the petitioners was Rs.54,395/- which amount has already been recovered under the directions of this Court.

6. The grounds for challenge set out in this petition indicate that the petitioners were rendered a sick industry. Assets of the company at its establishment at MIDC Chikalathana Aurangabad were taken into possession by the State Industrial and State Investment Corporation (SICOM) in August 1990. Till August 1993, the assets continued to be in the possession of SICOM. Though advertisement was published by the petitioners in July 1991 in Free Press Journal and Nav Shakti, none of the statutory creditors appeared before the Honourable High Court. Consequentially, the order of sanction of the scheme of compromise and reconstruction of the company was passed on 15.7.1993 by this Court.

7. I find from the order of this Court dated 15.7.1993 that the petitioner has given a personal guarantee that in the event of the company making a default in payment of amounts to the statutory

and unsecured creditors, it shall pay the same, in default, to such creditors.

8. The issue as to whether the contribution and the damages are liable to be recovered from the petitioners is thus a matter of adjudication. Grievance of the petitioner is that no such adjudication has taken place, despite the petitioners having stated in their reply to the authorities dated 20.10.1994 that the amounts mentioned in the recovery notice ought not to be recovered from the petitioners. Such disputed questions, as raised in this petition, cannot be decided in the supervisory and/or revisional jurisdiction of this Court.

9. Apparently, the amount that is sought to be recovered is under Section 85B of the ESIC Act.

10. Considering the above, I find that since the amount of damages has already been recovered, the interest on the damages from July 1995 till the amount is withdrawn by the authorities in March 2004, needs to be deposited while giving an opportunity of rehearing to the petitioner before respondent No.2.

11. Learned Advocate for the respondents points out from paragraph No.14 of the affidavit in reply dated 11.9.1995, filed by

the Manager, Local Office, ESIC, Aurangabad, vide which, it is specifically stated that a statutory remedy is available to the petitioner of approaching the ESIC Court at Aurangabad, which is the Industrial Court constituted under Section 74 and can seek relief by putting forth its grievance under Section 75.

12. In the light of the above, this petition is disposed off with the following directions:-

(A) From the amount that is lying in this Court, Rs.36,700/- towards simple interest @ 7.5% per annum on the amount of Rs.54,395/- from July 1995 till March 2004 shall be withdrawn by the respondents / authorities and shall be apportioned with reference to their claim against the petitioners set out in the impugned notice / orders.

(B) Having withdrawn the amount of Rs.54,395/- and in the light of the withdrawal of the interest as above, there shall be no further claim as regards interest on the said amount by the respondent with reference to the impugned notice / orders.

(C) The remainder amount in this Court shall be withdrawn by the petitioners by making a proper application, supported with the authorization and identity proof of the person representing the petitioner and upon being identified by the learned Advocate for the petitioner. Said amount then can be withdrawn without conditions.

(D) Consequent to the above, the respondents are released from the Bank guarantee furnished under the order of this Court dated 11.3.2004.

(E) The petitioners shall then be at liberty to resort to appropriate proceedings before the ESIC Court at Aurangabad, in relation to the impugned orders dated 11.10.1994, 16.12.1994 and 11.7.1995, within eight weeks from today. The time spent by the petitioners in this Court shall be a good ground for entertaining the proceedings which would be filed by the petitioners in the light of paragraph No.14 of the affidavit of the respondent.

(F) The ESIC Court shall deal with the said proceedings on their own merits and in the event the petitioners succeed in making out a case for refund, the respondents, subject to further litigation, will then be obliged to return the said amount as may be assessed by the ESIC Court.

13. With the above observations, this petition is disposed off and Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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