



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1283 of 2016

1.The E.S.I. Corporation, Tirunelveli,
Represented by Joint Regional Director
2.The Recovery Officer,
E.S.I.Corporation,
Tirunelveli. ... Appellants/Respondents
Vs.
S.Jameela Beevi ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, to set aside the order dated 31.03.2015, passed by the ESI Court (I.e Labour Court), Tirunelveli in ESI OP No.18 of 2012, reinstate the contribution order dated 08.12.2006 of the ESI Corporation and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellants.

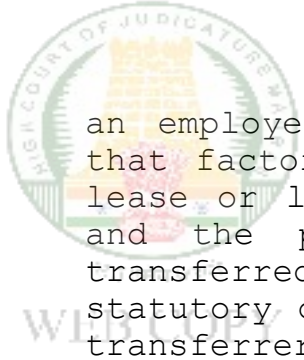
For Appellants : Mr.P.Ganapathisamy
For Respondent : Mr.M.E.Ilango

JUDGMENT

Heard the learned counsel on either side.

2.The respondent herein is the lessee of one Sakthi Madha Cashew Company. It is an Establishment covered by the provisions of the Employees' State Insurance Act, 1948. On 08.12.2016, an order was passed under Section 45(A) of the Employees' State Insurance Act levying contribution for a sum of Rs.1,23,339/-. Instead of proceeding against the property of the establishment to enforce Order under Section 45(A) of the Employees' State Insurance Act, the authority chose to issue summons to the lessee to attach her personal property. It was set aside by the Employees' State Insurance Court by an order dated 31.03.2015 in E.S.I.O.P.No.18 of 2012. It is this order that is challenged in this Appeal.

3.While granting relief to the respondent herein, the Labour Court also proceeded to set aside the order under Section 45(A) of the Employees' State Insurance Act in so far as it proposed to proceed against the respondent's lease hold rights. This is clearly contrary to Section 93 of the Employees' State Insurance Act. The proviso to the said provision states that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. The said provision further states that 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 statutory dues. When such joint liability is fastened both on the transferrer as well as the transferee, the respondent herein cannot escape from the liability. The only protection is her liability will be limited to the value of the transfer. In other words, there can be protection only for her personal property. In fact, the respondent herein questioned only the issuance of summons to her to attach her personal properties. An order under Section 45(A) of the Employees' State Insurance Act was not really under challenge. While so, the ESI Court chose to set aside the order under Section 45(A) of the Employees' State Insurance Act.

4.The order dated 31.03.2015, on the file of the Employees' State Insurance Court (I.e Labour Court), Tirunelveli, made in ESI OP.No.18 of 2012 is set aside. However, it is made clear that the personal property of the respondent shall not be proceed against.

5.With this clarification, this Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Presiding Officer, The ESI Court (I.e Labour Court),
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1cc to Mr.M.E.ILANGO,Advocate,SR. 93961

+1cc to Mr.P.GANAPATHISAMY,Advocate,SR. 94213

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