



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .Nos.417 and 451 of 2016
and
C.M.P. (MD) .Nos.5635 and 5941 of 2016

A.Mohamad Nowfal ... Appellant in C.M.A.No.417 of 2016

Abdul Salam ... Appellant in C.M.A.No.451 of 2016

Vs.

1. Employees' State Insurance Corporation,
Tirunelveli,
Represented by its Joint Regional Director.
2. The Recovery Officer,
Employees' State Insurance Corporation,
Tirunelveli. ... Respondents in Both C.M.A

Common Prayer:- Civil Miscellaneous Appeals are filed under Section 82(2) of the Employees' State Insurance Act, 1948, to set aside the order dated 31.03.2015 and made ready on 15.04.2015, passed by the Labour Court, Tirunelveli in E.S.I.O.P.Nos.17 and 11 of 2012.

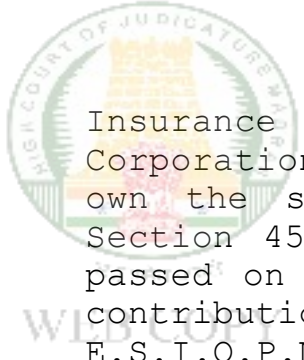
For Appellant : Mr.M.E.Ilango for both C.M.A

For Respondents : Mr.P.Ganapathisamy in
C.M.A. (MD) .No.417 of 2016

For Respondents : Mr.K.C.Ramalingam in
C.M.A. (MD) .No.451 of 2016

COMMON JUDGMENT

The appellant in C.M.A.(MD).No.417 of 2016, A.Mohamad Nowfal, is the purchaser of M/s. Pooja Cashew Industries, originally owned by one Jeyakumar. The purchase was made on 21.03.2005. It was already a covered Establishment. Unfortunately, the said Jeya Kumar, did not intimate the purchaser/the present appellant about the pendency of proceedings under the Employees' State



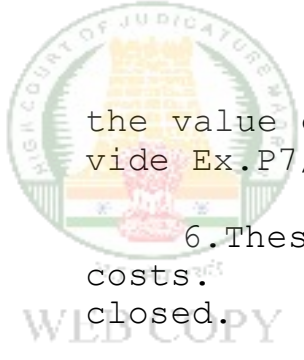
Insurance Act. Therefore, the Employees' State Insurance Corporation proceeded in the manner as if Jeyakumar continued to own the said M/s. Pooja Cashew Industries. An order under Section 45 (A) of the Employees' State Insurance Act came to be passed on 22.12.2005 and levying a sum of Rs.2,03,910/- towards contribution. This was questioned by Mohamad Nowfal, by filing E.S.I.O.P.No.17 of 2012, on the file of the Labour Court, Tirunelveli. In the mean while, he had leased out the factory in favour of his father Abdula Salam. The Lessee filed E.S.I.O.P.No.11 of 2012, questioning the order passed under Section 45(A) of the Employees' State Insurance Act.

2.Both the petitions were heard together.

3.On the side of the Establishment, as many as 18 documents were marked. On the side of the Employees' State Insurance Corporation nine documents were marked. They also adduced oral evidence. Though the petitioners contended that what was purchased by them was only the land, building and machinery and not the business as such, a mere look at the terms of the sale deed dated 21.03.2005, marked as Ex.P7/R5 would establish that the Establishment run by Jeyakumar was purchased as such and that thereafter it is being run in the name of A.S.Cashew Exporters. This is clearly a case of transfer of an Establishment. Therefore, the mere factum of purchase by one of the appellants herein will not make any difference to the coverage of the Establishment. Once an Establishment is covered by the provisions of Employees' State Insurance Act, it will continue to be covered.

4.Section 93(A) of the Employees' State Insurance Act, 1948, states that the transferee will continue to be liable. But his liability shall be limited to the value of the assets obtained by him by such transfer. In the present case, the Labour Court has directed that Employees' State Insurance Corporation shall first proceed against the property of erstwhile Pooja Cashew Industries and if it is not sufficient to meet the dues, then only it shall proceed against the appellants/petitioners. This Court is of the view that this is incorrect. Since the appellants/petitioners are only transferees, the Employees' State Insurance Corporation cannot proceed against the personal properties of the appellants/petitioners for enforcing the dues levied against the Pooja Cashew Industries.

5.These appeals were admitted on the ground as to whether the impugned order made in E.S.I.O.P.Nos.11 and 12 of 2017 is contrary to Section 93(A) of the Employees' State Insurance Act. This substantial question of law that arose for determination is answered in favour of the appellants. The order dated 31.03.2015 is set aside to the extent that the Employees' State Insurance Corporation shall not proceed against the appellants/petitioners in their individual capacity and that they have to confine only to



the value of the assets obtained by way of transfer from Jeyakumar vide Ex.P7/R5.

6. These Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Labour Court (Employees' State Insurance Court or ESI Court), Tirunelveli.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.P.Ganapathisamy , Advocate in SR No. 92510
+ 1 cc TO Mr.M.Elango , Advocate in SR No. 92351

tsg/lis
AE/KKR/SAR3/17.04.2018/3P/6C

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