



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.588 of 2015

and

M.P. (MD) .No.1 of 2015

J.S.Ramamurthy

... Appellant/Petitioner

Vs.

The Recovery Officer,
Employees' State Insurance Corporation,
No.143, Sterling Road,
Chennai 84.

...Respondent/Respondent

PRAYER : This Civil Miscellaneous Appeal is filed under Section 82 of the Employees' State Insurance Act, 1948, against the Judgment and decree in E.S.I.O.P.No.76 of 2001, dated 19.12.2012 on the file of the Presiding Officer/District Judge, Labour Court, Tiruchirapalli.

For Appellant	: Mr.M.Subash Babu
For Respondent	: Mr.K.C.Ramalingam
	Standing Counsel

JUDGMENT

The establishment has filed this appeal questioning the order dated 19.12.2012 dismissing E.S.I.O.P.No.76 of 2001, filed by the appellant questioning the recovery proceedings. A mere look at the documents marked on the side of the Transport Corporation would show that an order was passed under Section 45A of the Employees' State Insurance Act, 1948 , as early as on 28.05.1986. This order was marked as Ex.R.4 before the Employees' Insurance Court. When recovery proceedings were initiated the establishment at last woke up and filed E.S.I.O.P.No.76 of 2001 before the Labour Court at Thiruchirapalli.

2. The respondent herein filed a detailed counter. In their objection a specific ground was taken that the petition was hit by limitation. It was specifically pleaded that the order under Section 45-A was passed in the year 1986 and therefore the challenge must have been mounted within three years. Since the appellant failed to do so, it is not open to the appellant to impugn the recovery proceedings. It is true that in the petition, the appellant had also sought a declaration that the order under Section 45-A is illegal. Such clever wording of prayer cannot save the appellant from the mischief of limitation. The fact ~~seems to be that the~~ appellant did not approach the Court within three years from the date when the cause of action arose. The Employees' Insurance Court was therefore right in non suiting the

appellant on the ground of maintainability as well as limitation. When there is no challenge to the order under Section 45-A of ESI Act, there cannot be a challenge to the consequential proceedings taken under Section 45(3) of ESA Act.

3. In this appeal no substantial question of law has arisen for determination. Accordingly, the appeal is dismissed. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Presiding Officer/District Judge,
Labour Court,
Tiruchirapalli.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.Subash Babu, Advocate SR.No. 85837

C.M.A. (MD) .No.588 of 2015
07.11.2017

kmi

JM/JC/SAR 4/28.11.2017/2P/4C