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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) NO.219 OF 2018

M/s Voslloh Beekay Castings Ltd. 25 And 28 Light Industrial Area, Bhilai District Durg Chhattisgarh Through, Mahesh Kumar, S/o Shri Ramdas Nagev, Aged About 45 Years, General Manager, M/s Voslloh Beekay Castings Ltd., 25 And 28 Light Industrial Area, Bhilai District Durg Chhattisgarh.

…Petitioner(s)

Versus

1. Employees State Insurance Corporation Regional Office, 107 Ram Nagar, Kota, Raipur Chhattisgarh Through Regional Director, Employees State Insurance Corporation, Regional Office,107 Ram Nagar, Kota, Raipur Chhattisgarh.
2. Chief Manager, State Bank Of India, S.M.E. Branch Bhilai, State Bank Premises, Sector-1, Bhilai, District Durg Chhattisgarh. 490001.

… Respondent(s)

For Petitioner	:	Shri Kishore Bhaduri and Shri Chandresh Shrivastava, Advocates.
For Respondent No.1	:	Shri Sudip Johri, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.10.2018

1. Challenge in this petition is to the order dated 27.09.2018 (Annexure P/1) whereby the petitioner has been intimated from the respondent Bank so far as a garnishee order having been issued by the respondent No.1 recovering an amount of Rs.70,95,602/-against demand of Rs.1,88,27,604/-.

2. The petitioner had on an earlier occasion filed an appeal which was registered as Misc. Appeal No.24 of 2015 which stood disposed of on 16.07.2018. While disposing of the writ petition, this court had made following observations:

> "9. We find that the appellant raised a dispute. A reply was filed by the Corporation, the Insurance Court framed issues and after allowing the parties to lead oral and documentary evidence recording various finding on the merits of the case

> were rewarded. Having held that without complying with pre-deposit requirements and without there being any waiver or reduction, the Insurance Court could not usurp the jurisdiction to decide the dispute on merits, the entire exercise undertaken by the Insurance Court is without jurisdiction and authority of law which cannot be allowed to remain operative. The Insurance Court had no option but to dismiss the application as not maintainable or to allow the employer to apply for waiver or reduction, decide the same and then pass such order as would be permissible under the law.
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> 10. As an upshot of our discussion, on the first substantial question of law, we have to hold that the application filed by the appellant before the State Insurance Court application under Section 75 of the ESI Act, 1948 was not maintainable for want of per-deposit of 50% of the demand or waiver or reduction.
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> 11. Though, other substantial question of law has also been framed by the Court, three in number, which essentially deals with the merits of the case, we are not inclined to answer those questions as it would be futile exercise once we hold that the Court had no jurisdiction to take up the matter for decision on merits on the claim of the parties. It will be fair to both the parties that we set aside the impugned order and leave the appellant to either comply with provision of pre-deposit or apply for waiver or reduction before the Court. It will be open for the respondent Corporation to take its own stand on such matter by contesting the same. The merits would be examined only after appropriate orders are passed as required under Sub-section (2-B) of Section 75 of the ESI Act, 1948."

3. Inspite of High Court having disposed of the said Appeal on 16.07.2018, the respondents did not take any prompt steps to move appropriate application before the concerned ESI Court. Finally, the respondent No.1 initiated steps for recovering the amount assessed against the petitioner and it was only thereafter that the petitioner had on 28.09.2018 moved an appropriate application before the ESI Court seeking for reconsideration/exemption from making any deposit.

4. While challenging the assessment, prima facie perusal of record shows that after disposal of the Appeal of the petitioner on 16.07.2018, the petitioner took about 2 and ½ months time to move an application seeking exemption from making any pre-deposit before the ESI Court. This apparently speaks volume so far as conduct of the petitioner is concerned. Nonetheless, it was argued that the respondents meanwhile have by way of issuance of garnishee order recovered more than Rs. 78 Lakhs from the bank account of the petitioner.

5. Given the situation that more than about 78 Lakhs have already been recovered by the respondent No.1-Corporation, this court is of the opinion that ends of justice would meet now if the ESI Court is directed to proceed and decide the application which the petitioner has moved, on its own merit. It is made clear that any further steps for recovery of any amount from the petitioner shall be only subject to outcome of the proceedings drawn by the ESI Court.

6. With the aforesaid observations, the writ petition stands disposed of. It is also made clear that recovery which has already made would also be subject to outcome of the proceedings drawn by the ESI Court.

Sd/-
(P. Sam Koshy
Judge

inder