

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1116 of 2014 and
MP.No.1 of 2014

1. Employees State Insurance Corporation,
Rep. by its Regional Director,
143, Sterling Road, Chennai - 600 034.
2. Recovery Officer,
Office of the Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai - 600 034. Appellants/ Respondent

-Vs-

Mogrelia Respondent/ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.19032 of 2009 dated 30.07.2013.

WP.No.19032/09 : Writ petition filed under Article 226 of the constitution of India praying this court for issuance of Writ of Certiorari to call for the records pertaining to the Notice bearing No.TN/RECY/45 (G) - 51 - 8567 - 18 dt 31.3.2009 issued by the 2nd respondent herein and quash the said notice in so far as it relates to the petitioner.

For Appellants : Mr.SP.Srinivasan

For Respondent : Mr.A.R.Gokulnath

J U D G M E N T

[Judgment of the Court was made by K.K. SASIDHARAN, J.]

The recovery proceedings initiated by the Employees State Insurance Corporation (hereinafter referred to as "ESIC") to recover the arrears of contribution from the respondent was quashed by the learned single Judge on the ground of limitation. The order is under challenge at the instance of the Employees State Insurance Corporation.

2. The respondent was running a Garment Export Unit by name Zero Garments Private Limited, situated at C3, Industrial Estate, Ambattur, Chennai. The industry was covered by the Employees State Insurance Act. Since contribution was not paid, ESIC passed an order under Section 45-A of the ESI Act. The order was challenged before the ESI Court in EIOP No.105 of 1987. The original petition was dismissed by order dated 5 January 2013. Thereafter, writ petition was filed by the respondent challenging the recovery certificate, dated 10 May 1993. The writ petition was dismissed for default by order dated 13 February 2001.

3. The Recovery Officer by order dated 31 March 2009 called upon the respondent to pay the arrears with interest. The notice was challenged before the Writ Court in W.P.No.19032 of 2009. The learned single Judge was of the view that recovery action taken after a period of 18 years is barred by limitation under Rule 42(1) and (2) of the Tamil Nadu State Employees Insurance Court Rules, 1951.

4. The learned counsel for the appellants contended that Rule 42(1) and (2) have no application to the facts of the case. According to the learned counsel, there was no action taken by the appellant to execute the decree passed by the ESI Court and as such, the learned single Judge was not correct in placing reliance on Rule 42(1) and (2) to quash the recovery notice.

5. The learned counsel for the respondent contended that the ESI Court passed an order dated 5 January 1993. The decree passed by the ESI Court shall be deemed to be a decree passed in a civil suit by the Civil Court. Since the decree would operate as a decree in the cross appeal, the Recovery Officer ought to have executed the decree within the period of limitation. Since the decree was sought to be executed by the Recovery Officer after the period of limitation, the learned single Judge was correct in quashing the recovery proceedings.

6. The statutory authority under the ESI Act determined the contribution payable by the respondent. The order under Section 45-A determining the liability was passed on 8 September 1987. The statutory order was challenged by the respondent in EIOP No.105 of 1987. The original petition was dismissed by the ESI Court by order dated 5 January 1993. The order has become final.

7. The recovery action taken by the Recovery Officer of the ESI Corporation was challenged in W.P.No.11497 of 1993. The writ petition was dismissed for default by order dated 13 February 2001. Thereafter, the Recovery Officer issued notice on 17 November 2004, calling upon the respondent to clear the entire arrears. There was no response. The Recovery Officer once

again issued a notice dated 31 March 2009 calling upon the respondent to discharge the entire arrears with statutory interest. The said order was challenged before the Writ Court. The learned single Judge quoted a Rule applicable for execution of the decree passed by the ESI Court and quashed the Recovery Notice.

8. The only question that arises for consideration is as to whether the learned Judge was correct in the finding that recovery action is barred in case action is not taken within the period of limitation prescribed under Rule 42(1) and (2) of the Tamil Nadu State Employees Insurance Court Rule, 1951.

9. The learned single Judge proceeded as if the decree was passed in a proceeding initiated by the ESI Corporation. The proceedings in W.P.No.11497 of 1993 was initiated only by the respondent. The respondent challenged the order passed under Section 45-A of the ESI Act before the ESI Court. The ESI Court by way of a detailed order dismissed the original petition. There was no appeal preferred against the said order. The challenge made to the order under Section 45-A of the ESI Act has become final. The subsequent proceedings were all taken only for enforcement of the order under Section 45-A of the ESI Act.

10. There is no dispute that the order passed by the ESI Court after adjudication under Chapter VI of the ESI Act, 1948 shall be enforced, as if it were a decree passed by the Civil Court. The fact that the order passed by the ESI Court is given a statutory flavour by declaring it as a decree passed by a Civil Court would not prevent the Recovery Officer from initiating recovery proceedings de hors the decree.

11. The proceedings before the ESI Court in EIOP No.105 of 1987 was not the one initiated by ESI Corporation. It was an independent proceedings initiated by the respondent challenging the order under Section 45-A of the ESI Act. Therefore, there was no executable decree granted in favour of the appellant. The ESI Court dismissed the claim made by the respondent and confirmed the order under Section 45-A of the ESI Act. Even if the contention taken by the respondent to the effect that the decree granted in EIOP No.105 of 1987 would operate as a decree in a cross suit enabling the Recovery Officer to execute the decree, still it cannot be said that the Recovery Officer is not legally entitled to initiate independent recovery proceedings to enforce the order issued under Section 45-A of the ESI Act.

12. There is no period of limitation to enforce the order under Section 45-A of the ESI Act. The limitation is only for executing the order passed by the ESI Court, which is given a

statutory flavour by treating it as a civil court decree. The rule quoted by the learned single Judge would come into operation only in case the decree sought to be executed was passed by ESI Court.

13. The substantive order passed under Section 45-A of the ESI Act has become final. The subsequent recovery proceedings initiated by the Recovery Officer has nothing to do with the order dated 5 January 1993 in EIOP No.105 of 1987 dismissing the petition filed against the order under Section 45-A of the Act. We are therefore of the view that the learned single Judge was not correct in quashing the recovery proceedings initiated by the ESI Corporation.

14. The order dated 30 July 2013 is set aside. The writ petition in W.P.No.19032 of 2009 is dismissed.

15. The intra court appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To,

1.The Regional Director,
Employees State Insurance Corporation,
Rep. by its Regional Director,
143, Sterling Road, Chennai - 600 034.

2.The Recovery Officer,
Office of the Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai - 600 034.

+1cc to Mr. A.R.Gokulnath, Advocate, S.R.No.16579

+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No.16812

W.A No.1116 of 2014

GJ(CO)
RRK(16/04/2018)