



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

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THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No. 418 of 2015

and

M.P (MD) No. 1 of 2015

R. Alagendran
S/o Rajarathinasamy Nadar,
40/95 New Avadi Road,
New M.N. Artho Hospital,
Kilpauk,
Chennai - 600 010.

... Petitioner

Vs.

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

2. O. Homerial
2/154, Nedumpra Garden Road,
Vellicode,
Mulagumudu Post,
Kanyakumari District - 629 167.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent dated 03.11.2014 in C.P.No.98 of 2013 on the file of the ESI Court (Labour Court) Tirunelveli and quash the same.

For Petitioner	: Mr.M.Kamalanathan
For Respondents	: Mr.S.Kumar for R2
	R1 Court

ORDER

The second respondent herein was appointed as 'Supervisor' in Alagendran Exports Limited on 08.12.1998. The second respondent herein was subsequently asked to work as Manager. The Company became defunct. But according to the learned counsel for the petitioner herein, the second respondent was terminated on 02.08.1999. Aggrieved by the same, I.D.No.42 of 2000 was filed by the second respondent before the Labour Court, Tirunelveli. In



the said I.D, the writ petitioner herein was shown as first respondent. However, it was described that the petitioner was Chairman of Alegendran Export Limited. One Krishnamoorthy was shown as second respondent in his capacity as Manager. The Labour Court by award dated 26.05.2009 allowed the I.D. The termination of the second respondent herein was set aside. The second respondent was directed to be reinstated with continuity of service and back-wages. The said award was questioned by the petitioner herein in W.P(MD)No.8728 of 2009. By order dated 28.02.2014, the writ petition was allowed as prayed for. The award passed by the Labour Court in I.D.No.42 of 2000 was set aside. In the meanwhile, the second respondent herein filed C.P.No.98 of 2013 before the Labour Court, Tirunelveli. The said C.P. was allowed and the petitioner herein was directed to pay a sum of Rs.3,80,750/-. The said order is under challenge in this writ petition.

2.Heard the learned counsel appearing on either side.

3.It is seen that the claim petition filed under Section 33-C (2) was to enforce the award dated 26.05.2009 in I.D.No.42 of 2000. The stand of the employee was that the said award directing his reinstatement was challenged in W.P(MD)No.8728 of 2009 and in that, an application filed under Section 17(b) of the I.D Act, an order was passed on 21.12.2012 in his favour. Since the said order was not complied with, the claim petition came to be filed.

4.The impugned order has to be quashed on two short grounds. Firstly, the writ petitioner herein was only the Chairman of the Company, which was the employer. The order of appointment dated 08.12.1998 is enclosed in the typed set of papers. The learned counsel for the petitioner would point out that the petitioner herein was arrayed as a respondent and described only in his official corporate capacity as Chairman of the employer. It is a settled principle of law that the limited company is an independent entity. If the limited company is liable in law to enforce the said liability, proceedings have to be taken only against the company. The Director or Chairman cannot be made vicariously liable, unless law specifically provides therefor. In this case, the employer has not even been shown as a party in the I.D. More than anything else when the award made in I.D.No.42/2000 itself was set aside in W.P(MD)No.8728 of 2009 on 28.02.2014, the claim petition will not lie also. Of course, it is true that the claim petition was filed during the pendency of the said writ proceeding. But then the Labour Court ought to have taken note of the passing of the final order in the writ proceeding. What the Labour Court failed to do so, this Court will have to do taking note of the fact that the award itself has been set aside and the order made in the claim petition also will have to be necessarily set aside.



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5. For the above reasons, this writ petition stands allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
ESI Court (Labour Court),
Tirunelveli.

+ 1 cc TO Mr.S.Kumar , Advocate in SR No. 52779
+ 1 cc TO Mr.M.Kamalanathan , Advocate in SR No. 52274

skn
AE/SKN RSK/SAR2/31.05.2018/3P/4C

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