IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

352 **FAO No. 1727 of 1993 (O&M)**
Date of Decision : 20.2.2018

Ravinder Kumar **....Appellant**

VS

The Employees State Insurance Corporation **....Respondent**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rajesh Goyal, Advocate
for the appellant.

Mr. Vikas Suri, Senior Standing Counsel
for the respondent.

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AJAY TEWARI, J.(Oral)

This appeal has been filed against the judgment of the ESI Court dismissing an application under Section 75 (1)(G) of the Employees State Insurance Act filed by the appellant. The necessary facts are that one partnership firm M/s R.K.Banta Manufacturing Company, Moga was engaged in manufacturing of glass balls. The survey was conducted on 15.2.1985 and it was found that there were 13 employees working with the aid of an electric power. Consequently, notices were issued to the person who was Incharge of the factory, one Surinder Pal Goel and ultimately contribution of Rs. 9952.80/- was determined. The appellant challenged that determination. It would be interesting to notice how he had described himself in the application viz. Ravinder Kumar s/o Sh. Mohan Lal, R/o House No. 695, near old Police Station, Moga. Determination was made and it was held that M/s

R.K.Banta Manufacturing Company, Moga was liable to pay the amount through Surinder Pal Goel. The case of the appellant was that in fact on 15.3.1984 the entire goods and machinery etc. of M/s R.K.Banta Manufacturing Company, Moga had been attached in a civil suit filed by a lender and the same was given on superdari to Surinder Pal Goel and as a matter of fact all notices were also issued to Surinder Pal Goel and therefore, the liability could not be foisted upon the firm. As per him, after illegally foisting the liability on the firm the recovery was being sought to be made from him. It is noteworthy that no evidence was placed on the file regarding attachment or superdari. It was in these circumstances that the ESI Court held that the liability to pay the insurance dues was of M/s R.K.Manufacturing Company and dismissed the application. Learned counsel has argued that once the notices were being sent to Surinder Pal Goel then under Section 2(17) of the Employees Insurance Corporation Act that person was the Principal Employer and therefore, the order of determination against M/s R.K.Manufacturing Company and the recovery sought to be made from the appellant was illegal. He has relied upon the judgment of this Court in the matter titled as "***S. Gurdial Singh and others vs. The Regional Diretor, Employees State Insurance Corporation and others 1974 AIR (Punjab) 33".*** Before proceeding further it would be appropriate to analyze that case. In that case Hindustan Embroidery Mills Private Limited was the owner of the factory. The recovery of contribution was sought to be made from those appellants who were the Chairman, Managing Director and Directors of that company. It was in those circumstances that this Court held as follows :-

"5. From these definitions, it is quite clear that the petitioners are not, covered by the definitions of 'principal.' 'employer' or 'occupier'. The owner of the factory is the Company, namely, the Hindustan Embroidery Mills Private Limited, Chheharta (Amritsar). Inder Singh was appointed the Manager of the Company for the purpose of the Factories Act and he was, therefore, the occupier of the Factory for all purposes.) The petitioners cannot be said to be the persons who have ultimate control over the affairs of the factory. That control vests in the Company. It has not been shown that the affairs of the factory had been or are entrusted to any of the petitioners. The liability for the payment of contributions to the Employees State Insurance Corporation is that of the principal employer under Section 40 of the Act. As the petitioners cannot be termed as 'principal employer', no recovery can be made from them."

Learned counsel for the respondent has argued that in the first place the appellant was not entitled to file an application in his individual capacity. Once the determination was made against M/s R.K.Banta Manufacturing Company, Moga, if the appellant wanted to challenge the same he could not have challenged the same in his capacity of partner and the mere fact that he described himself as partner in Para 1 of the application would not cure this defect. The second argument is that no evidence was placed on the record of the E.S.I. Court about either the attachment or sapurdari and therefore, the respondents were fully justified in arriving at the conclusion that the premises were owned by M/s R.K.Banta Manufacturing Company, Moga and once that was so then Surinder Pal Goel (who was also otherwise a partner of the M/s R.K.Banta Manufacturing Company, Moga) was rightly treated as a Managing Agent. In his submission the definition of Principal employer is an inclusive definition because though the primary liability to pay the insurance dues is of the owner of the factory and even a Manager can be treated to be an occupier of the factory it is not the intention of the law to foist liability on an agent of the real owner while exempting the real owner from dues which rightfully are his to discharge. I am in agreement with the argument of counsel for the respondent. The Judgment cited by the learned counsel for the appellant would not be applicable because that was a case of private limited company. It is trite to say that a company has a different juristic identity from its Directors while a partnership firm is an amalgam of its partners.

The appeals stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

20.2.2018 **(AJAY TEWARI)**
anuradha **JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No