IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.2320 of 1996 (O&M)
Date of Decision : 27.03.2018

Employees' State Insurance Corporation
...... Appellant

Versus

M/s GDPA Industries and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. H.S.Bhatia, Advocate for the appellant.

Mr. C.B.Goel, Advocate for the respondents.

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the Employees State Insurance Court, Jalandhar allowing an application under Section 75 read with Section 76 of the Employees Insurance Act, 1948 (for short the 'Act') filed by the respondents.

The brief facts are that there was a firm called M/s Goverdhan Dass P.A. against whom there were dues of about Rs.11,890/- as damages on account of delayed payment of contribution for the period from February 1981 to December 1981. The case of the respondents before the Employees' State Insurance Court was that all dues were of the firm M/s Goverdhan Dass P.A. but that firm was dissolved on 31.12.1984 and a new firm in the name of M/s GDPA Industries had come into existence on the very next date i.e. 01.01.1985. It was thus period that no liability could be foisted upon the present respondents. In the reply the stand of the appellant was that the alleged new firm had taken over the assets and liabilities of the previous firm and further that respondent No.2 was the principal employer in the previous firm as well as in the new firm. The Court, however, held that the successor firm was not bound to pay the liabilities of the previous firm and consequently allowed the application.

Learned counsel for the appellant has argued that in view of the fact set out in the reply and in view of Section 93-A of the Act it is clear that the judgment of the ESI Court is flawed. Section 93-A of the Act is to the following effect :-

> *"**93-A. Liability in case of transfer of establishment.***
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> *Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:*
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> *Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."*

In view of the above position, it is clear that the respondents were liable to pay the ESI dues of the predecessor firm. Even otherwise it is a matter of common sense and also unjust if a beneficial legislation like the present can be side stepped merely by changing the constitution of a firm.

Second ground taken by the ESI Court was that under Section 77 of the Act the limitation was fixed at 5 years and this claim being more than 5 years was time barred.

Learned counsel for the appellant has relied upon a judgment of the Supreme Court passed in ***Employees State Insurance Corporation Vs. C.C.Santhakumar, 2007 (1) SCC 584*** **.** In that case the Supreme Court held that the bar of Section 77 of the Act applied only to an application moved by the Corporation before the Court and to no other proceedings.

Learned counsel for the respondents is not in a position to cite any contrary judgment.

In the circumstances, the appeal is allowed and the impugned order is set aside.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

27.03.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No