

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-7627-2017 (O&M)
Date of Decision : 23.05.2018**

M/S LAKHANI FOOTWEAR LTD.

..... APPELLANT

VERSUS

THE REGIONAL DIRECTOR, E.S.I. CORPORATION, FARIDABAD

..... RESPONDENT

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Shiv Kumar, Advocate
for the appellant.

Mr. Vikas Suri, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment dated 14.07.2017 passed by the Ld. Civil Judge (Sr. Division), Faridabad and an order dated 01.06.2015 passed by the respondent imposing damages for delay in payment.

On 08.12.2017 the following order was passed in the main case:-

“Learned counsel for the appellant states that the impugned recovery is hit by the bar of limitation as in this case the cause of action in respect of the damages arose in April-May-2009 and the notice for recovery was issued on 30.10.2014, which is beyond the period of limitation prescribed in Section 77(1)(b) of the Employees' State Insurance Act, 1948.

Notice of motion for 17.01.2018.

Notice regarding stay as well.”

The issue is whether the decision of the Supreme Court in *ESI Corpn. vs. C.C. Santhakumar, (2007) 1 Supreme Court Cases 584* covers the field or not. It is the contention of the counsel for the appellant that the proviso of Explanation (b) of Sub-Section 1-A of Section 77 of the Employees' State Insurance Act, 1948 clearly lays down that there is a limitation of 5 years for a claim by the Corporation for recovering contributions (including interest and damages). However, the counsel for the respondent has argued that this issue was considered by their Lordships in the aforementioned judgment and has relied upon paragraph Nos.23 and 29 which are reproduced herein below:-

“23. Similarly, no limitation is provided in Chapter VII. It deals with the imposition of penalty or levy of damages upon failure to pay contributions. It consists of Sections from 84 to 86A.

29. Section 77 of the Act relates to commencement of proceedings before the E.S.I. Court. The proviso to sub-Section 77 of the Act cannot independently give any meaning without reference to the main provision, namely, Section 77 of the Act. Therefore, the proviso to Clause (b) of Section 77(1A) of the Act, fixing the period of five years for the claim made by the Corporation, will apply only in respect of claim made by the Corporation before the E.S.I. Court and to no other proceedings.”

A perusal of these extracts clearly reveals that there is no limitation for the Corporation to recover damages and the limitation would apply only if the Corporation approach the ESI Court.

I find this to be indeed so. Appeal is dismissed.

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

May 23, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No