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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 264/2018 & C.M.Nos.21985-86/2018

JAG PRAKASH

..... Appellant

Through: Mr. Avinash Lakhanpal and
Mr. Jaipal Singh, Advocates.

Versus

EMPLOYES STATE INSURANCE CORPORATION & ANR

..... Respondents

Through: Mr. V. K. Singh and Mr. Ajit Kumar
Singh, Advocates with Mr. Paramjit
Singh, SSO in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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23.05.2018

This First Appeal impugns an order dated 12.02.2018 passed by the learned Senior Civil Judge-cum-Rent Controller, Saket Courts, New Delhi, holding him liable for paying the contribution to the extent of Rs.45,674/-.

It is the appellant's contention that the inspection carried out by the officers of the Employees' State Insurance Corporation (ESIC) was without authority and the evidence does not show that the appellant company came under the purview of the provisions of the Employees' State Insurance Act, 1948 (ESI Act). Under the said Statute, a Unit would come under its purview if it has 10 or more persons employed on any day in the preceding 12 months. The inspection of the appellant company was carried out on

26.05.2008. It found that 11 persons were employed on the spot, two other persons were also employed. Against each person working for the appellant, their signatures were taken by the two inspecting officers of the respondent and the said document was also signed by the Supervisor Mr. Anil Kumar Sharma employed by the appellant. The said Supervisor was brought in as a witness by the appellant himself. In his deposition, the Supervisor has stated as under:-

- “8. I state and submit that in the month of May 2008 approximately 7-8 persons were working in the unit and I further state and submit that during my service period with the Applicant as mentioned above, always there used to be 8-9 persons.*
- 9. I state and submit that after obtaining the signatures of the persons available there on such paper, the said persons left.*
- 10. I state and submit that the said persons had not asked about the Applicant or any other paper except the names of the persons available in the building.”*

Amongst the issues framed before the Trial Court, apropos issue No.6, the Trial Court found that there was no doubt that 11 persons were working for the appellant on that day. It had reasoned as under:-

“42. Sh. Anil Kumar Sharma as AW2 admitted that he had signed the document Ex. DX-1 after reading the document and all the Employees had signed in his presence. The fact that Sh. Idrish and Sh. Chhote Lal had not signed on document Ex. DX-1 does not have any effect upon the case of the petitioner, since he has himself admitted that these two persons were his employees. Rest of the persons whose names are mentioned in the List Ex. DX-1 had admittedly signed the document in presence of Supervisor/AW2 Sh. Anil Sharma. Therefore, it is clear from the

documentary and oral evidence brought on record that 11 employees including the Supervisor Sh. Anil Kumar Sharma were found working in the Establishment M/s. Neha Fashions, premises no. 827/7, IIIrd Floor, Govindpuri, New Delhi on the date of inspection on 26.05.2008.”

From the above, it is clearly established that the appellant's Unit was covered under the provisions of the ESI Act. The other contention of the appellant is that his application seeking details of authorization of the officers of the respondent-Corporation for conducting the inspection under section 45 of the ESI Act was never adjudicated upon. The Court is of the view that the said argument is without merit because the information which the appellant sought, had already been assimilated into issue No. 6, and it has been determined against the appellant. The appellant's further contention that he was denied the natural justice is without any justification.

In view of the above, no question of law arises in the appeal. It, alongwith pending applications, stands dismissed accordingly.

NAJMI WAZIRI, J.

MAY 23, 2018

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 206/2018 & CM Nos. 18881-2/2018**

AMITEX POLYMERS PVT LTD Appellant

Through: Ms. Neelam Rathore, Advocate.

Versus

J S INDUSTRIES Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **08.05.2018**

This appeal impugns an order dated 12.01.2018 dismissing the appellant's application which sought setting aside of the judgment/decreed dated 25.02.2016 passed in CS No. 17 of 2013. It had decreed an amount of Rs.6,48,831/- with *pendent-lite* and future interest @ 24% *per annum* from the date of filing of the suit till its realization against the appellant.

The brief facts of the case are that the appellant purchased goods from the respondent for a total value of Rs.6,48,831/- (vide invoice nos.19/2010-11 for Rs. 3,08,063.00 and 89/2010-11 for Rs. 3,40,768.00 on 06.06.2010 and 16.08.2010 respectively). Since the goods were found to be defective, the appellant intimated the respondent/supplier about it, by e-mails dated 24th June, 27th June and 12th July, 2011. In response the latter agreed by an e-mail dated 14.07.2011 to take its materials back. However, the respondent sent a legal notice dated 23.04.2013 to the appellant to pay the monies due. Upon non-payment, the respondent filed a suit being CS No.17 of 2013

seeking recovery Rs.9,65,023/- with pendent-lite and future interest @ 24% *per annum* against the appellant. The appellant had entered appearance through counsel. Subsequently, they abandoned the proceedings and chose not to participate in the trial. Accordingly, they were proceeded *ex-parte*. They claim that they got to know about the *ex parte* order of 25.02.2016 only on 05.09.2016 hence, they moved an application under Order IX Rule 13 CPC on 23.09.2016 seeking setting aside of the said order, which was dismissed on the following grounds:-

“ The only ground taken in the application is the miscommunication of the counsel engaged by the party. There is no pleading that if the counsel informed about the dismissal of the case then as to why the copy of the order of dismissal was not sought from him and if he failed to supply the same as to why the copy was not applied to the Court. It appears that the plea taken by the defendant in this regard is not true. The conduct of the applicant was also negligent and it cannot take shelter behind its advocate particularly, in the absence of any complaint made by it for the misconduct of the counsel.

Further, the defendant no. 1 is a company and there is no pleading that the person filing the present application has been duly authorized by its Board of Directors to move the application for setting aside the decree passed against it.

In the facts and circumstances, the plea taken by the applicant is not trustworthy and the conduct of the applicant is not bonafide and diligent, so, the application is dismissed.”

The learned counsel for the appellant states that because of mistake on the part of the lawyer, who was engaged to contest the case, the appellant has suffered an *ex-parte* order, however, there is nothing on the record to show whether there was any communication between the appellant and the

lawyer or whether they followed it up with the counsel apropos the progress of their case.

The Court would note that the appellant is a corporate body and is deemed to have a better understanding of legal proceedings, since they are neither illiterate nor an uninformed litigant; they sat over their rights despite being accorded due opportunity to participate in the proceedings and to lead evidence; furthermore, the allegations against their counsel are not supported by any notice to him, or complaint to the police or to the Bar Council concerned or otherwise any action having been initiated against him.

In view of the above, the appeal is without merits, hence, it is dismissed.

The pending applications also stand dismissed.

NAJMI WAZIRI, J.

MAY 08, 2018

sb/rw