IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.625 OF 2004

1. M/s. Morbandhu (Suitings/Shirtings)
Aurangpura, Aurangabad, through-
Anilkumar Satayanarayan More,
Age: 38 yrs, Occ: Business,
R/o. Aurangpura, Aurangabad.

2. Morbandhu (Sarees) Aurangpura, -
Aurangabad, through Proprietor,-
Ashok-kumar Surajkiran Mor,
Age: 44 yrs, Occ: Business,
R/o. Aurangpura, Aurangabad. ..Appellants

Versus

1. Assistant Regional Director
Subregional Office, Employees
State Insurance Corporation
Panchdeep Bhavan, Ganesh Path
Nagpur 18.

2. Employees State Insurance -
Corporation Opp. ST Francis
High School, Aurangabad through
Office Incharge. ..Respondents

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Mr. V.P. Latange, Advocate for Appellants.
Mr. V.D. Sonwane, Advocate for Respondents.

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CORAM : P.R. BORA, J.
RESERVED ON : 07th FEBRUARY, 2019.
PRONOUNCED ON : 26th APRIL, 2019.

JUDGMENT:-

1. The judgment and order passed by the Employees State Insurance Court Aurangabad in Application

ESI No.7 of 1998 decided on 25.11.2003 is challenged in the present appeal. The appellants had filed the aforesaid application for setting aside the orders dated 06.03.1998 and 31.08.1998 passed by the Assistant Regional Director of ESI Corporation, Region Nagpur. Vide notice dated 06.03.1998, appellant no.1 was directed by the ESI authorities to take immediate steps for registration of their employees under ESI Act. The appellant establishment was also allocated Code No.25-1263-102. Vide notice dated 31.08.1998, appellant no.1 was called upon to pay the contributions for the wage period ending in the calendar years April 1997 to March 1998 or else to face the penal action.

2. The aforesaid notices were challenged by the appellants before the ESI Court. It was the contention of the appellants that appellant nos.1 and 2 are two separate legal entities; both the establishments are having separate licenses under the Bombay Shops and Establishment Act and they are two independent proprietary firms having different proprietors. It was also contended that ESI Inspector when visited the shop on 09.06.1997, he did not follow the due procedure and drew an erroneous conclusion that number of employees working at the shop of the

appellants since, was more than ten, the establishments were liable to be registered under the provisions of ESI Act. The ESI court however, turned down the objections so raised and rejected the application filed by the appellants. Aggrieved by, the appellants have filed the present appeal.

3. Shri Latange, the learned counsel appearing for the appellants assailed the impugned order on various grounds. The learned counsel submitted that the ESI Court has failed in appreciating that appellant nos.1 and 2 are two separate entities and were independently registered under the Shop and Establishment Act having two different shop act licenses. The learned counsel submitted that appellant no.1 whereas, deals in suitings and shirtings, appellant No.2 is in the business of sarees exclusively. The learned counsel further submitted that both the firms are submitting their separate income tax returns. Both the firms have their separate bank accounts. The learned counsel submitted that merely because the businesses of appellant no.1 and 2 are being carried out in one building that does not mean that both the establishments are one and the same. The learned counsel further submitted that both the appellants have independent and separate supervision and control over their respective employees. The learned counsel further

submitted that the employees of one appellant are not transferable to the other. It is further contended that separate muster rolls are maintained by both the establishments and the bank accounts are also separately maintained.

4. The learned counsel relying upon the judgment of ***"Employees State Insurance Corporation, Sub-Regional Office, Nagpur Vs. Anand Bhandar, Nagpur and Another, 2017(4) Mh.L.J. 267"*** submitted that in absence of any evidence to indicate any inter connection between appellant nos.1 and 2 in matter of supervisory, financial or managerial control, only on the basis of fact that both the units are situated in one premises, one on the ground floor and other on the first floor respondent no.1 has erroneously clubbed both the firms. The learned counsel also relied upon the judgment of the division bench of this Court in the case of ***"Niton Industries, Bombay Vs. Union of India and Ors, 2000(3) Mh.L.J. 104"*** to urge that merely because appellant nos.1 and 2 are situated in one and the same building having a single common entrance, did not establish functional integrity between them and as such respondent no.1 could not have clubbed both these establishments for the purpose of applying the

provisions of ESI Act to both the establishments.

5. Shri V.D. Sonwane, the learned counsel appearing for the respondents resisted the submissions advanced on behalf of the appellants. The learned counsel supported the impugned order. The learned counsel pointed out that though appellant nos.1 and 2 are shown to be two independent establishments having separate shop act licenses, witness Ashok Kumar i.e. proprietor of appellant no.2 has admitted that for both the shops there is a common cash-counter and the cash amount received by sale of goods for both the shops is collected at one place. The learned counsel further submitted that not only that both the establishments are situated in one premises, but for both the premises there is only one entrance and one cash-counter. The learned counsel submitted that respondent no.2 has passed a well reasoned order and no interference is required in the order so passed.

6. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned judgment and order as well as the evidence adduced in the matter. The material on record shows that on 09.06.1997, the Inspector of the

Employees State Insurance Corporation inspected the premises in which the appellant establishments are carrying on their business. As has come on record in the evidence of DW-1 Jose Kalayil Pappy, he found total 21 employees working for both the establishments. It has further come on record in his evidence that on the date of his visit, there was only one single shop act license for both the establishments. The fact so stated by DW-1 has not been controverted in his cross-examination. Moreover, as was brought to my notice by Shri Sonwane, the learned counsel appearing for the respondents, initially there was only one shop act license in the name of 'Morbandhu' and the nature of business was shown as sale of suitings/shirtings and sarees. The said shop act license is part of the record of the Trial Court. The said shop act license is dated 06.05.1997. Another shop act license in the name of 'Morbandhu Sarees' was admittedly issued on 23.07.1997. It is thus evident that on 09.06.1997, when the ESI Inspector visited the premises of the appellants firms, there was only one shop act license. It is discernible that thereafter two shop act licenses were obtained and two separate divisions were shown one for suitings and shirtings in the name of Morbandhu (Suitings) and another was shown for sale of sarees in name of

Morbandhu (Sarees). The license which was initially in existence on the date when the ESI Inspector visited the subject premises, was only one composite shop act license in the name of Morbandhu and the nature of business was shown as sale of suitings/shirtings and sarees. At the time when the ESI Inspector visited the shop premises, there were 21 employees found working at the said premises. All these employees therefore must be held to be employees of the establishment by name Morbandhu. In the circumstances, though Ashok Kumar Mor in his cross-examination has denied the suggestion that there was a common shop act license, the document on record clearly establishes that there was only one license as on 09.06.1997.

7. Ashok Kumar Mor has further admitted in his cross-examination that there is a common entrance for both the shops and cash-counter for both the shops is also one. In the circumstances, the notice was issued to the appellants on 17.07.1997. As I noted herein-above, the separate shop act license came to be obtained on 23.07.1997 i.e. after the notice dated 17.07.1997 was served upon the appellants. From the material on record it is quite evident that after the show cause notice was issued

to the appellants, the bifurcation was done and an attempt was made to demonstrate that there were two establishments working independently.

8. After having perused the documents on record and the evidence available on record, undoubtedly it can be said that two firms were created after the visit of the ESI Inspector and the intention behind that was to circumvent the provisions of ESI Act and to avoid the coverage of the units under the ESI Act and consequently to avoid the statutory liability under the provisions of ESI Act. The further evidence which has come on record showing that there was only one entrance for both the shops also leads to an inference that there was functional integrity in both the establishments. More importantly, the another fact which has come on record that for both the shops there was only one cash-counter and the cash received by way of sale in both the shops was being collected at one counter, also leads to the only inference that though there may be two units shown on paper in fact there was functional integrity in both the units. The ESI Court has therefore rightly negated the objections raised on behalf of the appellants and has accordingly rejected the application filed by them.

9. After having considered the evidence on record, I have no hesitation in holding that though an attempt was made by the appellants to show appellant nos. 1 and 2 to be two separate entities; on the date of inspection carried out by the ESI Inspector, there was only one unit having more than 21 employees working in the said unit and was therefore covered under the provisions of ESI Act and was liable to be registered under the said Act. Two units are made only after issuance of the show cause notice by the ESI Corporation and only intention was to anyway circumvent the provisions of ESI Act and to avoid the liability under the said Act. The admissions given by the witness examined by the appellants leaves no doubt that appellant no.1 and appellant no.2 constitute one unit. I, therefore, found no infirmity in the impugned order. In the result, the following order is passed:

ORDER

The appeal is dismissed.

(P.R. BORA, J.)

Mujaheed//