

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.285 OF 2015
WITH
CIVIL APPLICATION NO.858 OF 2015**

Pore Brothers .. Appellant

vs.

The Employees State Insurance Corporation .. Respondent

Mr.M.S.Topkar for the appellant

Ms.Shraddha Chavan h/f Mr.P.M.Palshikar for the respondent
nos.1 to 3

**CORAM : K. K. TATED, J
DATE : AUGUST 1, 2019**

P.C.:

. Heard.

2 By this First Appeal, appellant is challenging the judgment and decree dated 20.1.2015 passed by learned Judge, Employees State Insurance Court, Kolhapur in ESI Application No.4 of 1995 rejecting appellant's application under section 75 and 77 of the Employee's State Insurance Act, 1948.

3 In the present proceeding, on 7.2.1990, an Inspector from ESI Corporation visited the appellant's shop. He prepared

panchnama, On the basis of the said panchnama, the Assistant Regional Director issued show cause notice in Form No.C-18 on 4.4.1991 proposing to determine and recover the amount of contribution under section 45-A of the Employees' State Insurance Act, 1948 for the period from 1.4.1990 to 30.9.1990 for Rs.13207/- on Adhoc basis. Thereafter, the authority passed order dated 3.10.1994 under section 45-A of the Employees State Insurance Act, 1948. Thereafter, on 16.5.1995, Respondent no.2 issued individual show cause notice to the appellant and to its partners stating that the appellant has failed to comply with the provisions of section 39 of the Employees' State Insurance Act, 1948 by neglecting to pay contributions from January, 1990 to June, 1994. The appellant was directed to show cause as to why it should not be prosecuted for an offence under section 85 (a) read with 85(i) (b) of the Employees' State Insurance Act, 1948. Subsequently, the Respondent issued several notices for different period calling upon the appellant to pay gratuity amount of workers. Being aggrieved by the said order, the appellant filed application under section 75 and 77 of the said Act. On the basis of pleading of both the parties, Trial Court raised following issues:

ISSUES

FINDINGS

- 1) Whether said application under section No. 75 and 77 of the Employees' State Insurance Act, 1948 is legally maintainable on 2 grounds raised by the opponent?
- 2) Whether treating Pore Brothers, Pore Does not arise Vastraniketan and Pore Emporium as one

unit by the opponents is illegal, improper and bad in law?

- 3) Whether orders of opponent under section 45-A of the Employees' State Insurance Act, 1948 and notice for criminal prosecution are illegal and improper?
- 4) What order ? As per final order

4 It is to be noted that the appellant authority decided the appellant's application summarily on the ground of limitation. As per section 77 of the Employees' State Insurance Act, 1948, application is required to be filed within a period of 3 years from the date on which cause of action arose. Section 77 reads thus:

“77. Commencement of proceedings - The proceedings before an Employees' Insurance Court shall be commenced by application.

1[(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation. - For the purpose of this sub-section.

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person

claims or claim that benefit in accordance with the regulations made in that behalf within a period twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.]

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation."

5 The authority held that application ought to have been filed on or before 26.8.1993 whereas the same was filed by them on 7.6.1995 i.e. beyond the period of 3 years.

6 The learned counsel for the appellant submits that the court below erred in coming to the conclusion that appellant's establishment was covered by the said Act for payment of gratuity. He submits that when the Inspector from ESI Corporation visited the appellant's shop on 7.2.1990, at that time, workers of other associate firms i.e. Pore Brothers, Pore Vastraniketan and Pore Emporium were standing there. Hence, the Inspector clubbed all the workers in appellant's firm only and held that the appellant establishment is covered under the provisions of ESI Act, 1948. He submits that the authority failed to consider the documents produced by them showing that all these firms have separate office, registration including electricity bills and water bills. He submits that same is against justice, equity and good conscience and is required to be set aside. He further submits that authority erred in coming to the conclusion that application filed by them under section 75 and 77 of the said act was barred by limitation and therefore, they are not entitled to any relief.

7 On the basis of these submissions, the learned counsel for the appellant submits that they have good chance of

success in the present proceeding. He submits that in the interest of Justice, this Hon'ble court be pleased to set aside the impugned Judgment dated 20.1.2015 passed by ESI, Kolhapur in ESI Application No.4 of 1995 holding that the appellant's establishment is covered by the provisions of ESI Act, 1948.

8 Heard the learned counsel for the appellant at length.

9 It is to be noted that in the present proceeding, bare reading of the judgment dated 20.1.2015 passed by ESI Court, Kolhapur clearly shows that appeal filed by the appellant stands rejected in view of section 77 of the said Act on the ground that same was filed beyond the period of 3 years.

10 It is to be noted that limitation starts from the date of passing the order by the authority. In the present case, same was passed on 1.1.1990 and appellant filed application under section 75 and 77 of the said Act on 7.6.1995 i.e. beyond the period of three years. Apart from that, appellant failed to make any case for condonation of delay in filing appeal before the ESI Court. Therefore, bare reading of the judgment passed by ESI court, Kolhapur dated 20.1.2015 does not require any interference.

11 In the present appeal, apart from that, there is no substantial question of law involved in the First Appeal as required by section 82 of the said Act. Bare reading of

section 82 shows that appeal shall lie to the High Court from the order of Employees State Insurance court, if it involves substantial question of law.

12 Reading of judgment clearly shows that substantial question of law is not involved in this case. Apart from that, advocate for the appellant also failed to point out substantial question of law involved in the appeal. Apart from that, even in appeal memo, appellant failed to make out any substantial question of law involved in the present proceeding.

13 Hence, following order:

- a. First Appeal stands rejected.
- b. In view of dismissal of First Appeal, nothing survives in the Civil Application No.858 of 2015 which is preferred by the appellant for stay of the impugned judgment and decree. Same stands dismissed as infructuous.
- c. No order as to costs.

(K.K.TATED, J.)