

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 719 OF 2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. H.V. Mehta for the Appellant.

CORAM: K.K.TATED, J.
DATED : 16/09/2019

P.C.

1 Heard learned Counsel for the parties.

2 By this First Appeal, the Applicant is challenging the Judgment dated 21.03.2014 passed by the learned Judge, Employees Insurance Court, Maharashtra, Mumbai in Application (ESI) No. 06 of 2008 allowing the Respondent's application under Section 75 read with Section 76 of the Employees State Insurance Act, 1948 setting aside the order dated 30.01.2008 passed by the Joint Director, Employees' State Insurance Corporation for recovery and damages of Rs.1,58,364/- for delayed payment of contribution for the period July 1973 to September 1981 and the certificate issued by the Recovery Officer dated 07.03.2008 on the ground that same was barred by

limitation as per proviso of Section 77(A)(b) of the Employees' State Insurance Act, 1948.

3 The learned Counsel for the Appellant submits that Employees State Insurance Court erred in coming to the conclusion that same was barred by limitation. In support of his contention, he relied on Apex Court Judgment in the matter of **ESIC v/s. C.C. Santhakumar reported in 2007 Labour I.C 597**. Paragraph 28 reads thus:

“28. Section 77 of the Act relates to commencement of proceedings before the ESI 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.”

4 The learned Counsel for the Appellant submits that matter is required to be heard on its own merits.

5 Considering the submissions made by the learned Counsel for the Appellant and the Judgment of the Apex Court in the matter of C.C. Santhakumar (supra), I am satisfied that Appellant has made out a case for following order.

a) Admit.

b) The substantial question of law as follows:

“Whether the order passed by authority dated 30.01.2008 was barred by limitation as per proviso of Section 77(A) (b) of the Employees State Insurance Act, 1948?”

c) Printing is dispensed with.

d) Appellant to file private paper book within one year from today, failing which First Appeal shall stand dismissed without further reference to the Court.

e) Registry is directed to call R & P immediately.

f) The learned Counsel for the Respondent waives service.

(K.K.TATED, J.)