

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

**CIVIL APPLICATION NO. 1288 OF 2019
IN
FIRST APPEAL NO. 445 OF 2019**

M/s. Sumaya Automobiles

.... Applicant

Versus

Employees State Insurance Corp. & Anr.

.... Respondents.

Mr. Niraj Prajapati for the Applicant
Mr. H.V. Mehta for Respondents.

CORAM : K. K. TATED, J.

DATE : 18th SEPTEMBER, 2019

P.C.

Heard learned counsels for parties.

2. By this Civil Application, the applicant is seeking an order of injunction restraining respondents from acting on recovery notice dated 17.04.2013 issued by respondent No.2 and also stay of operation and implementation of the impugned order dated 07.04.2018 passed by the Employees Insurance Company Court at Mumbai in Application (ESI) No.21 of 2013.

3. The learned counsel for the applicant submits that, issue involved in the present proceeding is, whether the applicant is covered under Employees State Insurance Act or not? Therefore, there is no question of paying any amount to the respondents towards their

contribution. He submits that, till the hearing and final disposal of First Appeal, this Hon'ble Court may please to restrain the respondents from recovering any further amount from the applicant as per recovery notice dated 17.04.2013. The learned counsel for the applicant further submits that, they already deposited 50% amount at the time of filing of the Application (ESI) No.21 of 2013.

4. On the other hand, learned counsel Mr. Mehta appearing on behalf of the respondents vehemently opposed the present application. He submits that, application filed by the applicant under Section 75 & 77 of The Employees State Insurance Act, 1948 is dismissed by the Court after considering evidence on record. Hence, applicant is liable to pay entire amount as per notice issued by respondent No.2 dated 17.04.2013. Therefore, there is no substance in the present Civil Application and same is required to be dismissed with costs.

5. It is to be noted that in the present proceeding, application (ESI) No.21 of 2013 filed by applicant under Section 75 & 77 of the said Act stand dismissed by order dated 07.04.2018.

6. Considering these facts, applicant has to deposit the remaining entire amount with the respondents within 8 weeks from today. Hence, the following order -

- (i) Pending the hearing and final disposal of the present First Appeal, respondents are restrained by an order of injunction for

taking any recovery action as per recovery notice dated 17.04.2013 issued by respondent No.2 against applicants on condition that applicants have to deposit remaining amount with respondent on or before 15.10.2019, failing which Civil Application shall stand dismissed without further reference to the Court.

(ii) After depositing amount, the applicant to place on record receipt to that effect, in the Registry of this Court.

(iii) Civil Application stand disposed of accordingly.

(iv) No order as to costs.

[K. K. TATED, J.]