

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

**CIVIL APPLICATION NO. 735 OF 2016
IN
FIRST APPEAL NO. 291 OF 2016**

Madhu Malti Enterprises

....Applicant

V/s.

The Employees State Insurance Corporation and ors.Respondents

Mr. V.P. Vaidya a/w. Ms. Shraddha Chavan i/b. Mahendra Agvekar
for the applicant/appellant.

Mr. H.V. Mehta for respondent nos.1 to 4.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th AUGUST, 2019**

P.C.:-

. The applicant has sought stay of execution and implementation of the impugned judgment and order dated 08/09/2015 whereby the learned Judge, Employees Insurance Court, Mumbai has dismissed the Application(ESI) No.03/2009 challenging the orders dated 09/05/2007 and 23/04/2008 passed by the respondent no.1 - Employees State Insurance Corporation.

2. The applicant runs business of distribution of medicines of several pharmaceutical companies. The applicant is involved in storing medicines till its dispatch to various druggists and chemists. The

Respondent – Corporation has passed an order under Section 45-A of the ESI Act claiming contribution of Rs.68,016/-. The reason for fastening the liability was that the applicant had been using a refrigerator of 365 litres for storing and cooling of drugs which were to be supplied to the druggists and chemists. The applicant challenged the said order before the Employees Insurance Court, Mumbai.

3. The learned Judge has confirmed the order holding that the applicant had been using a refrigerator of 365 litres for storing and cooling of certain medicines. It has been held that storing and cooling of medicines till the disposal of goods is a continuation of manufacturing process.

4. It is not in dispute that the applicant is not engaged in manufacturing of the drugs but is only engaged in the business of distribution of the medicines to several pharmaceutical companies and is registered under Maharashtra Shops and Establishment Act, 1948. The refrigerator of 365 litres was being used for the purpose of storing the medicines which were to be dispatched to various chemists and druggists and/or other pharmaceutical companies.

5. Mr. V.P. Vaidya, the learned counsel for the applicant has relied upon the decision of the Apex Court in ***Hotel New Nalanda v/s. Regional Director, Employees State Insurance Corporation [(2009) 14 SCC 558]*** has held that :-

“20. Unless the links are established, that is to say, it is shown that some process or work is carried on in the establishment which qualifies as 'manufacturing process' within the meaning of section 2(k) of the Factories Act and the manufacturing process is carried on with the aid of power, the mere presence of a refrigerator and a grinder there, even though connected to the main power line may not necessary lead to the inference that the establishment is a factory as defined under section 2(12) of the Act. ”

6. In ***Regional Director Employee's State Insurance Corporation v/s. Shri. Serofie Bernard Vaz [2008(6) ALL MR 115]***, it was sought to be contended that 'preserving or storing any article in cold storage' is itself a manufacturing process under Section 2(k)(vi) of the Factories Act and once it is shown that this process is carried on with the aid of power, provisions of Employee's State Insurance Act would be attracted. While refuting these contention, it was held that :-

“ If preservation or storage of an article in a domestic refrigerator is to be treated as preservation or storage of an article in cold storage, it would be doing violence to the language. The definition of 'manufacturing process' is liable to be interpreted in business sense of the

term having regard to the meaning of the words in common parlance and the usage of the trade. If the test is to be applied, it shall become clear that the trial Court was not right in treating a small refrigerator in the restaurant or the hotel as a place of cold storage. ”

7. In the instant case, as stated earlier, prima facie there is no material to indicate that the use of refrigerator was for the purpose of manufacturing process within the meaning of Section 2(k)(vi) of the Factories Act. The refrigerator was used for storing medicines, which in my prima facie view, does not constitute preservation or storage of products in cold storage.

8. Under the circumstances, interim relief is granted in terms of prayer clause (a) subject to deposit of the entire contribution with interest before the Employee's State Insurance Court, Mumbai within a period of four weeks.

9. Civil Application stands disposed of.

Preeti H.
Jayani

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(SMT. ANUJA PRABHUDESSAI, J.)