

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.04.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.11273 of 2019
and
W.M.P.No.11629 of 2019

M/s.Surya Multispeciality
Hospital Pvt.Ltd.,
rep.by its Director Dr.M.Baskaran Petitioner

vs.

The Deputy Director,
Sub-Regional Office (Salem),
Employees State Insurance Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads,
Salem-636 009 Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondent to consider the representation of the petitioner dated 20.09.2018 and revise the order of the respondent bearing No.63000936070001401/INS-II/SRO/SLM/454/17, dated 29.08.2018.

For Petitioner .. Mr.S.Raveekumar
For Respondent .. Mr.Ramachandramurthy,
C.G.S.C.

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ORDER

The writ petition has been filed seeking a direction to the respondent to consider the representation of the petitioner, dated 20.09.2018, against the order passed by the respondent dated 29.08.2019, initiating recovery proceedings against the petitioner hospital.

2. In the impugned proceedings itself it is clearly mentioned that in case of objections against the order, the petitioner may file an appeal to the Appellate Authority, under Section 45-AA of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') by remitting 25% of the amount determined in the impugned order. Without exhausting the appeal remedy, as provided under the above said Section, the petitioner has casually approached this Court, after much delay, presently.

3. Moreover, when the matter is taken up for admission, on behalf of the respondent Mrs. Ramachandramurthy, learned counsel, has appeared and would submit that not only the petitioner has not availed the appeal remedy, which is provided under the enactment, but has also not chosen to approach the Labour Court against the order impugned in the writ petition. Since the petitioner has not chosen to avail either the appeal remedy before the Appellate Authority or approached the Labour Court for adjudication of dispute, the present writ petition filed by the petitioner is not maintainable.

4. This Court is entirely in agreement with the submission made on behalf of the respondent/Corporation. Time and again the Courts have held that when an effective alternate remedy is available in a Statute, the same has to be availed before knocking the doors of this Court under Article 226 of the Constitution of India.

5. In this case, the petitioner, having failed to avail the effective alternate remedies that are available in the ESI Act, cannot be permitted to approach this Court directly by invoking its extraordinary jurisdiction. The petitioner cannot be allowed to bypass the alternate remedies and permitted to approach this Court.

For the above said reasons, this Court finds that the writ petition is not maintainable and therefore, the same is dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (Insp. Cell)

//True Copy//

msk

Sub Assistant Registrar

To

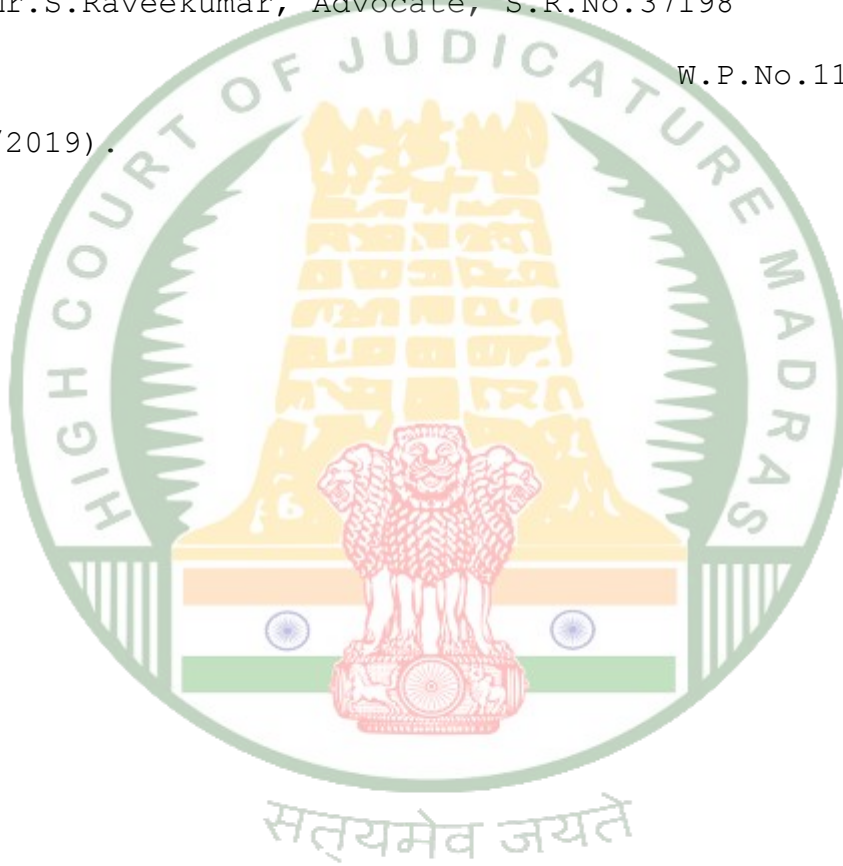
The Deputy Director,
Sub-Regional Office (Salem),
Employees State Insurance Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads,
Salem-636 009

+1 cc to Mr.C.V.Ramachandramurthy, Advocate, S.R.No.37347

+1 cc to Mr.S.Raveekumar, Advocate, S.R.No.37198

W.P.No.11273 of 2019

KK(CO)
SSM(04/06/2019).



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