

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. No.3402 of 2019 and
C.M.P.No.20003 of 2019

M/s Nandeessvar Clothing Company,
No.223/1A, 1B, & 224/97, GST Road,
Acharapakkam - 603 301
represented by its authorised signatory... Petitioner /Appellant

Vs.

Employees State Insurance Corporation,
Rep. by its Assistant Director,
No.143, Sterling Road,
Nungambakkam
Chennai - 34 ... Respondent/Respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 82 of the Employees' State Insurance Act, 1948 (Act 34 of 1948) against the order dated 19.06.2019 in I.A.No.3 of 2019 in E.I.O.P.No.79 of 2019 passed by the learned Judge, Principal Labour Court, (Employees' Insurance Court) Chennai.

For Petitioner : Mr.S.Ravindran
Senior Counsel for
Mr.D.Abdullah

For Respondent : Mr.T.N.C.Kaushik

O R D E R

The present Civil Miscellaneous Appeal is filed under Section 82 of the Employees' State Insurance Act, 1948 (Act 34 of 1948) against the order dated 19.06.2019 in I.A.No.3 of 2019 in E.I.O.P.No.79 of 2019 passed by the learned Judge, Principal Labour Court, (Employees' Insurance Court) Chennai.

2. Originally, the appellant was running a unit at Acharapakkam and he was supplying garments, as per the orders placed by the customers and the materials supplied by the customers by cutting, stitching and packing. Depending on the orders received, the work of washing, Ironing, Embroidery was entrusted to third party establishments. These establishments do the work at their premises by engaging their men and material. Only the quality is checked by the appellant on receipt of the finished materials.

3. The learned counsel for the appellant submitted that they are not liable to pay contributions on the salaries paid to the staff of the third parties, who were paid more than the statutory limits and there is a high labour turnover among the employees engaged in the production and many of the labourers are not permanent employees and they do not come under the ESI Act.

4. The respondent Corporation has visited the premises and passed an order under Section 45-A dated 26.11.2018 demanding a sum of Rs.14,95,434/- on the ground that the appellant failed to produce the records before the Social Security Officer despite providing sufficient opportunities. The appellant had submitted only the attendance register from 1/2018 to 4/2018 and the salary statement for 3/2018 and the officer could not verify further during the inspection because of non production of records including ledgers.

5. The Recovery Officer had sent another notice on 25.03.2019 under Section 45 A of the ESI Act, which was challenged before the ESI Court in ESIOP No.79 of 2019. Together with the main petition, I.A.Nos.1, 2 and 3 of 2019 were also filed. The I.A.No.3 of 2019 was filed with a prayer to raise the order of attachment dated 25.03.2019 bearing TN/RECY/45G/51-51001160920000108/CCR-83803, attaching the bank account of the appellant, namely Bank of Baroda, Perundurai Branch, No.309, Chennimalai Road, Perundurai with Account No. 05510200009555 pending disposal of the main petition.

6. In the said interlocutory application, the ESI Corporation filed a counter wherein they sought to sustain the order of attachment.

7. Further, I.A.No.1 of 2019 was also filed by the appellant herein seeking waiver of the deposit of 50 % of the claim made by the respondent in the order dated 26.11.2018. The lower court, after considering the facts, felt that there is necessity to adjudicate the dispute, had inclined to waive 25 % of the claim amount, less payment of Rs.4,00,000/- already made

through document No.7 had directed the petitioner to pay 25 % of the claim amount with interest, less the payment made already on or before 06.06.2019 and posted the matter on 07.06.2019. The I.A.No.2 of 2019 was filed seeking for stay of operation of the demand order, the Court after considering the fact that the company is running in loss after perusing the IT returns, and bills had allowed the waiver petition on condition to deposit 25 % of the claim amount, less amount already paid, and had held that the prima facie case has been made out by the appellant and there is necessity to adjudicate the contention of the appellant on merits, as requested by the appellant for granting stay of operation of the impugned order dated 26.11.2018, a stay was granted against operation of the said order till 07.06.2019 and notice was issued to the respondents and the counsel for the appellant submitted that the stay was further extended. It is seen from the records that pursuant to the said order, the appellant has deposited a sum of Rs.69,620/- being 25% of the amount after deducting the amount already paid by way of Demand Draft No.316997 dated 04.06.2019 drawn on City Union Bank Limited.

8. In the meanwhile, I.A.No.3 of 2019 was filed by the appellant with a prayer to raise the order of attachment dated 25.03.2019. In the said I.A., the respondent corporation had filed a counter contending that the appellant has not submitted justifiable grounds to seek revocation of the bank attachment. In I.A.No.3 of 2019, the ESI Court, by its order dated 19.06.2019 has declined to raise the attachment order and dismissed the petition, against which, the present Appeal is filed on the ground that when there is an order of stay already granted by the same court, which is in existence, the present order passed by the ESI Court is erroneous.

9. Considering the fact that in I.A.Nos.1 and 2, there was an order of stay with further direction to pay 25 % of the amount demanded, the learned counsel for the appellant submitted that they do not have sufficient means, as the appellant is running the business on loss and that the appellant is ready to deposit the said amount if it is adjudicated by the said Court, and he also prayed for raising the attachment, as they are not able to continue their business and the entire bank account has been freeze due to the said attachment. The impugned order passed is only on the Interlocutory Application. The main original petition is yet to be adjudicated and final decision is to be arrived at by the ESI Court.

10. At this stage, this Court is not inclined to go into the merits of the case. The learned counsel for the appellant

submitted that since the entire money of the appellant is lying in the bank, which was attached, he is not in a position to pay even salary to the workers, this Court is inclined to consider the said prayer of the appellant. Since there is an attachment, the appellant is not in a position to run his day to day activities, in the absence of any liquid cash on hand. As the amount is freezed, they are ready to abide by the final order being passed and if they are liable to pay, they will pay the amount.

11. In view of the above pleadings and the undertaking given by the counsel that are ready to abide by the final order being passed and if they are liable to pay, they will pay the amount, once the matter is adjudicated finally. Hence, this Court is of the considered view, in the interest of justice, that the appellant shall deposit another 25% of the said demand amount before the Labour Court. Considering the fact that only when the attachment is raised, the appellant will be in a position to pay the 25 % amount to the said Court, this Court directs the Manager, Bank of Baroda, Perundurai Branch to release a sum of Rs.4,24,610/- from the account of the appellant herein in Ac.No.05510200009555, within one week from the date of receipt of a copy of this order. The said amount shall be transferred by way of Demand Draft in favour of the Presiding Officer, Labour Court, Chennai. The respondent counsel as well as the appellant counsel are directed to inform the same by way of filing a memo to the concerned Labour Court. Thereafter, the Assistant Director, Employees State Insurance Corporation, Chennai is directed to file counter within a period of two weeks.

12. After the receipt of the above said amount, the court below is directed to raise the attachment passed by the Recovery Officer, Employees State Insurance Corporation, Chennai in ref.No.TN/Recy/45-G/51-51001160920000108/CCR-83803 dated 25.03.2019 and complete the trial within a period of twelve weeks from the date of filing the counter by the ESI Corporation.

With the above observations and directions, the present Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The learned Judge,
Principal Labour Court, (Employees' Insurance Court)
Chennai.

2. The Assistant Director
Employees State Insurance Corporation
No.143 sterling road
Nungambakkam Chennai-34

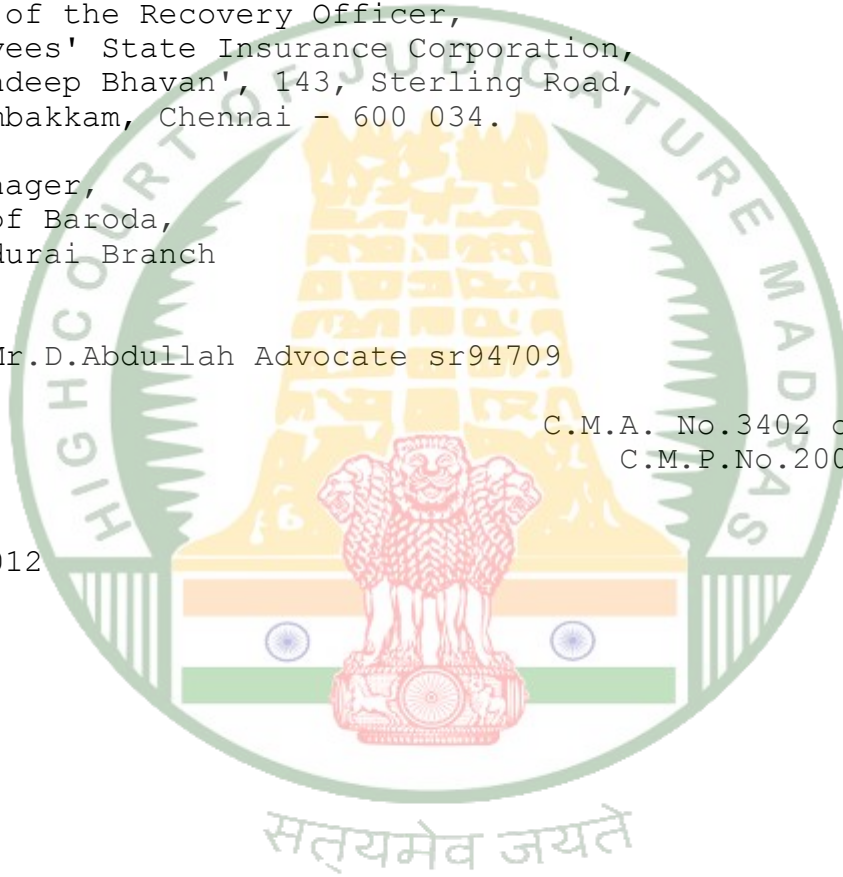
3. Office of the Recovery Officer,
Employees' State Insurance Corporation,
'Panchdeep Bhavan', 143, Sterling Road,
Nungambakkam, Chennai - 600 034.

4. The Manager,
Bank of Baroda,
Perundurai Branch

+1 cc to Mr.D.Abdullah Advocate sr94709

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