



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
C.R.P. (PD) (MD)No.1120 of 2013
and
M.P (MD)No. 1 of 2013

M/s Hotel Mega
rep. by its Managing Partner,
C.Pitchai,
S/o Chinnayyan Naicker,
No.8-B, rockins Road,
Cantonment,
Tiruchirapalli - 1.

..Petitioner/Petitioner/Petitioner

-VS-

1.The Regional Director,
E.S.I Corporation,
Chennai - 34.

2.The Recovery Officer,
E.S.I. Corporation,
No.143, Sterling Road,
Chennai - 34.

.. Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.12.2012 made in I.A.No.586 of 2009 in E.S.I.O.P.No.4 of 2006 on the file of Labour Court at Tiruchirapalli.

For Petitioner	:	Ms.G.Priyavadhana for Mr.P.Thiagarajan
For Respondent	:	Mr.K.C.Ramalingam

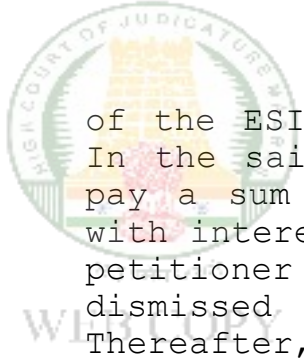
ORDER

This civil revision petition is filed challenging the order made in I.A.No.586 of 2009 in E.S.I.O.P.No.4 of 2006 dated 06.12.2012, wherein and whereby, the Labour Court, Tiruchirapalli dismissed the Interlocutory Application filed for condoning the delay of 509 days to restore main original petition, which was dismissed for default on 27.03.2008.

2. Heard both sides.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioner before this Court, as the petitioner before the Labour Court, filed E.S.I.O.P.No.4 of 2006 challenging the order



of the ESI Corporation passed under Section 45(A) of the ESI Act. In the said order, the ESI Corporation directed the petitioner to pay a sum of Rs.1,47,078/- which is claimed from the petitioner, with interest. When the ESIOP posted for hearing on 27.03.2008, the petitioner did not appear and consequently, the Labour Court dismissed the original petition for default on 27.03.2008. Thereafter, the petitioner filed I.A for restoration of the O.P., with delay of 509 days. It is stated that the petitioner was unwell at that time and therefore, he was not able to contact his Advocate to give instruction. By contending so, the petitioner wanted the Labour Court to restore the O.P. However, the Labour Court refused to restore the said O.P by condoning the delay and thus, dismissed the condone delay petition by holding that the reason stated by the petitioner is not a reason for condoning the delay.

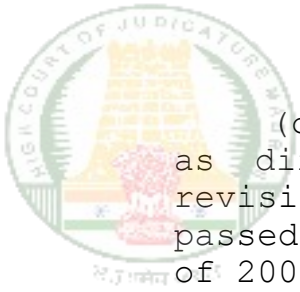
4. There is no dispute to the fact that as against the order passed under Section 45(A) of the ESI Act, the petitioner has approached the Labour Court and filed O.P. The merits of the claim made by the ESI Corporation has to be considered and decided in the main O.P. However, the petitioner did not appear on the date of hearing and consequently, the O.P was dismissed for default. Now, it is contended before this Court that the petitioner is having excellent case on merits and therefore, the matter may be restored so as to place the facts before the Labour Court.

5. Considering the fact that the petitioner has approached the Labour Court and filed the restoration application with delay of 509 days by contending that he was unwell and could not contact his counsel to instruct him and further considering the fact that the merits of the claim made by the petitioner is yet to be gone into, this Court is of the view that one more opportunity should be given to the petitioner to put forth his case before the Labour Court, so as to enable the Court to consider the matter on merits. However, such indulgence can be shown only by putting the petitioner on condition.

6. Accordingly, this civil revision petition is allowed and the trial Court is directed to restore the ESIOP No.4 of 2006 and pass order on the same on merits and in accordance with law, after hearing both the parties subject to the following terms:-

(a) the petitioner shall deposit the entire claim made in the order passed under Section 45(A) of the ESI Act with interest to the credit of ESIOP No.4 of 2006 on the file of the Labour Court, Tiruchirapalli, within a period of four weeks from the date of receipt of a copy of this order.

(b) On such deposit, the Labour Court, shall restore the ESIOP and dispose of the same on merits and in accordance with law, after hearing both the parties within a period of twelve weeks thereafter.



(c) If the petitioner fails to comply with the payment as directed in clause (a) of this order, this civil revision petition shall stand dismissed and the order passed by the Labour Court, Tiruchirapalli, in I.A.No.586 of 2006 shall stand restored.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judge,
Labour Court,
Tiruchirapalli.

2.The Regional Director,
E.S.I Corporation,
Chennai - 34.

3.The Recovery Officer,
E.S.I. Corporation,
No.143, Sterling Road,
Chennai - 34.

+1 CC to M/s.K.C.RAMALINGAM, Advocate SR-68646.

+1 CC to M/s.P.THIAGARAJAN, Advocate SR-68665.

C.R.P. (PD) (MD) No.1120 of 2013

and

M.P (MD) No. 1 of 2013

13.06.2019

CS: (02/07/2019) 3P 6C