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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1305/2019

AJAY KUMAR

..... Petitioner

Through: Mr Brajesh Pandey and Mr Amit
Kumar, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr Jivesh Tiwari and Ms Suman
Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.02.2019

CM No. 5902/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 1305/2019 & CM No.5901/2019

2. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 16.11.2018 issued by the Recovery Officer seeking to recover arrears amounting to ₹2,45,165/- from the petitioner.

3. The impugned notice indicates that a certificate of recovery had been forwarded by the authorized officer to the recovery office and the petitioner has been called upon to pay the aforesaid amount of ₹2,45,165/- along with further interest with effect from 14.09.2018. The petitioner has also put to notice if the said amount has not been paid, proceedings shall be initiated for realising the said amount.

4. The petitioner's father Shri Shiv Kumar (since deceased) was running

a sole proprietor concern in the name and style of M/s Shiva Security.

5. The petitioner states that his father expired on 12.05.2017 without bequeathing any assets in favour of his legal heirs. He further submits that his father's business was also not running smoothly. After the petitioner's father had expired, the respondent issued a recovery notice dated 17.09.2018 in the name of M/s Shiva Security/Shri Shiv Kumar for recovery of the amount ₹2,45,165/-. It is stated that the petitioner responded to the aforesaid notice by a letter dated 30.10.2018 informing the concerned respondent that his father has expired without leaving behind any assets.

6. The respondent has not addressed the aforesaid contention and had simply issued a notice of recovery against the petitioner as a legal heir of his deceased father.

7. The learned counsel appearing for the respondent submitted that the petitioner was also a 'principal employer' within the meaning of Section 2(17)(i) of the Employees State Insurance Act, 1948 (ESI Act, 1948). Section 2(17)(i) of the ESI Act, 1948 reads as under:-

2. Definitions. — In this Act, unless there is anything repugnant in the subject or context,

“(17) “principal employer” means –

- (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under³¹ [the Factories Act, 1948 (63 of 1948)], the person so named.”

8. Plainly, the said clause is inapplicable as the petitioner's father did not

own or run any factory but was providing security services. Thus, the fundamental premise that the petitioner is principal employer, is flawed.

9. The learned counsel for the respondent further submitted that if the petitioner has any objection to the said notice, he ought to have approached the concerned officer with the same. This contention is also unmerited. The petitioner had, prior to issuance of the notice, duly informed the concerned officer, by a letter dated 30.10.2018, that the petitioner's father had expired on 12.05.2017 without leaving any assets to his legal heirs. He had unequivocally stated that the legal heirs of Shri Shiv Kumar had not inherited any asset or property from him. However, the said contention was ignored and the respondent has initiated recovery proceedings against the petitioner.

10. In view of the above, the impugned notice dated 16.11.2018 is set aside. It is clarified that this would not preclude the respondent from initiating fresh proceedings against the petitioner if there is any material to suggest that the petitioner had inherited any estate from his late father. It is further clarified that recovery, if any, would also be limited only to the extent of the estate of the deceased Shri Shiv Kumar.

11. The petition and the pending application are disposed of.

VIBHU BAKHRU, J

FEBRUARY 08, 2019

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