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

Date of Decision: 17th September, 2019

+ **CM (M) 735/2018 & CM APPL. 26440/2018**

EMPLOYEE STATE INSURANCE CORPORATION Petitioner

Through: Mr. V. K. Singh, Ms. Nisha Hans and
Ms. Komalpreet Kaur, Advocates.
(M:9811645002)

versus

**M/S G L MANAGEMENT SERVICES
(P) LTD. & ANR.**

..... Respondents

Through: Mr. Manish Malhotra, Advocate.
(M:9911314422)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the impugned order dated 16th April, 2018 by which the evidence, which was to be recorded has been suddenly terminated and the following order was passed:

“ No evidence is being recorded today because it appears that this petition can be decided without recording of any evidence. In this context, it is noteworthy that in the written statement, the respondent has nowhere explained the exact or rough basis of the amount of Rs. 1,29,33,203/-, sought from the petitioner by way of the impugned Order.

List for consideration on the aforesaid aspect, on 29/05/2018.”

2. Ld. counsel for the Petitioner submits that if the recordal of evidence had been continued, after the Respondents had led evidence, the Petitioner would also have liberty to defend the order passed under Section 45A of the

Employees' State Insurance Act, 1948 (*hereinafter the 'Act'*) by leading its evidence.

3. It is further submitted by Id. counsel for the Petitioner that there is no reasoning whatsoever given in the order as to why the evidence was suddenly terminated.

4. On the other hand, Id. counsel for the Respondents submits that the order passed by the Petitioner under Section 45A of the Act has to stand on its own legs. It should not be allowed to lead evidence in the matter in order to justify its order when a challenge has been raised under Section 75 of the Act. If the Employees' Insurance Court (*'EIC'*) upon a *prima facie* reading of the order under Section 45A believes that the order cannot be sustained, then it is not required to record evidence. Thus, the Id. Trial Court, in fact, on 16th April, 2018 came to the conclusion that the recording of evidence would not be required and hence terminated the same. He further submits that recording of evidence of the Respondents had not been commenced before the EIC.

5. Issues were framed in the matter on 17th March, 2016. The same read as under:

- “ a) Whether the Petitioner is entitled for the prayer of setting aside the impugned order dated 06/06/13*
- b) Whether the petition of the petitioner is not maintainable as petitioner has no locus standi or cause of action?*
- c) Relief, if any”*

After a period of nearly two years post the framing of issues, the Trial Court has, by the impugned order, terminated the recordal of evidence. The order is completely cryptic and there is no reasoning given whatsoever as to why

such a course of action was adopted. On a query by the Court it is conceded by Id. counsels across the bar that usually in proceedings before the EIC under Section 75 of the Act, evidence is recorded by the Court. In fact, a perusal of the Section 78 of the Act shows that the EIC has all the powers of a Civil Court including of summoning witnesses, recordal of evidence, administration of oath, production of documents etc. Thus, issues having already been framed in the matter three years ago, and the Respondents having already filed their affidavit in evidence, though the same has not been tendered, there is no reasoning whatsoever given in the order for termination of recordal of evidence. If the Trial Court was of the opinion that the order framing issues had to be recalled and evidence had to be terminated, the Trial Court should have given proper reasoning for the same, which is completely lacking in the present case. While this court is conscious of the fact that in some cases under Section 75, the matter could be decided without recording evidence and that it may not be compulsory to record evidence in all matters, the manner in which the Trial Court has proceeded with the impugned order is surprising to say the least. This is more so when the predecessor court had framed issues and directed the filing of the evidence. In fact such an approach has resulted in greater delay as there has been a challenge to the order and the adjudication of the main matter has been stalled.

6. Moreover, a perusal of the order passed on 5th September, 2018 in this petition, also shows that despite pendency of the present petition, the Trial Court fixed the matter for final arguments. This was impugned by the Petitioner before this Court and an interim order was passed directing stay of the proceedings till disposal of the present petition. The extract of the order

dated 5th September 2018, is set out below:

“The matter is indicated to be listed for 05.10.2018 and taken up on CM app. 36076/2018, an application filed on behalf of the petitioner seeking an early hearing submitting to the effect that vide proceedings dated 23.08.2018 before the learned trial Court in CS 8047/2016, the matter is listed for the date 13.09.2018 and it has been submitted on behalf of the petitioner that vide the order dated 21.08.2018, the trial Court has already fixed the matter for clarification/order on 13.09.2018 at 4:30 pm observing to the effect that arguments as per order dated 16.04.2018 had been heard.

The respondent has apparently been served with the notice of the present application. Taking the said aspect into account, the proceedings before the learned trial Court are stayed till disposal of the present petition.”

7. Under these circumstances, the impugned order dated 16th April, 2018 is set aside and the recordal of evidence shall continue. Considering the nature of the matter and the fact that it has been pending for a considerable period of time i.e. at least since 2016, expeditious disposal of the appeal filed by the Respondents is directed.

8. The petition is allowed in the above terms. The pending application is also disposed of. *Dasti.*

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 17, 2019/dk