

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No.37 of 2020

and

C.M.P.No.205 of 2020

1. M/s.Vikram Mahesh Ahuja

2. A.T.Suppiah

vs.

Petitioners

1. The Deputy Director,
Employees' State Insurance Corporation,
(Sub Regional Office),
1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram,
Coimbatore 641 045.

2. The Recovery Officer,
Employees' State Insurance Corporation,
(Sub Regional Office).
1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram,
Coimbatore 641 045.

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 11.12.2019 passed in I.A.No.15 of 2019 in Unnumbered ESIOP on the file of the Employees State Insurance Court/Principal Labour Court, Coimbatore.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondents : Mr.S.P.Srinivasan

ORDER

The petitioners in unnumbered ESIOP now pending on the file of the ESI Court/Principal Labour Court, Coimbatore had filed I.A.No.15 of 2019 seeking a discretionary order to waive the deposit or to reduce the amount to be deposited under Section on Section 75(2B) of the ESI Act, 1958.

2. Heard Mr.Anand Gopalan, learned counsel for the revision petitioners and Mr.S.P.Srinivasan, learned counsel for the respondents-ESI Corporation.

3. The petitioners claim that they have taken over the business concern in the year 2006 after ensuring that there were no dues to the ESI Corporation. In fact, they have also received a letter stating that no due is pending in the year 2008. A notice had been issued and proceedings had been dropped, as it was clarified that there were no dues in the year 2006. Subsequently, in the year 2018, a further notice has been issued and recovery proceedings had been initiated. Questioning that, the petitioners/plaintiffs had filed unnumbered ESIOP before the competent court viz., Sub Court/Principal Labour Court,

Coimbatore. They sought for waiver under Section 75(2B) of the ESI Act, 1948.

4. The learned Judge, while examining the said Application, after issuing notice to the respondent and also examining the counter, had dismissed the said Application and granted time to deposit 50% of the amount claimed viz., Rs.15,18,873/- which comes to Rs.7,59,436.50 which was rounded off to Rs.7,59,437/- as a pre condition to entertain the main O.P. and further stated that if there is no deposit, the main Original Petition will stand rejected.

5. Aggrieved by such imposition of 50% of the demand amount, the present revision petition has been filed.

6. A preliminary objection has been raised by Mr.S.P.Srinivasan, learned counsel for the respondents that as against any order passed by the court concerned, only a Civil Miscellaneous Appeal and not a Civil Revision Petition would lie.

7. This statement is countered by Mr.Anand Gopalan learned

counsel for the petitioner that technically an order has been passed in an Interlocutory Application, as a pre condition to take up ESIOP and that if the said amount is paid, there is an inference that on the basis of the said direction, the ESIOP would stand revived and therefore, it cannot take the effect of a final order and an Appeal would lie only against a final order and not against an order passed in an Interlocutory Application as in the present order in question.

8. The learned counsel for the petitioners also pointed out that the present revision petition has been filed taking advantage of Article 227 of the Constitution of India, which according to the learned counsel gives a wide power to examine any order passed by any one of the courts as to whether the court has exercised its jurisdiction in excess or had not exercised jurisdiction vested in it.

9. Let me not examine that particular issue and keep that open. I think it would only be appropriate and advisable that the parties are relegated to the ESI Court/Principal Labour Court, Coimbatore to examine the issues concerning the demand made by the respondents herein.

10. Therefore, instead of going into the issue as to whether the

order passed by the ESI Court/Principal Labour Court, Coimbatore in an Interlocutory Applicable is appealable or revisable, in the interest of justice, it would be appropriate to direct the petitioners to deposit 20% of the demand made by the respondents instead of 50% of the demand made as a precondition for entertaining the ESIOP. Such deposit shall be made by the petitioners before the ESI Court/Principal Labour Court, Coimbatore within a period of four weeks from the date of receipt of a copy of this order and on such deposit, a request is placed before the court concerned to entertain the ESIOP if it is otherwise in order.

11. I am confident that the learned counsel for the parties also would cooperate for conclusion of the trial without seeking any unnecessary adjournments.

12. With the said observation, the civil revision petition is disposed of. No order as to costs. The connected Miscellaneous Petition is closed.

20.4.2021.

Index: Yes/No.
Internet: Yes/No.

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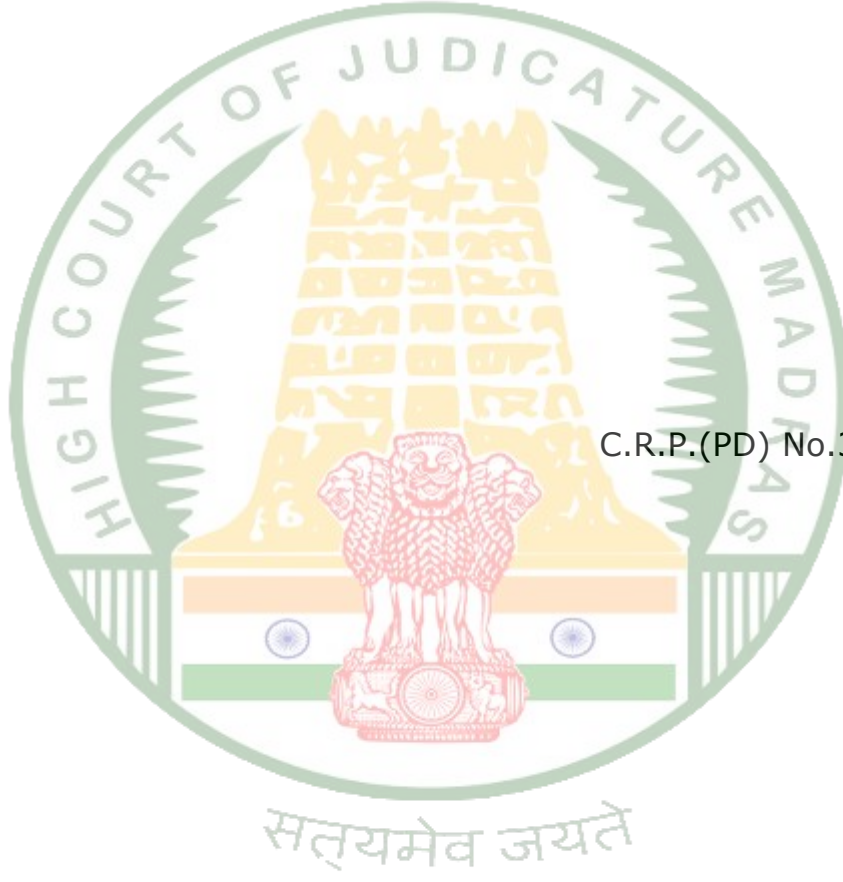
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C.V.KARTHIKEYAN, J.

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