

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.02.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.278 of 2021
and
C.M.P.No.1857 of 2021

M/s.Sri Bhavani Textiles Processors (P) Ltd.,
Rep.by its Director S.Jaganathan,
Akkarai Kodivery,
Gobichettypalayam - 638 454.

...Appellant/Petitioner

Vs.

1.Employees State Insurance Corporation,
Rep.by its Deputy Director,
"Panchdeep Complex"
1897, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045.

2.The Additional Commissioner/Appellate
Authority,
Employees State Insurance Corporation,
"Panchdeep Complex"
1897, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045.

3.The Recovery Officer,
ESIC, Sub Regional Office,
"Panchdeep Complex"
1897, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act, 1948, to set aside the docket order of the Employees State Insurance Court, Coimbatore dated 15.11.2019 in I.A.No.382 of 2018 in Unnumbered E.S.I.O.P and allow the appeal.

For Appellant

: Mr.S.Ravindran
Senior counsel
For Mr.S.Bazeerahamed

For Respondents

: Mr.G.Bharadwaj
Standing counsel for ESI

J U D G M E N T

The order dated 15.11.2019 passed by the 1st respondent in I.A.No.382 of 2018 in Unnumbered E.S.I.O.P is under challenge in the Civil Miscellaneous Appeal.

2. The E.S.I.O.P was filed by the appellant under Section 75 of the Employees State Insurance Act, 1948 to set aside the order dated 14.09.2018 passed by the Additional Commissioner / Appellate Authority, ESI Corporation, determining the compensation under Section 45AA of the ESI Act. The facts as well as the grounds raised by the appellant as well as the respondent were considered by the Employees State Insurance Court, Coimbatore in I.A.No.382 of 2018 and the petition was ordered on condition to deposit 25% of the claim amount of Rs.14,51,951/- i.e. Rs.3,62,988/- with the Court on or before 15.11.2019, failing which, the petition will stand dismissed. The matter was directed to be listed on 15.11.2019 by the ESI Court.

3. The facts and details are not required in the appeal is filed against the order only on the limited ground that the appellant had not deposited the 25% of the claim amount on or before 15.11.2019 and therefore, the petition stand dismissed automatically and thus, the present appeal is filed.

4. The learned Senior counsel appearing on behalf of the appellant mainly contended that on certain unforeseen circumstances, which resulted non compliance of the conditional order passed by the ESI Court. The appellant was willing to deposit the amount and he failed to do so due to certain personal reasons and therefore, further time is to be granted to deposit the said amount, enabling the appellant to adjudicate the appeal on merits and in accordance with law.

5. The learned counsel appearing on behalf of the respondent / ESI Corporation mainly contended that the appellant has not raised any Substantial question of law and therefore, the appeal is to be dismissed in limine.

6. This Court is of the considered opinion that in the event of non-adjudication of the ESI appeal on merits between the parties, the same would cause denial of an opportunity of adjudication in a statutory appeal and thus, such a denial will certainly would cause an injustice to either of the parties and therefore, it is sufficient if the said point is raised, the same can be construed as a substantial question of law as the same would affect the right of adjudication of a party to the appeal filed under Section 75 of the ESI Act. Thus, if the appeal is dismissed on account of the non-compliance of the

conditional order to deposit 25% of the claim amount is allowed to be confirmed, then the same would cause greater hardship and prejudice to the interest of the appellant and therefore, the said point can be considered as a question of law for the purpose of adjudication of the appeal on hand.

7. The learned Senior counsel appearing on behalf of the appellant contended that the appellant is ready with the Demand Draft and he is willing to deposit, if an order is passed by this Court.

8. This being the factum, this Court is inclined to consider the appeal. Accordingly, the order dated 15.11.2019 passed in I.A.No.382 of 2018 in unnumbered E.S.I.O.P is set aside to the limited extent of fixing the time limit as 15.11.2019 and accordingly, the time granted by the ESI Court to pay stands extended to 02.03.2021. The appellant is directed to deposit the 25% of the claim amount of Rs.14,51,951/- i.e. Rs.3,62,988/- on or before 02.03.2021, failing which, the ESIOP stands dismissed automatically.

9. Accordingly, the Civil Miscellaneous Appeal in C.M.A.No.278 of 2021 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To
The Presiding Officer
The Employees State Insurance Court,
Coimbatore.

+1 cc to Mr.G.Bharadhras Advocate sr9276

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C.M.A.No.278 of 2021

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