

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1697 of 2020
C.M.P.No.12498 of 2020

M/s.Super Spinning Mills Limited (Defunct)
Corporate Office, "Elgi Towers"
P.B.No.7113, Green Fields,
Puliakulam Road,
Coimbatore-641 045.
Rep.by its Managing Director and Chairman
Sumanth Ramamurthi. .. Appellant/Petitioner

vs.

- 1.Assistant Director,
M/s.Employees State Insurance Corporation,
Sub-Regional Office,
1897, Trichy Road, Ramanathapuram,
Coimbatore-641 045.
- 2.The Recovery Officer,
M/s.Employees State Insurance Corporation,
Sub-Regional Office,
1897, Trichy Road, Ramanathapuram,
Coimbatore-641 045. .. Respondents/ Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 82(2) of ESI Act, against the judgment and decree dated 04.08.2020 passed in I.A.No.2 of 2019 in E.S.I.O.P.C.F.R.No.125 of 2019 by the Employees State Insurance Court, Coimbatore.

For Appellant : Mr.S.Ravichandran, Senior Counsel
for Mr.S.Bazeerahamed

For Respondent : Mr.A.E.Lakshmanen
for Mr.K.Prabakar

J U D G M E N T

The order dated 04.08.2020 passed in I.A.No.2 of 2019 in E.S.I.O.P.C.F.R.No.125 of 2019 is under challenge in the present Civil Miscellaneous Appeal.

2. The learned Senior Counsel appearing on behalf of the appellant mainly contended that the statutory order passed under Section 45A of the Act was not communicated nor served to the appellant. Therefore, there was a delay in filing the appeal under Section 75 of the Act. In order to establish the said contention, the learned Senior Counsel solicited the attention of this Court with reference to the prohibitory order passed by the second respondent in proceeding dated 01.10.2018 wherein the address of the appellant is stated as M/s.Super SPG Mills Limited, 18E, 18F, Jeeva Street, Urumandampalayam, GN Mills Post, Coimbatore-641 029. The said address is the address of the factory and the factory was closed on 09.07.2007 itself. Thus, the order communicated to the above factory address was not reached and the appellant had no occasion to get the order. However, the office address was also furnished to the ESI Authorities and even in the said prohibitory order, the office address as M/s.Super SPG Mills Limited, 737 D Puliakulam Road, Elgi Towers, Green Fields, Coimbatore-641 045 is mentioned. In the said address, the office of the appellant was functioning and the order was communicated subsequently to the address. Therefore, the ESI Authorities cannot say that the appellant has changed his address and therefore, the order was not communicated.

3. Relying on the said order passed by the Recovery Officer, the learned Senior Counsel made a submission that after receiving prohibitory order, the appellant/Company made a request to furnish the copies of the orders/documents passed under Section 45A of the Act. Thereafter, in proceedings dated 28.11.2008, all the photocopies of the orders/documents were communicated to the appellant in their office address. On receipt of documents/orders passed under Section 45A of the Act, the appellant preferred an appeal under Section 75 of the Act before the ESI Court along with an interlocutory application to condone the delay in filing the appeal. It is relevant to consider that Rule 17(1) of the Tamil Nadu Employee's Insurance Courts Rules was struck down by the Courts. Therefore, the ESI Court had no power to condone the delay and the ESI Court passed an order in the interlocutory application by holding that the delay occurred in filing of the petition till April 2019 is unsubstantiated and an abnormal delay of more than a year cannot be condoned in the circumstances of the case on hand. Therefore,

the petition was dismissed.

4. In the present case, the Authorities have not served the copy of the order passed under Section 45A to the appellant in time. In the absence of any proof, the ESI Court ought not to have arrived a conclusion that the copies were communicated to the appellant in time. Contrarily, the appellant could able to establish that the factory was closed in the year 2007 itself and they have received the prohibitory order dated 01.10.2018, after a lapse of 11 years from the date of closure of the factory. Thus, there is no occasion to see the order passed under Section 45A of the Act. Thereafter, the appellant made a request on 12.11.2018 to furnish copies of the orders/documents and the said copies of the orders/documents were communicated to the appellant by the ESI Authorities along with letter dated 28.11.2018. Thus, for all purposes, the date of communication of the statutory order passed under Section 45A of the Act would be the date of communication which was 28.11.2018. Thus, the period of limitation is reckoned from 28.11.2018. Accordingly, the appeal is filed within a period of six months and there was no actual delay and the delay occurred due to non-communication of the statutory order passed under Section 45A of the Act.

5. This being the factum established, the ESI Court has proceeded based on erroneous footing that the order was communicated to the appellant in time and the delay occurred at the instance of the Authorities. Such a finding is contrary to the facts established and further, the ESI Authorities have not established that the statutory order was communicated soon after passing of the order. This being the factum, this Court is of the considered opinion that the dismissal of the interlocutory application on the ground of delay is not in consonance with the facts established. Accordingly, the order dated 04.08.2020 passed in I.A.No.2 of 2019 is set aside and the ESI Court is directed to number the E.S.I.O.P if the papers are otherwise in order and continue the adjudication by following the procedures contemplated under the Statutory Rules. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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Assistant Registrar

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Sub Assistant Registrar

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To

The Employees State Insurance Court,
Coimbatore.

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The Section Officer,
VR Section, High Court, Madras. +2 Copies

+1cc to Mr.K.Prabakar, Advocate SR.No.20839

C.M.A.No.1697 of 2020

LN (CO)
GMY (30/04/2021)



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