



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2021

Delivered on : 10.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) No.981 of 2013

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The Recovery Officer,
E.S.I. Corporation,
Sub-Regional Office,
2nd West Street,
K.K.Nagar, Madurai - 20.

... Appellant / Respondent

Vs.

M/s.Ayyan Fire Works Factory (P) Ltd.,
Geethalaya Buildings, 12A Chairman,
A.Shanmuganadar Road,
Sivakasi.
Rep. by the Managing Director,
Mr.A.Grahadurai

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 182(2) of the E.S.I. Act, 1948, against the order of the Labour Court, Madurai, passed in E.S.I.O.P.No. 19 of 1995, dated 22.01.2011.

For Appellant	: Mr.N.Dilip Kumar
For Respondent	: Ms.K.Vidya for Mr.M.Senthil Kumar

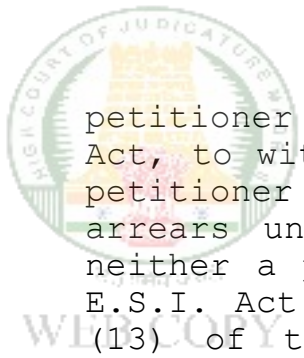
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order of the Labour Court, Madurai, passed in E.S.I.O.P.No. 19 of 1995, dated 22.01.2011.

2.The appellant herein is the E.S.I Corporation and the respondent is the petitioner in E.S.I.O.P.No.19 of 1995.

3.Brief substance of the petition in E.S.I.O.P.No.19 of 1995, is as follows:-

The petitioner is a private Limited Company, doing business in manufacturing and sale of fire works. On 20.01.1994, the petitioner-Company entered into a lease agreement with M/s.Saravana Fire Works, Sengamalanachiarapuram and occupied the premises on 21.01.1994. The petitioner was prompt in registering the employees under the E.S.I. Scheme. On 10.12.1994, the Managing Director of the petitioner received a communication for recovery of Rs.84,024 towards unpaid E.S.I. Contribution for the period from April 1981 and 31.12.1992. No notice was served on the petitioner. The



petitioner filed a petition under Section 45 E and F of the E.S.I. Act, to withdraw the notice issued against him. On 12.05.1995, the petitioner received a communication that he was liable to pay E.S.I. arrears under Section 93 of the E.S.I. Act. The petitioner is neither a principal employer as defined under Section 2(17) of the E.S.I. Act nor an immediate employer as defined as under Section 2 (13) of the E.S.I. Act. The respondent failed to comply the principles of natural justice. The petition filed by the petitioner under Section 45A was not considered by the authorities and the notice and order are to be set aside.

4. Brief substance of the counter in E.S.I.O.P.No.19 of 1995, filed by the respondent is as follows:-

The order of the respondent, dated 08.12.1994 is legal. M/s. Saravana Fire Works was covered by the provisions of the E.S.I. Act. The petitioner has failed to pay the contribution due for the period from April 1981 to September 1985. The order dated 12.06.1998 was passed under Section 45A of the E.S.I. Act. The petitioner filed a petition in E.S.I.O.P.No.3 of 1987, before the E.S.I Court, Ramanathapuram at Madurai. On 13.11.1990, it was held that the said Factory is liable for payment of contribution with interest. The respondent is taking steps to recover the same and the petitioner has taken the factory on lease and he is running the same. Under Section 93A of the E.S.I. Act, the petitioner is also liable to pay all the arrears of contribution due from M/s. Saravana Fire Works. When an employer occupy a factory by sale or lease, both the transferor and the transferee are jointly liable to pay arrears of contribution.

5. On the side of the petitioner, no witness was examined and three documents were marked as Ex.P1 to Ex.P3. On the side of the respondent, no witness was examined and no document was marked.

6. After hearing both sides, the Labour Court, has allowed the petition and remitted the matter back to the respondent authority for fresh disposal. Against that order, the appellant has filed this Civil Miscellaneous Appeal.

7. On the side of the appellant, it is stated that the matter in dispute was already decided by the competent Court in E.S.I.O.P.No.3 of 1987 by its order, dated 13.11.1990 and has attained finality. The Labour Court failed to appreciate the provision under Section 45E of the E.S.I. Act. E.S.I.O.P.No.3 of 1987 suffers from non-joinder of proper and necessary party. The appellant is only a recovery officer and is carrying out the provisions under Sections 45C to 45G of the E.S.I. Act and he cannot be prayed to comply with direction of the trial Court. The authorised officer was not a party before the trial Court. The action of the appellant is maintainable under Section 93A of the



8.The substantial question of law raised in this case is as follows:

On the facts and circumstances, whether the lower Court was correct in remitting the matter back to the Appellant for fresh disposal, even after the same issue has been decided by the E.S.I. Court, Ramanathapuram at Maduri, in E.S.I.O.P. No.3 of 1987, dated 13.11.1990.

9.On the side of the appellant, it is stated that the factory, by name, M/s. Saravana Fire works, was covered under the E.S.I. Act, the contribution was not paid and proceeding was initiated against the Institution and a survey was done, notice was sent to the employer. The employer received Form C-18, notice passed on 07.11.1995 against M/s. Saravana Fire Works. There was default, from April 1981 to September - 1985, for a period of four years and five months. Recovery Certificate was issued on 15.03.1994. There was no appeal against the order and the order reaches finality. The present respondent is occupying the premises as a lessee. Under Section 93A of the E.S.I.Act is also liable for the contribution to be paid by the previous occupier. Under Section 93A of the E.S.I. Act, there is no necessity to give an opportunity. An *exparte* order was passed on 08.05.1995, there is no necessity for a fresh enquiry and prayed the Appeal to be allowed.

10.On the side of the respondent, it is stated that M/s. Saravana Fire Works is a manufacturing Company producing Fire works with their own label. On 10.12.1994, the respondent received the demand notice, requesting Contribution for a period from April - 1981 till September - 1985. The respondent occupied the premises only on 20.01.1994. A lessee is not a successor, post arrears need not be paid by the lessee. As per Section 93A of the E.S.I. Act, the transferee of an establishment either by way of sale or licence is not jointly or severally liable to pay contribution prior to the date of transfer or lessee. The order was passed without notice to the respondent and without enquiry. Since opportunity was not given to the respondent, the Labour Court has remitted back the matter and prayed the Appeal to be dismissed.

11.The appellant has not filed any documents regarding E.S.I.O.P.No.3 of 1987. It is stated that the respondent was occupying the premises from 21.01.1994. The present respondent is not a party in the E.S.I.O.P.No.3 of 1987. Admittedly, no notice was issued to the present respondent, no enquiry was conducted. In the above circumstances, the question of law raised by the appellant is unsustainable.



12. There is nothing sufficient enough to interfere in the order of the Labour Court. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (T & P)

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Labour Court,
Madurai.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-25752[F] dated 10/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25827[F] dated 10/08/2021)

Pre-delivery Judgment made in
C.M.A(MD) No.981 of 2013
10.08.2021

RS (18.08.2021) 4P 6C