



WEB COPY



W.P.No.25458 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.25458 of 2022
and WMP.No.24457 of 2022

M/s. Minvesta Infotech Ltd.,
Old No.5 & 5A, New No.9,
Pycrofts Garden Road,
Nungambakkam,

..Petitioner

Vs.

1. The Deputy Director,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai – 600 034.

2. The Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai – 600 34. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for Writ of Mandamus, forbearing the 2nd respondent from proceeding any further in terms of its recovery notice dated 06.09.2022 in proceedings No.5100097220000911/CP/505210 CCR-111491 pending disposal of the ESI OP Sr.No.375 of 2022 filed by the petitioner before the Principal Labour Court, Chennai.

For Petitioner

: Mr.Anand Gopalan



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for M/s.T.S.Gopalan & Co.

For Respondents : Mr.G.Bharadwaj
Standing Counsel

ORDER

The prayer sought for herein is for a writ of mandamus, forbearing the 2nd respondent from proceeding any further in terms of its recovery notice dated 06.09.2022 in proceedings No.5100097220000911/CP/505210 CCR-111491 pending disposal of the ESI OP Sr.No.375 of 2022 filed by the petitioner before the Principal Labour Court, Chennai.

2. As against the order passed by the Employees State Insurance Corporation [in short, “ESI”] against the petitioner under Section 45A of the ESI Act dated 01.12.201, belatedly, the petitioner now only has filed an appeal under the provisions of the ESI Act before the ESI Court Chennai. Since there has been a delay in filing such appeal, a condone delay petition also has been filed and is pending consideration before the said Court.

3. In the meanwhile, the present writ petition has been filed, challenging the very same order. However, Mr.Anand Goplan, learned counsel appearing for the petitioner submitted that the petitioner wanted



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to limit the prayer sought for herein only to the extent to protect the interest of the petitioner as an interim measure till the condone delay petition is disposed of and the appeal is numbered by the ESI Court and thereafter, it will be taken care of by the said appeal before the ESI Court, where the petitioner would pursue his remedy.

4. Heard Mr.G.Bharadwaj, learned Standing Counsel appearing for the ESI Corporation, who would submit that, since belated appeal has been filed, that too, after several years, whether the delay would be condoned or not is the matter to be decided by the ESI Court. Therefore, at this juncture, the petitioner cannot seek such a protection from this Court.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. Even though a larger prayer is sought for in this writ petition, now Mr.Anand Gopalan, learned counsel appearing for the petitioner, has confined the prayer only to that extent of giving interim protection to the



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petitioner till his condone delay petition filed before the ESI Court along with delayed appeal before the said Court is decided one way or another.

7. I feel that the said plea raised by the petitioner can be considered otherwise the very appeal filed by the petitioner before the ESI Court would get infructuous, if the ESI Corporation is proceeded to recover the money as proposed in the impugned order passed under Section 45A of the Act.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That the petitioner can work out his remedy in the appeal before the ESI Court against the impugned order and in this regard till a decision is taken by the ESI Court on the condone delay petition along with an appeal, no coercive action shall be taken by the ESI Corporation pursuant to the impugned order.

With this direction, this writ petition is disposed of. No costs.



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Index : Yes/No

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R.SURESH KUMAR, J.

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