



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	15.12.2021
DELIVERED ON	11.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.1204 of 2011

The Deputy Director,
E.S.I. Corporation,
Sub-Regional Office,
Sinduppoondurai,
Tirunelveli - 627 001.

...Appellant/Respondent

Vs.

C.Jeyakumar

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 (2) of the E.S.I. Act, 1948, to set aside the Order and Decree passed by the Labour Court, Tirunelveli, in E.I.O.P. No.16 of 2006, dated 24.02.2011.

For Appellant : Mr.N.Dilip Kumar
For Respondent : Mr.C.Karthikeyan, for
Mr.P.Chandra bose

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Order and Decree, dated 24.02.2011 in E.I.O.P. No.16 of 2006 passed by the Labour Court, Tirunelveli,

2. Heard on either side. Perused the material documents available on record.

3.This Civil Miscellaneous Appeal is filed on the ground that the observation of the Labour Court that it is the duty of the appellant to prove the two shops are owned by the respondent is not correct and the respondent has miserably failed to discharge the burden of proof on him. The Lower Court has erred in not giving due importance to the documents from R-1 to R-12 and the evidence of R.W.1.

4. The case of the Respondent/Petitioner is that Eagle Book Centre is a small firm. This firm has no other branches. The appellant/Respondent sent C 18 Form on 25.04.2006 and ordered the



Respondent/Petitioner to pay a sum of Rs.61,937/- for 21 employees for the period from 08.04.2005 to 30.04.2005. The Corporation has also issued show cause notice on 28.04.2006 without giving an opportunities.

5. The Corporation has also incepted the firm on 23.06.2006. The firm was not coming under E.S.I. Act since only 3 employees are working.

6. The corporation has issued notice on 13.06.2006 to the respondent/petitioner to appear for enquiry on 04.07.2006. The Corporation came into conclusion that 21 employees are working in the Respondent concern and E.S.I. Act, is applicable to the firm, without any basis. So, the show cause notice is to be cancelled.

7. The appellant/respondent has filed CR- affidavit and stated that only the respondent/ petitioner has to prove the averments in the petition. The Head office of the respondent/petitioner's firm is at Door No:168 and Branch office is at Door No:39. In the head office 17 employees were working, in branch office 4 employees were working and totally 21 employees were working. So, the firm comes under the E.S.I. Act. Form 11 was also issued. The respondent/petitioner has not paid any amount.

8. Further C-18 Form was sent to the respondent/petitioner for his personal appearance, he has not used the opportunities. So, 45-A Notice was issued.

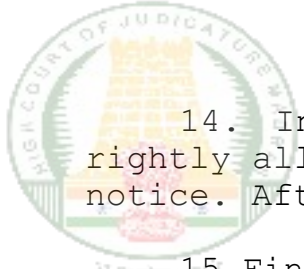
9. Whether the Respondent/petitioner is liable to pay contribution under E.S.I. Act?.

10. The Respondent/Petitioner's firm is situated at Door.No.168, Tiruvendram road, Palayamkottai. There is another shop in the same name as Eagle Book Centre at Door No.39. The Corporation has stated both the shops are under the control of C.Jeyakumar. At the time of inspection, there were 21 employees were working in both the shops.

11. The learned counsel appearing for the Respondent/Petitioner contented that he is running only one shop at Door No. 168 and only three employees were working. In support of his contention Ex.P3 to Ex.P6 were filed.

12. On the other hand, the Appellant/ Respondent relied a paper advertisement which was marked as Ex.R1. At the time of inspection, the officer of the Corporation did not verify the records to know the owner of the shop in Door No.39 and in Door No.168 are same.

13. When the respondent/ petitioner denied the ownership of both shops and filed E.S.I.O.P.NO.16 of 2006 to question the show cause notice, the corporation should verify the records. Without verifying the records the Corporation has issued 45-A notice.



14. In view of the aforesaid reasons, the Labour Court has rightly allow the E.S.I.O.P.No.16 of 2006 and quashed the show cause notice. After that final order also cannot be passed.

15.Finally, this Civil Miscellaneous Appeal stands dismissed by confirming the Order and Decree, dated 24.02.2011 in E.S.I.O.P. No.16 of 2006 passed by the Labour Court, Tirunelveli, No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-1229[F] dated 11/01/2022)

C.M.A. (MD) .No.1204 of 2011

11.01.2022

MGJ(28.01.2022) 3P 3C