

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 74/2019 and CM APPL. 8648/2019

Date of Decision: 23.11.2022

IN THE MATTER OF:

RAM CHANDER

..... Appellant

Through: Mr. Dhiraj Abraham Philip, Advocate

Versus

M/S RAMA INDUSTRIES

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'Act'), the appellant/claimant has assailed the order dated 18.12.2018 passed by the learned Commissioner, Employees' Compensation, District North-West, Delhi.

2. A perusal of the proceeding would show that the respondent stands served and was duly represented through Counsel on previous date(s) of hearing. It is also borne out from the record that no Reply has been filed. Accordingly, this Court proceeds to hear and decide the instant appeal.

3. Learned counsel for the appellant has submitted that vide the impugned order, the learned Commissioner arrived at a conclusion that the claim petition filed by the appellant was not maintainable as the respondent's firm was registered under the Employees' State Insurance Act, 1948 (hereinafter, referred to as the 'ESI Act'), and the claimant

being a beneficiary under the ESI Act could not have filed the claim petition under the Act. It is contended that once having reached such a conclusion, the learned Commissioner erred in returning findings on the merits of the case.

4. It is worthwhile to note that learned counsel for the appellant has not disputed the finding recorded in the impugned order with respect to the maintainability of the claim petition in view of Sections 53 and 61 of the ESI Act. In this regard, learned counsel has also referred to a decision of the Himachal Pradesh High Court in Trisis Corporation v. Vipin Kumar & Another reported as **2011 SCC OnLine HP 3609**.

5. The only issue which remains to be examined is whether having come to the conclusion that the claim petition was barred, the learned Commissioner was right in making observations on the merits of the case. I am of the considered opinion that once the Court arrives at a conclusion that a petition is not maintainable in terms of specific statutory bar, it ought not to make further observations on the touchstone of the merits of the case. In this regard, one may profitably refer to the observations of the Supreme Court in Municipal Corporation of Greater Mumbai v. Pankaj Arora (Secretary) and Others reported as **(2018) 3 SCC 699**. Relevant excerpt from the captioned decision reads as under: -

“20. Moreover, it was not necessary for the High Court in the earlier order to travel beyond the issue of ascertaining whether a dismissal of complaint on the ground of delay amounted to acquittal in order to invoke the jurisdiction under Section 378 CrPC. The observations of the High Court on the interplay of CrPC and the MMC Act and its implication on the facts were not foundational or necessary for the jurisdictional issue. Despite a specific jurisdictional issue present, the court gave a finding on merits and such finding cannot be treated as res judicata as it was purely auxiliary or non-foundational to the main issue in the earlier order. [Ramnik Vallabhdas Madhvani v. Taraben Pravinlal

Madhvani, (2004) 1 SCC 497 [as per S.B. Sinha, J. (concurring)]]”

6. In Pandurang and Others v. State of Maharashtra reported as (1986) 4 SCC 436, the Court was in *seisin* of an issue as to when a matter was required to be decided by a Division Bench of the High Court, is decided by the learned Single Judge, whether the decision rendered would be a nullity. While answering in affirmative, it was held that even if a decision is right on merits, it is rendered by a forum which is lacking in competence with regard to the subject matter. It was further observed that ‘*even a right decision by a wrong forum is no decision*’ and is ‘*non-existent in the eye of law*’. To the similar extent are the observations of the Apex Court in Union of India and Others v. Baleshwar Singh reported as 1994 Supp (2) SCC 587.

7. In view of the foregoing decisions, this Court deems it apposite to allow the present appeal. Accordingly, the impugned order dated 18.12.2018 is set aside and the appellant would be at liberty to avail appropriate remedy in accordance with law. It is clarified that proceedings hereafter, if any, filed on behalf of the appellant shall be decided on its own merits.

8. With the aforesaid observations, the appeal is disposed of alongwith pending application.

9. The Registry shall communicate a copy of this order to the concerned Commissioner, Employees’ Compensation.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 23, 2022

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