

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL (ST.) NO.31207 OF 2022
WITH
INTERIM APPLICATION NO.1876 OF 2023
WITH
INTERIM APPLICATION NO.953 OF 2023**

Pepsico India Holdings Pvt. Ltd.,
Mumbai

... Appellant

V/s.

E.S.I. Corporation & Anr.

... Respondents

Mr. Pradhyuman Madhusudhan Bhagat for the
appellant.

Mr. Shailesh S. Pathak with Jay Vora for the
respondents.

CORAM : AMIT BORKAR, J.

DATED : MARCH 1, 2023

P.C.:

INTERIM APPLICATION NO.953 OF 2023

1. The interim application is for condonation of delay of 184 days in filing present appeal.
2. For the reasons stated therein, the interim application is allowed in terms of prayer clause (a).

FIRST APPEAL (ST.) NO.31207 OF 2022

3. The appeal is directed against the judgment and order dated 22nd March 2022, passed by the Employees Insurance Court,

Mumbai rejecting application bearing ESI No.49 of 2006 filed under section 75 of the Employees State Insurance Act, 1948. On perusal of the impugned judgment, it appears that nine orders passed under section 45A of different date for different periods had been challenged by way of single application.

4. Grievance of the appellant is that the Employees State Insurance Court failed to adjudicate each grievance of the appellant.

5. On perusal of the application, it appears that the subject matter, scope of inquiry, the merits of each order as reflected from paragraph 8 of the application is different. Filing of such joint application has resulted into failure on the part of ESI Court to adjudicate on all grievances.

6. Faced with this difficulty, the learned advocate for the appellant, on instructions, seeks permission to withdraw ESI Application No.49 of 2006 with liberty to file fresh application challenging individual order passed under section 45A of the ESI Act, 1948.

7. Considering the adjudication by the ESI Court and the pleadings in application under section 75 of the ESI Act, 1948 present proceeding is treated as bona fide proceeding under section 14 of the Limitation Act, 1963.

8. The appellant is, therefore, permitted to withdraw present appeal with liberty to file fresh application under section 75 of the ESI Act, 1948. Since present proceeding is treated as bona fide

under section 14 of the Limitation Act, if the appellant files appeal within six weeks from today, the need for filing application for condonation of delay is dispensed with. On filing of such application within six (6) weeks from today, the ESI Court shall decide each application on its own merit.

9. The first appeal stands disposed of. No costs.

(AMIT BORKAR, J.)