

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 498 of 2020
Subhodhkumar Manikchand Jain
Vs.

Deputy Director, Regional Office, Employees State
Insurance Corporation, Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr.R.P.Joshi, counsel for the Petitioner.

Mrs.B.P.Maldhure, counsel for respondent No.1.

CORAM : ANIL S. KILOR, J.
DATED : 10.01.2023.

Heard the learned counsel for the respective parties. Though respondent No.2 was served long back, none appears on behalf of respondent No.2, even no reply is filed by respondent No.2 for opposing the present writ petition.

2. In this writ petition, the orders below Exhibits-36 and 33 dated 26/07/2019 and 11/12/2019 respectively are under challenge.

3. The learned Employees State Insurance Court rejected both the applications moved by the petitioner. The application Exhibit-36 was for setting aside order dated 26/08/2011 and grant of permission

to file written statement and the application Exhibit-33 is to cross-examine the witnesses of the opponent No.2.

4. Shri Joshi, learned counsel for the petitioner, submits that there is no liability of payment of dues on the petitioner, as he is the auction purchaser of the industrial plot, which was auctioned by the Provident Fund Authority.

5. He submits that the liability is of the original owner, i.e. respondent No.2. He, therefore, submits that because of mistake of the lawyer, the delay has been caused in filing the written statement. However, the delay has been properly and satisfactorily explained, but it was not considered by the Employees State Insurance Court and rejected the application Exhibit-36 for permission to file written statement.

6. He further submits that Exhibit-33, i.e. the application for cross-examination of the witnesses of opponent No.2/respondent No.2 was allowed in favour of the petitioner, however, it was allowed to the extent of denial only. He, therefore, prays for quashing and setting aside the impugned orders.

7. On the other hand, Mrs. Maldhure, learned counsel for respondent No.1, supports the impugned orders.

8. I have perused both the orders and documents filed along with the present petition.

9. Undisputedly, the petitioner is an auction purchaser of the industrial plot, which was originally owned by respondent No.2 and the recovery of employees insurance amount was initiated because of the default committed by respondent No.2. The affidavit filed by the petitioner explaining the delay shows that because of mistake of the lawyer, the delay has caused in filing the written statement.

10. Thus, considering the matter from the above referred perspective and further considering the settled law position that the provision of Code of Civil Procedure does not strictly apply to the proceedings before the Employees State Insurance Court, I am of the opinion that the learned Lower Court ought to have permitted the petitioner to file written statement.

11. Moreover, after going through the order below Exhibit-36, it is evident that the Court has not considered the explanation offered by the petitioner in right perspective and rejected the application without considering the case of the petitioner. In the circumstances, I am of the opinion that Exhibit-36 needs to be allowed.

12. As I have observed that the application Exhibit-36 needs to be allowed and the petitioner should be permitted to file written statement, the order below Exhibit-33 loses its efficacy, as on filing of the written statement, the petitioner will get the right to cross-examine. As such, no orders are required as regards the order below Exhibit-33. In the circumstances, I pass the following order.

ORDER

- (1) The writ petition is partly allowed.
- (2) The order below Exhibit-36 is hereby quashed and set aside.
- (3) The petitioner is permitted to file written statement, subject to payment of costs of Rs.10,000/- to be paid to the respondent No.1 within two weeks from today and the acknowledgement of the same shall be filed within three weeks in the Registry of this Court.

13. In view of the above, the writ petition is disposed of. No order as to costs.

[ANIL S. KILOR, J.]