

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7937 OF 2018

PETITIONER : M/s Shikara Restaurant and Bar Wadi
 Naka, Amravati road, Nagpur
 Through its Proprietor

..VERSUS..

RESPONDENTS : 1 Employees State Insurance
 Corporation, Panchdeep Bhawan,
 Ganeshpeth Nagpur Sub Regional
 Office, Through its Joint Director.

2 The Recovery Officer, O/o Sub
 Regional Office, Employees State
 Insurance Corporation, Panchdeep
 Bhawan, Ganeshpeth Nagpur

 Mr S. D. Shukla, Advocate for Petitioner.

Mrs B. P. Maldhure, Advocate for Respondent No.1.

CORAM : **VALMIKI SA MENEZES, J.**

DATE : **7th JUNE, 2023.**

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. This petition under Articles 226 and 227 of the Constitution of India takes exception to order dated

12.04.2018 passed by the Industrial Court, Nagpur in ESI Case No.5 of 2008 dismissing an application filed by the Petitioner at Exhibit – 50 on the record of the Industrial Court.

2.1. The application at Exhibit – 50 on the record of the Industrial Court seeks permission of that Court to lead further evidence in respect of documents filed by the respondent through an application at Exhibit – 48, whereby the respondent Corporation was allowed to produce various documents which included the Visit Note of the ESI Corporation alongwith Preliminary Inspection Record (PIR) amongst other documents.

2.2. It is a matter of record that the petitioner has denied the knowledge of some of these documents, and more specifically having denied the receipt thereof during the course of the proceedings pending before the Corporation.

3. From the record of the petition, it appears that after the proceedings under Section 75 of the Employees' State Insurance Act, 1948 commenced, the petitioner, who

was the original applicant/appellant, filed an application at Exhibit – 31, whereby he sought directions to the ESI Corporation to produce on record the Preliminary Inspection Record (PIR) amongst other documents. This application at Exhibit – 31 dated 28.10.2014 came to be dismissed since the same was vague and did not specify the particulars of the documents required ; the Industrial Court however granted the petitioner liberty to seek the production of documents from the ESI Corporation by making an application stating specific pleadings therein.

3.1. Thereafter, the respondent Corporation filed an application at Exhibit – 48 to produce on record of the ESI Court, various documents which included the Preliminary Inspection Record (PIR), Visit Note, various forms and other documents which were at Exhibits C-11 and C-18 of the Court's record. This application at Exhibit -48 came to be opposed by the petitioner mainly on the ground that the same were not produced by the respondent before recording of the evidence of the petitioner ; consequently, the petitioner opposed the application on the contention that

production of such documents would defeat the petitioner's right to adduce evidence with regard to these documents, since it had completed recording its examination-in-chief and cross-examination was underway.

3.2. The application at Exhibit – 48 came to be allowed, taking on record all the documents produced by the respondent, however, without reserving the right to the petitioner either to lead evidence in rebuttal or to lead their further evidence in order to deal with the contents of these documents. Be that as it may, the petitioner then filed an application at Exhibit – 50 dated 12.04.2018 stating therein that since the petitioner had no opportunity to deal with the documents produced by the respondent under Exhibit - 48, the Court ought to have granted permission to the petitioner to lead further evidence to deal with these documents. In other words, the application sought to lead further examination-in-chief, even though the cross-examination of the petitioner's witness had by then commenced.

4. The impugned order dated 12.04.2018 has rejected the application of the petitioner at Exhibit – 50. The main grounds urged by the petitioner in challenge to the impugned order are that the petitioner is now precluded from leading evidence to deal with both, the contents of these documents and to deal with the question as to whether they had actually received the same and were aware of their contents after having received these documents from the ESI Corporation. It is further the contention of the petitioner that unless they are given an opportunity to lead the evidence to deal with these documents and the contention of the respondent that the petitioner was all alone aware of the inspection carried out by the Corporation at the petitioner's premises, grave prejudice would be caused to the petitioner which might result in passing of an erroneous order.

4.1. The argument of the petitioner has been opposed and the impugned order supported by the respondent mainly on the contention that there is no perversity seen in the impugned order and the petitioner would have an opportunity to lead further evidence through any other

witness or by way of re-examination of the witness presently under cross-examination, after the cross-examination is complete.

5. I have heard the submissions of the learned Counsel appearing for the parties and perused the record. I have gone through the impugned order.

6. The impugned order dated 12.04.2018 proceeds on the assumption that most of the documents or orders passed by the Authority as well as inspection reports are already served on the applicant. The applicant/petitioner in fact have disputed this position and have contended that the evidence that they wish to lead on these documents is precisely to bring on record the fact that they were not served with some of these documents.

6.1. The impugned order further states that there would be no question of leading any evidence on the documents produced by the applicant and all the applicant could do at that stage was to seek permission for re-examination, if necessary.

7. In my opinion, the impugned order proceeds on the wrong assumption that the petitioner had admitted service of all the documents now produced by the respondent, that too after the completion of the examination-in-chief of the petitioner's witness. In all fairness, the ESI Court ought to have either reserved the right of the petitioner to lead evidence in rebuttal on the said documents or allowed the application at Exhibit -48 subject to the petitioner being allowed to lead further evidence/examination-in-chief to deal with the documents there were produced by the respondent under Exhibit -48. This has not been done by the Trial Court, whilst passing the impugned order.

7.1. The Trial Court has further erred in dismissing the application by holding that the petitioner could seek its permission for re-examination of the petitioner's witness after the cross-examination was complete. The provisions of the Evidence Act provide for re-examination which would be restricted only to clarify facts that may have come on record during the cross-examination of the petitioner's witness.

Beyond clarifying those parts of the cross-examination, re-examination under the Evidence Act would not entitle the petitioner to lead any evidence on the content of the documents produced under Exhibit – 48 or bring on record the evidence as to whether they were served with those documents or not. For these reasons, the impugned order is unsustainable, as it is passed contrary to law and without considering the right of the petitioner to have an opportunity to lead evidence on documents produced by the respondent Corporation after having led their examination-in-chief.

8. For the reasons cited above, the petition is **allowed**. The impugned order dated 12.04.2018 is hereby quashed and set aside. The application filed by the petitioner at Exhibit – 50 on the file of the ESI Court/Industrial Court at Nagpur in ESI Case No.5 of 2008 is allowed.

9. The petitioner shall be allowed to lead evidence through the witness, who is presently in the witness box and under cross-examination, to lead further examination-in-chief, on all the documents produced by the respondent

Corporation under Exhibit – 48. The Industrial Court at Nagpur shall thereafter proceed to record further cross-examination of the witness, and re-examination, if permissible.

10. The Industrial Court at Nagpur which is the notified Court under the Employees' State Insurance Act shall endeavour to dispose of ESI Case No.5 of 2008, after recording evidence of the parties, within a period of six months from the receipt of the copy of this judgment.

11. Parties are directed to appear before the ESI Court/ Industrial Court at Nagpur on 19.06.2023 at 11:00 a.m. The parties shall produce a copy of this judgment before the ESI Court.

12. Registry to inform the ESI Court/Industrial Court accordingly.

13. Rule is made absolute in above terms with no order as to costs.

JUDGE