



C.M.A. No. 1874 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1874 of 2021

The Deputy Director,
Employees State Insurance Corporation,
Sub Regional Office, Panchdeep Bhavan
1897, Trichy Road,
Coimbatore - 641 045.

... Appellant / Respondent

Vs.

M/s. Prime Tex
No.10-B, Padmavathipuram,
Tirupur - 641 603.

... Respondent / Petitioner

Civil Miscellaneous Appeal filed under Section 82 (2) of Employees State Insurance Act to set aside the Order of the Employees State Insurance Court, Coimbatore dated 10.02.2020 made in I.A. No.1/2019 in Unnumbered E.S.I.O.P.

For Appellant	:	Mrs. G. Narmada (for Mr. G. Bharadwaj)
For Respondent	:	Mr. Ezhil Raj



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant herein under Section 82 (2) of Employees State Insurance Act, 1948 (E.S.I Act, hereafter) to set aside the Order of the Employees State Insurance Court, Coimbatore dated 10.02.2020 made in I.A. No.1/2019 in Unnumbered E.S.I.O.P.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. The petitioner is an Export House engaged in Knitted Garment business in the name of “Prime Tex” and brought under the provision of Employees State Insurance Corporation Act, 1948. The E.S.I Code number allocated to the petitioner's establishment is Code No.56-61338-16/25/INS/III/TRP.

4. On 06.10.2012, the respondent - Corporation issued two Show Cause/ Ad-hoc Notices to the petitioner for seeking contribution for Rs.61,61,985/- and for a sum of Rs.6,19,481/- for the financial years 2001-



2002 and 2002-2003 respectively. On receipt of the Adhoc notices, the petitioner immediately filed a petition before the E.S.I Court, Coimbatore on 24.10.2004 and the same was intimated to the Corporation as per the letter dated 15.11.2004. However, the Corporation has passed an ex-parte Order dated 22.11.2004 by invoking section 45-A of the E.S.I Act. The petitioner approached the E.S.I Court challenging the Section 45-A Order passed by the appellant herein. Subsequently, the petition filed by the petitioner before the E.S.I Court, challenging the Ad-hoc Notice was returned on the ground that the same is pre-matured and observed that the petitioner shall appear before the Corporation and submit his case. Thereafter, he appeared before the respondent - Corporation and prayed for setting aside the ex-parte Order passed on 22.11.2004, but the respondent- Corporation has not conducted any enquiry as prayed by the petitioner. He has also sent another letter requesting for re-hearing and the same was also not considered.

5. Subsequently, on 23.01.2019, the respondent - Corporation has initiated the recovery proceedings and demanded the payment of the contribution as ordered by Section 45-A within a period of 15 days. Immediately after the receipt of the copies, the petitioner approached the



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E.S.I Court to set aside the Order passed under Section 45-A of the Act along with by filing a petition for condoning the delay by invoking Section 5 of the Limitation Act, 1963.

6. The E.S.I Corporation has also filed objections for condoning the delay. The E.S.I Corporation has taken a stand that the respondent herein has not challenged the Order passed U/s. 45-A of E.S.I Act or has not come forward to pay any contribution demanded by them. There is no reasonable cause to condone the delay of 4219 days and contended that the petition itself is not maintainable, since there is no provision of law to condone the delay.

7. The E.S.I Court after considering the arguments made on both sides has inclined to condone the delay. Aggrieved over the Order of condonation of delay, this appeal has been filed by the respondent – Corporation. The question of law arises for consideration before this Court is as follows: Whether E.S.I Court is having power to condone the delay in filing petition challenging the Order passed U/s.45-A of the Act, beyond the period prescribed U/s. 77(1-A) of the E.S.I Act?



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8. The learned counsel appearing for the E.S.I Corporation submits that the proceedings before the E.S.I Court ought to be filed within the period of three years from the date of Order passed in Section 45-A of E.S.I Act and there is no provision for condoning the delay after lapse of three years. Originally there was a provision in Rule 17 of the Madras Employees Insurance Court Rules empowering the E.S.I Court to condone the delay. However, it has been declared as ultra vires by the Division Bench of this Court in *M/s. Solar Works, Madras vs. E.S.I [1964 Madras 376]*. The Hon'ble Apex Court in *M/s. Bharat and Drum Mfg. Co. vs. E.S.I Corporation [AIR 1972 SC 1935]*, has held that the E.S.I Court is not a Court for the purpose of Limitation Act. The learned counsel also relied on the Division Bench judgment of the High Court of Kerala in *Tripenta Hotels Pvt. Ltd., vs. E.S.I Corporation, Thirissur, dated 08.04.2016 in App. No. 64 of 2012*, wherein it is held that the Limitation Act, 1963 is not applicable to the E.S.I Court and the appeal has to be filed within the time limit prescribed under section 77 and 82 of the E.S.I Act, 1948.

9. Per contra, the learned counsel appearing for the petitioner has submitted that originally the petition has been filed before the E.S.I Court



before passing Section 45-A Order and subsequently, it was dismissed as pre-mature. After dismissal, the petitioner has approached the E.S.I Corporation to set aside the Ex-parte Order, but they have not taken any steps to re-hear the matter. In the year 2017 only, the E.S.I Corporation has come forward to take recovery proceedings, hence the respondent immediately approached the E.S.I Court challenging the Order and also filed a petition to condone the delay, hence the petition filed by the petitioner is maintainable and prays to dismiss the appeal.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. It is the admitted case that, the E.S.I Corporation has issued C-18 show cause notices dated 06.10.2004 to the petitioner, and he had not chosen to file his reply to notice, approached the E.S.I Court challenging the Ad-hoc notices by filing Original Petition. In the mean time, the E.S.I Corporation has passed the Order under Section 45-A on 22.11.2004. Subsequently, the original petition filed by the petitioner was dismissed as pre-matured since the challenge made therein is against the show cause



notice. Though the petitioner approached the E.S.I Corporation to set aside the show cause notice, he has not approached the E.S.I Court, challenged the Order passed U/s. 45-A of E.S.I Act by invoking Section 75 of E.S.I Act, immediately after receipt of final Order. Only after initiation of recovery proceedings, he approached the E.S.I Court to set aside the final Order dated 22.11.2004, belatedly.

12. Relevant provisions deals with the powers, question or disputes to be decided between parties, limitation of the E.S.I Act are hereby stated for better appreciation.

“75. Matters to be decided by Employees' Insurance Court

(1) If any question or dispute arises as to-

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or



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(e) the right of any person to any benefit and as to the amount and duration thereof, or

[(ee) any direction issued by the Corporation under section 55A on a review of any payment of dependants benefits, or]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 11[or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act,

such question or dispute 11[subject to the provision of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely:-

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and



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(f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

PROVIDED that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.



77. Commencement of proceedings

(1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation : *For the purpose of this sub-section,-*

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

PROVIDED that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State



Government in consultation with the Corporation.

Section 82. Appeal. —

(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the [Limitation Act, 1963 (36 of 1963)] shall apply to appeals under this section.

13. Section 77(1-A) prescribes three years limitation period, from the date of cause of action, to approach E.S.I Court. In the case in hand, E.S.I Court, has invoked Section 5 of the Limitation Act, 1963 and condoned the delay of 4204 days and allowed the petitioner to initiate original proceedings to challenge the Order passed U/s. 45-A of the Act. Powers of E.S.I Court to condone the delay in receiving applications to decide any question or dispute was considered by Division Bench of this Court, prior to insertion of Section 77-(1-A) of E.S.I Act in ***M/s. Solar Works, Madras vs. E.S.I*** cited supra and had considered the virus of the Rule 17 of the



Employee State Insurance Court Rules, 1948. The question raised therein is that, when E.S.I Act does not prescribe any period of limitation for which an application to be filed, but Rule 17 prescribes a period of 12 months from the date on which the cause of action arose or the claim became due with a proviso that the Court may entertain an application after the said period of 12 months, if it is satisfied that the applicant had sufficient reasons for not making the application within the said period is ultra virus to the act or not.

14. After constructing the section 75(2), 76, 77, 78 and 96(1) of the E.S.I Act and Rule 17 of the Madras Rules has held that the section 96(b) has not authorized the State Government to make rules for limitation and the Rule 17 is ultra virus the Act. In *M/s. Bharat and Drum Mfg. Co. vs. E.S.I Corporation* cited supra, the Hon'ble Apex Court has considered the Rule 17 of Bombay Employees State Insurance Rules, and has held that the State Government has no power to prescribe the period of limitation and it further approved the view taken by the Division Bench of this Court in the *M/s. Solar Works, Madras vs. E.S.I* cited supra. It is observed in concluding paragraph as follows:

“.....We may before parting with this case point out that the legislature has since chosen to specifically prescribe 3 years



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as limitation period by addition of sub-section (1-A) to Section 77 while deleting Section 80. Section 77 (1A) provides that “Every such application shall be made within a period of three years from the date on which the cause action arose”. By this amendment the claim under clause (d), as well as, the one under clause (f) of sub-section (2) of Section 75 which provides for the adjudication of a claim by the Insurance Court for the recovery of any benefit admissible under the Act for which a separate limitation was fixed under Section 80, is now to be made within 3 years from the date of the accrual of the cause of action. This amendment also confirms the view taken by this Court that the power under Section 96(1) (b) does not empower the Government to prescribe by rules a period of limitation for claims under Section 75. In the result this Appeal is dismissed with costs.”

15. Calcutta High Court in ***Kohinoor Tailoring Works and another vs. ESI Corporation [(2004) ILLJ 84 Cal]*** has had an occasion to consider the power of E.S.I Court in invoking Section 5 of the Limitation Act and held in paragraph 55 as follows:

“55. Considering the provisions of the Employees' State Insurance Act, 1948, it appears that Section 5 of the Limitation Act has neither been expressly made applicable nor excluded by express reference in respect of the proceedings before the Employees' Insurance Court. If it was the intention of the Legislature to apply Section 5 of the Limitation Act to the proceedings before the Employees Insurance Court then, there could be no reason for the Legislature to apply Section 5 of the Limitation Act expressly to the application filed under Section 75 of the ESI Act. Admittedly, the legislature thought it fit and proper to apply Section 5 of the Limitation Act in the case of appeal preferred under Section 82 of the said Act as the appeal under the said Section 82 shall lie to the High Court from an order of the Employees' Insurance Court. Accordingly, it is clear that the Legislature thought it fit not to apply Section 5 of



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the Limitation Act to the proceeding before the Employees' Insurance Court although the Legislature specifically provided that the provisions of Section 5 of the Limitation Act shall apply in respect of the appeal preferred before the High Court under Section 82 of the said Act. In the aforesaid circumstances, I am of the opinion that Section 5 of the Limitation Act has been expressly excluded by necessary implication in respect of the proceedings before the Employees' Insurance Court in view of the fact that the Legislature intentionally excluded the applications made under the provisions of Section 5 of the Limitation Act in respect of the proceedings before the Employees' Insurance Court.”

16. The Division Bench of Kerala High Court in *Tripenta Hotels Pvt. Ltd., vs. E.S.I Corporation, Thirissur* cited supra, has also held that the proceeding before the E.S.I Court is based on a separate scheme envisaged from initiating the commencement of proceedings and for pursuing the rights of the appeal. The period mentioned has to be strictly followed and Section 5 of the Limitation Act has not been made applicable to the proceedings before the E.S.I Court.

17. Section 29(2) of the Limitation Act, 1963 deals with the applicability of Section 4 to 24 of the Limitation Act to all the proceedings under Special or local law unless they are expressly excluded by such law.

Section 29 of the Limitation Act is the saving section. Sub-section (2) reads as follows:



"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

Sub-section (2) thus, provides that Sections 4 to 24 of the Limitation Act shall be applicable to any Act which prescribes a special period of limitation, unless they are expressly excluded by that special law."

18. ***In Hukumdev Narain Yadav vs. Lalit Narain Mishra [AIR 1974 SC 480]*** and ***Gopal Sardar vs. Karuna Sardar [2004 (4) SCC 252]***, Apex Court has held that even in a case where special law does not exclude the provisions of Section 4 to 24 of the Limitation Act, by an express reference, "nonetheless, be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the special law exclude their operations".

19. The ***Union of India vs. Popular Constructions Co. [AIR 2001 SC 4010]***, the Apex Court has interpreted the powers of the Court in



condoning the delay for the petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 has held that, since the special Act prescribes the Limitation and itself containing code, it would amount to express exclusion within the meaning of Section 29(2) of the Act. Thereby, Section 5 of the Limitation Act is expressly excluded.

20. In *State of Madhya Pradesh and another vs. Anshuman Shukla [2014 (10) SCC 814]*, while deciding the scope of Section 29(2) of the Limitation Act, Apex Court has reiterated the Test to be applied for exempting the application of Section 4 to 24 of the Limitation Act, and has observed in paragraph 24 as follows:

“24. While examining the provisions of Section 29(2) of the Limitation Act, it was observed: (Mukri Gopalan case, SCC p.15, para 8)

"8. A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision:

(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation



Act."

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It was further held that if the two above conditions are satisfied, then the following implications would follow:

"9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law."

25. Further, in the case of Hukumdev Narain Yadav v. Lalit Narain Mishra MANU/SC/0247/1973 : (1974) 2 SCC 133, a three judge Bench of this Court, while examining whether the Limitation Act would be applicable to the provisions of Representation of People Act, observed as under:

"17.....but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would



nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

21. Prior to insertion of section 71-A of the E.S.I Act, the Bombay High Court in ***M/s. Bharat and Drum Mfg. Co. vs. E.S.I Corporation*** cited supra, has considered the application of Article 137 of the Limitation Act for initiating proceedings before the E.S.I Court has held as follows:

“27. ***

Thus an application filed in an Employee's Insurance Court before 1st January 1964 for a relief under Section 75 under the Employee's State Insurance Act was not subject to any period of limitation. Application filed on or after 1st January 1964 would, however, be covered by Article 137 of the Limitation Act of 1963 which provides a period of limitation of three years from the time when the right to apply accrues. Section 2(b) of the Limitation Act of 1963 says that an “application” includes a petition. Article 137 of the new Act covers all applications for which no period of limitation is provided by the other Articles in the Act. Hence our reply to the second question submitted by the Bombay Employee's Insurance Court will be that applications filed by the Corporation before 1st January 1964 are not subject to any period of limitation, and that those filed thereafter are subject to the period prescribed in the Article 137 of the Limitation Act of 1963.”

22. Hon'ble Apex Court in ***Nithyanand M. Joshi vs. Life Insurance Corporation of India and another [1969 (2) SCC 199]*** held as



follows:

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“11. Article 137 contemplates applications to ordinary courts. Section 4 of the Limitation Act provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Further under Section 5 of the Limitation Act only a court is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. The Labour Court is not a court within the meaning of the Limitation Act.”

23. The Apex Court has once again reiterated that Section 137 of the Limitation Act is not applicable before the quasi Judicial Tribunals, bodies etc., and observed as follows:

“9. In the Kerala State Electricity Board case (supra) the High Court held that in view of the decision of this Court in Town Municipal Council, Athani v. Presiding Officer Labour Court, Hubli and Ors. MANU/SC/0331/1969 : (1969)IILLJ651SC . the same construction should be put upon Article 137 as had been put upon Article 181. In the Athani Municipal Council case (supra) the workmen applied to the Labour Court under Section 33C(2) of the Industrial Disputes Act for computation of benefit in respect of over time. The Labour Court accepted the application of the workmen. The Athani Municipal Council challenged the decision of the Labour Court in a writ petition. On appeal to this Court it was contended that the jurisdiction of the Labour Court was barred by the provisions of Minimum Wages Act 1948 and second the applications to the Labour Court were time barred Under Article 137 of the Limitation Act, 1963. This Court held as follows: The alteration in the 1963 Limitation Act in Article 137, namely, the inclusion of the words "other proceedings" in the long title to the 1963



Limitation Act, the omission of the preamble and the change in the definition so as to include petition in the word "application" do not show any intention to make Article 137 applicable to proceedings before bodies other than courts such as quasi-judicial tribunals and executive bodies. The word "other" in the first column of the Article giving the description of the application "any other application for which no period of limitation is provided elsewhere in this division" indicates that the interpretation of Article 181 in the 1908 Limitation Act on the basis of ejusdem generis should be applied to Article 137. The application was presented to the Labour Court, a tribunal which was not a court governed by the Civil or Criminal Procedure Codes, and, therefore, the applications are not governed by Article 137 of the Limitation Act, 1963."

24. Subsequently, following the above judgment of Apex Court in

M.P. Steel Corporation Vs. Commissioner of Central Excise [(2015) 7 SCC 58] in paragraph 19, observed as follows:

"19. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in Town Municipal Council, Athani v. Presiding Officer, Labour Court MANU/SC/0331/1969 : (1969) 1 SCC 873, a question arose as to what applications are covered Under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said Article. This Court negated the said plea in the following terms:

12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil



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Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. As best, the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137.

Similarly, in Nityananda, M. Joshi and Ors. v. Life Insurance Corporation and Ors. MANU/SC/0320/1969 : (1969) 2 SCC 199, this Court followed the judgment in Athani's case and turned down a plea that an application made to a Labour Court would be covered Under Article 137 of the Limitation Act. This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms:

3 . In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is



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closed." Again Under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'

20. *In Kerala State Electricity Board v. T.P. Kunhaliumma* MANU/SC/0323/1976 : (1976) 4 SCC 634, a 3-Judge Bench of this Court followed the aforesaid two judgments and stated:

22. *The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case [MANU/SC/0331/1969 : (1969) 1 SCC 873 : (1970) 1 SCR 51] and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.*

This judgment is an authoritative pronouncement by a 3-Judge Bench that the Limitation Act applies only to courts and not to quasi-judicial Tribunals. Athani's case was dissented from on a different proposition - that Article 137 is not confined to applications under the Code of Civil Procedure alone. So long as an application is made under any statute to a Civil Court, such application will be covered by Article 137 of the Limitation Act."

25. Since, Section 77(1-A) has been inserted, which prescribes the three years as limitation period for approaching the E.S.I Court, which is



equivalent to the limitation period fixed under the 137 of the Limitation Act.

However, Test laid by the Apex Court in “*Hukumdev Narain Yadav vs. Lalit Narain Mishra [AIR 1974 SC 480]* and *Gopal Sardar vs. Karuna Sardar [2004 (4) SCC 252]*, could not be used for interpreting Section 77(1-A) of E.S.I Act, since Apex Court has categorically held in catena of judgments cited in “*M.P. Steel Corporation Vs. Commissioner of Central Excise* cited supra, that Section 137 of Limitation Act is not applicable to the Quasi Judicial Tribunals and applications only to the proceeding before the Court.

26. Even though, there was no express exclusion clause provided under the ESI Act, to take away the powers of the Court by invoking Section 5 of the Limitation Act, the ESI Act is a complete code by itself for settlement of disputes between the employee and employer, contribution payable by principal employer to any employee, right of any person to any benefit under the Act, any direction issued by the Corporation for payment of dependants of the employee, any other matter which is in dispute between the principal employer and the Corporation or principal employer and immediate employee or between a person and a Corporation or between an



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employee and principal or immediate employer in respect of any contribution payable or recoverable.

27. The power to implement the Order passed by the Authority, is vested with the Authorities. Section 77(1-A) of the E.S.I Act provides 3 years period as the maximum time to initiate any proceedings before the E.S.I Act. Time limit is prescribed for filing appeal U/s.82(2) of E.S.I Act is sixty days but for filing appeal, Section 5 and 12 of Limitation Act, 1963 made applicable. Above provisions exhibit the intention of Legislator that, since shorter duration of 60 days provided for filing appeal, against the Order of E.S.I Court the extended time is provided by applying provision of Section 5 to 12 of Limitation Act to the appeals, and maximum time limit of 3 years have been provided to initiate original proceedings before the E.S.I Court, including challenging of the Order passed U/s.45-A of the Act. The law maker consciously differentiated Section 77(1-A) (initiating proceedings before E.S.I Court) and with Section 82(4) (for filing appeal before High Court) strengthens the view that, Section 5 of the Limitation Act has not been made applicable to Section 77(1-A) i.e., to initiate proceeding before the E.S.I Court, by way of necessary implications.



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28. Admittedly, the petitioner approached the Court after a period of three years and the E.S.I Court has no power to entertain the original petition beyond the period of Limitation prescribed U/s. 77(1-A) of the E.S.I Act. As stated in the earlier paragraph, the combined reading of the Section 82(4), 75(1-A) of the act, shows that various provisions of E.S.I Act providing stage by stage limitation for initiating various proceedings. This Court is of the view that the provisions of the E.S.I Act will prevail over the Limitation Act. In view of the same, this Court is of the view Section 5 of the Limitation Act is not applicable to the proceedings under Section 75 of the E.S.I Act.

29. In the result, this Civil Miscellaneous Appeal is allowed. The Order of E.S.I Court, dated 10.02.2020 passed in I.A. No.1 of 2019 in Unnumbered E.S.I.O.P is hereby set aside. No cost.

20.12.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No



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WEB COPY To:

1. The Presiding Officer,
Principal Labour Court,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

stn

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