



WEB COPY



C.M.A No.2408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2408 of 2023
and C.M.P.No.22610 of 2023

Dr.Williams Nursery & Primary School,
4A/146 Anandha Iyengar Street,
NGGO Colony,
Periyanacikenpalayam,
Coimbatore-641 022.

... Appellant

Vs.

1.The Deputy Director,
ESI Corporation,
1897, Trichy Road,
Ramanathapuram,
Coimbatore 641 022.

2.The Recovery Officer,
ESI Corporation,
1897, Trichy Road,
Ramanathapuram,
Coimbatore 641 022.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 82 of Employees State Insurance Act, 1948, seeking to allow the appeal and set aside the



C.M.A No.2408 of 2023

order and decree of the Employees State Insurance Court, Coimbatore in I.A.No.2 of 2023 in EIOP.No.3 of 2023, dated 23.02.2023.

For Appellant : Mr.S.Harron Al Rasheed
for Mr.T.S.Gopalan and Co.

For Respondents : Mr.S.P.Srinivasan

JUDGMENT

The appellant herein challenges a proceeding of the ESI Corporation under Section 45A of the Employees' State Insurance Act, 1948 before the Labour Court, Coimbatore in EIOP.No.3 of 2023. Along with this O.P, the appellant has taken out I.A.No.1 of 2022 for waiver of payment of the claim made by the ESI Corporation, and I.A.No.2 of 2023 for stay of the said order. On 04.01.2023, the Tribunal passed an order in I.A.No.1 of 2022, directing the appellant to deposit 25% of the claim amount. Sofar as I.A.No.2 of 2023 is concerned, it posted the matter for the counter of the respondent.

2.The respondent had filed its counter, and after hearing both sides on the stay application, the Labour Court had dismissed the same essentially on the ground that the appellant had not produced any material for the



C.M.A No.2408 of 2023

Labour Court to come to a *prima facie* conclusion that there is some merit in the appellant's case. This order is now under challenge.

3.Heard Mr.S.Harron Al Rasheed, the learned counsel for the appellant and Mr.S.P.Srinivasan, the learned counsel for the respondents 1 and 2.

4.Mr.S.Harron Al Rasheed, the learned counsel for the appellant, submitted that in view of the order of dismissal in I.A.No.2 of 2023, ESI Corporation has frozen the bank account of the appellant and has also attached the property belonging to the trustee of a certain trust which runs the appellant / school. This property is very valuable, and he required that, upon depositing 25% of the claim as it is now made, the attachment may be directed to be vacated. If the statement of the learned counsel for the appellant were to be trusted, then it only indicates that the ESI Corporation appears to have gone after the properties valued around Rs.6,00,000/-. The ESI Corporation cannot proceed against any property in excess of the value of its claim, lest it will affect the fundamental right to life of every citizen who may fall within the net of ESI Act.



C.M.A No.2408 of 2023

5. Without getting into the merit of the ground assigned by the Labour Court, this Court merely intends to indicate that if the order is not stayed, then it may even defeat the very purpose of filing EIOP.No.3 of 2023. The right to file an appeal is a statutory right of the appellant, and therefore, this right needs to be protected both in its form and substance.

6. Turning to veracity of the attachment is concerned, the appellant is now at liberty to approach the Labour Court for appropriate remedies in this regard. It is made clear that the ancillary proceeding which this Court now requires the appellant to initiate before the Labour Court will not halt the proceeding in the main EIOP as directed earlier. In other words, in the eventuality of the appellant making any application to the Labour Court for seeking remedies *vis-a-vis* its bank account of the school and also the property of the husband of the trustee of the school, it is not a bar for proceeding with the main O.P.

7. Turning to this case, this Court, therefore sets aside the order dated 23.02.2023 passed by the Labour Court in I.A.No.2 of 2023 and stay the proceedings subject to the condition that the appellant deposits another 25% of the claim amount before the Labour Court.



C.M.A No.2408 of 2023

WEB COPY

8.The respondent herein is directed to file its counter if it is keen in contesting EIOP.No.3 of 2023, and the Tribunal to dispose of the matter as expeditiously as possible.

9.The Civil Miscellaneous Appeal stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

30.10.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Employees State Insurance Court,
Coimbatore.

2.The Deputy Director,
ESI Corporation,
1897, Trichy Road,
Ramanathapuram,
Coimbatore 641 022.

3.The Recovery Officer,
ESI Corporation,
1897, Trichy Road,
Ramanathapuram,



C.M.A No.2408 of 2023

N.SESHASAYEE, J.

Anu

C.M.A.No.2408 of 2023
and C.M.P.No.22610 of 2023

30.10.2023