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C.M.A.No.3287 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3287 of 2017
and W.M.P.No.20749 of 2017

M/s.Maxworth Home Limited,
21, Viajayalakshmi street,
Mahalingapuram, Nungambakkam,
Chennai-600034.

... Appellant/Petitioner

Vs

1.The Employees' State Insurance Corporation
Rep by its Regional Director,
Sterling Road, Chennai-600 034.

2.The Assistant Director,
The Employees' State Insurance Corporation
Sterling Road, Chennai-600 034.

3.The Recovery Officer,
The Employees' State Insurance Corporation,
Sterling Road, Chennai-600 034.

... Respondents/Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Fair and Decree passed by the Learned Employees Insurance Court (Principal Labour Court), Chennai dated 18.08.2017 and thereby consequently the Order passed by third Respondent in No.TN/RECY/CP-25/51-51751/101 dated 22.12.2003.

For Appellants ... Mr.R.Bharath Kumar

For Respondents ... Mr.P.Srinivasan for R1 to R3.

JUDGMENT

Challenging the impugned Decree dated 18.08.2017 passed by the Learned Employees Insurance Court (Principal Labour Court), Chennai, the appellant has filed the present appeal.

2. Brief facts which are necessary for the disposal of this Appeal are:-

The petitioner is established under the Employees State Insurance Act and it has been complying with the provisions of the act, regularly paying contributions. It is the case of the petitioner that by an impugned order dated 22.12.2003, the third respondent claimed Rs.4,83,275/- as arrears specified in



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C19 dated 30.05.2000, 27.03.2001, 03.05.2001, 16.04.2002. The second respondent even though issued a notice under Section C18, without following the principles of natural justice as laid down by the courts, without passing an order under section 45A of the ESI Act, and without giving due opportunity to the petitioner, the third respondent is taking steps to recover the money. After receiving the impugned order, the ESI Corporation was pressurising the petitioner, for payment by attachment orders. As against the purported demand of Rs.4,83,275/-, the petitioner has immediately paid a sum of Rs.2,50,000/-. However, without giving credit to the amount already paid to the tune of Rs.2,50,000/- the third respondent is now erroneously trying to recover a sum of Rs.4,83,175/- vide the impugned order dated 22.12.2003. Therefore, the petitioner filed a petition under section 75 of the ESI Act which was dismissed by the Learned Employees Insurance Court (Principal Labour Court), Chennai vide order dated 18.08.2017. Challenging the said order dated 18.08.2017 as well as the consequential order dated 22.12.2003, the appellant has filed the present appeal.



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3. Learned counsel appearing for the appellant would submit that no orders have been passed under Section 45A of the ESI Act and that no opportunity was given to the petitioner before issuing the impugned recovery notice. In the absence any orders under Section 45A, without giving due credit to the amount already paid to the tune of Rs.2,50,000/-, the third respondent is erroneously trying to recover the puported demand amount of Rs.4,83,275/- which is wholly unsustainable on the sole ground the appeal deserves to be allowed and the impugned recovery notice issued by the 3rd respondent is liable to be set aside.

4. Per Contra, learned counsel appearing for Respondents 1 to 3 submits that before passing the recovery notice impugned dated 22.12.2003, nine recovery certificates in Form C19 on various dates were issued against the petitioner, however, the petitioner had neither paid any claims made therein and nor has challenged the said claims before any court of law. However, the petitioner had only challenged the consequential notice. Without challenging the main orders, the petitioner cannot challenge the consequential order of the



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respondent. Hence, the ESI Court has rightly rejected the claim of the petitioner which requires no interference. Accordingly, he prays for dismissal of the appeal.

5. This Court heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

6. Though the contentions and counter contentions have been advanced by the respective parties in support of their case, however, the fact remains that nine orders have been passed which forms the basis of the impugned recovery notice dated 22.12.2003. The said notice is a consequential notice on the basis of which different orders passed for recovery. The appellant has not challenged the recovery orders passed by the authority but has challenged the recovery notice alone. The ESI has analysed all the materials and has come to a conclusion that the appellant having not challenged the order of recovery, had the consequential notice demanding the said sum cannot be maintained



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unless the appellant challenges the main orders the consequential notice cannot be challenged. On that premise, the ESI court has rejected the case of the appellant. The said finding recorded by the ESI court on the face of the documents placed before this Court is just and reasonable hence the same cannot be interfered with.

7. For the reasons aforesaid, the appeal deserves to be dismissed and according the same is dismissed. Consequently, the petitioner is directed to pay the balance amount of Rs.2,33,275/- to the respondent authorities within a period of four weeks from the date of receipt of a copy of this order. Failing which, the respondent authorities are at liberty to recover the said amount in the manner known to law. However, there shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

18.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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Principal Labour Court,
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Sterling Road, Chennai-600 034.
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- 5.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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