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C.M.A.No.4238 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.4238 of 2019

1. The Regional E.S.I.Commissioner,
Employees State Insurance Corporation,
Regional Office, No.143, Sterling Road,
Nungambakkam, Chennai – 600 034.
2. The Authorised Officer,
Insurance Branch-VII,
Employees State Insurance Corporation,
Regional Office, No.143, Sterling Road,
Nungambakkam, Chennai – 600 034.
3. The Recovery Officer,
Employees State Insurance Corporation,
Regional Office, No.143, Sterling Road,
Nungambakkam, Chennai – 600 034.

... Appellants

Vs.

M/s.Rizwan International Apparels,
Represented by its Partner M.Moosa,
No.45, 5th Avenue, Harrington Road,
Cheput, Chennai – 600 031.

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section u/s.82(2) of ESI Act, against the order and decretal order of the Employees Insurance Court (Principal Labour Court, Chennai) dated 12.07.2018 made in



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E.I.O.P.No.42 of 2007 to set aside the same.

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For Appellants : Ms.G.Narmadha
For Respondent : Mr.R.Saravanan
for M/s.T.Sai Krishnan

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the order and decreetal order of the Employees Insurance Court (Principal Labour Court, Chennai) dated 12.07.2018 made in E.I.O.P.No.42 of 2007 to set aside the same.

2. It is the case of the appellant that the respondent / claimant along with her partners have started a firm at Padi, Chennai during the month of August, 1992 and the said unit was closed down during November, 1992 due to various reasons. Subsequent to the closure of the concern, one M/s.Fashion Kraft India Private Limited had taken the said building on lease. Thereafter, the second appellant issued a notice dated 28.12.2005 to one of the partners of the respondent stating that a recovery certificate in No.51-57350-18 has been issued on 24.03.2004 by



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the 2nd appellant certifying a sum of Rs.11,50,985/- to be payable by the respondent / claimant, which certificate was then forwarded to the recovery officer and in pursuance of the same, a show cause notice was issued to one of the partners of the respondent's firm. Challenging the same, the respondent filed a petition in E.I.O.P.No.42 of 2007 on the file of the Employees Insurance Court (Principal Labour Court, Chennai seeking to quash the notice dated 28.12.2005, wherein the Labour Court has allowed the said petition on 12.07.2018 on the ground that no opportunity was given to the respondent before issuing the show cause notice. Challenging the same the appellants have filed the present appeal.

3. The learned counsel appearing for the appellants submit that the Insurance Inspector visited the petitioner's factory on 24.11.1992 and 30.11.1992 and prepared an enquiry report dated 30.11.1992. Upon inspection of the relevant records, the Inspector has referred the case to the authorised officer and the second appellant on receipt of the enquiry report found that the respondent failed to pay contribution statutorily payable and a notice was issued on 02.08.2001. As the respondent failed to respond, an order under Section 45 A of the Employees State



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Insurance Act, 1948 was passed. Without appreciating the said facts the Labour Court has allowed the petition filed by the respondent which is *per se* unsustainable. Hence, this Court may set aside the order passed by the Labour Court.

4. The learned counsel appearing for the respondent submits that though the firm was closed down during the month November, 1992, however, after a lapse of 13 years, the recovery proceedings was initiated in the year 2005 which is *per se* unsustainable.

5. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials placed on record.

6. The only ground on which the court below had passed an order in favour of the firm is that there is violation of principles of natural justice as no opportunity was provided to the firm to substantiate its contention. The whole case is premised on the basis that the firm was closed even in the year 1992 and the recovery proceedings were initiated



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only in the year 2005, after a lapse of 13 years. Though such a stand has been taken by the firm, however, the closure of the firm was not proved by the respondent before the trial court. In the absence of any proof with regard to closure of the firm, the recovery proceedings cannot be said to be erroneous. However, it should also not be lost sight of that the court below has given a categorical finding that the order has been passed by the appellants without providing an opportunity to the respondent and, therefore, there is violation of principles of natural justice.

7. In the aforesaid scenario, in the interest of justice, this Court is inclined to set aside the order impugned herein as also the proceedings initiated by the second appellant. Therefore, the appellant corporation is directed to initiate fresh proceedings u/s.45 A of the Employees State Insurance Act, 1948 as against the respondent. Further, liberty is granted to the respondent to canvass all his grievances before the authority concerned in accordance with law, including the closure of the firm as early as in the year 1992 by placing all the requisite documents, which shall be looked into by the appellants before passing any order.



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8. Accordingly, while setting aside the order impugned herein and also the proceedings initiated by the appellants, this appeal is disposed of directing the appellants to initiate fresh proceedings u/s.45 A of the Employees State Insurance Act, 1948 as against the respondent. Further, liberty is granted to the respondent to canvass all his grievances before the authority concerned in accordance with law, including the closure of the firm as early as in the year 1992 by placing all the requisite documents, which shall be looked into by the appellants before passing any order. No costs.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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WEB COPY To

1. Employees Insurance Court (Principal Labour Court, Chennai)
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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