



C.M.A(MD)No.1099 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1099 of 2013

- 1.The Assistant Regional Director,
Sub Regional Office, E.S.I Corporation,
No.1-B, Old Post Office Street, Tallakulam,
Now at 2nd West Street,
K.K.Nagar, Madurai-625 020.
 - 2.The Recovery Officer,
Sub Regional Office, E.S.I Corporation,
No.1-B, Old Post Office Street, Tallakulam,
Now at 2nd West Street,
K.K.Nagar, Madurai-625 020.
- ... Appellants/Respondents

Vs.

- 1.S.N.Subramanian
 - 2.M/s.Visalakshmi Dying and Printing Factory,
12, B.B.Road, Balaramapuram,
Madurai.
- ... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of the E.S.I Act, to set aside the decree and judgment passed in E.S.I.O.P.No.49 of 2001, dated 13.01.2001 by E.S.I Court (Labour Court), Madurai.



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For Appellants : Mr.N.Dilip Kumar

For R2 : Mr.G.Aravindan

JUDGMENT

The present appeal has been filed by the E.S.I corporation challenging the order of remand passed by the E.S.I Court in E.S.I.O.P.No.49 of 2001.

2. According to the employer, no order was passed under Section 45-A of the E.S.I Act and without passing any such order, a recovery certificate has been issued on 28.02.2001 and the recovery officer has sent notice of demand on 20.04.2001. However, the E.S.I corporation has contended that a code number was allotted to the employer and a C-18 notice was issued on 26.04.2000 and 19.07.2000. Since the petitioner has not complied with the said notices, after giving personal hearing, an order was passed under Section 45-A of the Act. Even the said 45-A order was not complied with, the corporation was constrained to initiate recovery proceedings.



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3. The E.S.I Court had allowed the petition on the ground that the recovery proceedings have been initiated without passing any order under Section 45-A of the E.S.I Act. The E.S.I Court has further remitted the matter back to the corporation for deciding the issues raised by the petitioner after giving due opportunity to the employer. This order is under challenge in the present appeal.

4. It is the contention of the learned counsel appearing for the corporation that an order under Section 45-A was passed and only due to the non-compliance of the said order, recovery proceedings have been initiated. Hence, he contended that the order of remand passed by the E.S.I Court is not legally sustainable. The learned counsel appearing for the respondent has filed a memo to the effect that the Proprietor, namely S.M.Subramaniam has passed away and the business has been closed and they have reported no instructions.

5. A perusal of the order passed by the E.S.I Court indicates that it has given a specific finding that no order has been passed under Section 45-A of the E.S.I Act. Even though the corporation has contended that an order under Section 45-A was passed, it was not filed before the E.S.I



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Court to establish the same. Therefore, I do not find any illegality or infirmity in the order passed by the E.S.I Court. All the substantial questions of law are answered as against the appellant.

6. Hence, the Civil Miscellaneous Appeal stands dismissed. No costs.

20.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The E.S.I Court (Labour Court),
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.1099 of 2013

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