



C.M.A(MD)No.776 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.776 of 2019

Mani India Technologies (P) Ltd.,
6/1209-B, Balathilagam Towers,
3rd Street, 4th Cross Indira Nagar,
Kovilpatti,
Represented by its Director,
P.Pyanchella Vadivoo

... Appellant/Petitioner

Vs.

1.E.S.I.Corporation,
Sub Regional Office (Tirunelveli),
Salai Street, Vannarpettai – 627 003,
Represented by its Joint Director.

2.Recovery Officer,
E.S.I.Corporation,
Sub Regional Office (Tirunelveli),
Salai Street, Vannarpettai,
Tirunelveli.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 (2) of the Employee's State Insurance Act, to set aside the order, dated 20.05.2019 in I.A.No.05 of 2018 in unregistered E.S.I.O.P on the file of the Labour Court, Tirunelveli.

For Appellant : Mr.M.Jerin Mathew

For Respondents : Mr.R.Ravindran



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JUDGEMENT

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The present appeal has been filed challenging an order passed by the E.S.I Court refusing to waive 50% of the damages, which has to be paid as a pre-condition for numbering the E.S.I petition.

2. According to the learned counsel appearing for the appellant, they are running a software company and an inspection was conducted on 08.05.2008. Originally, the authorities were of the view that the establishment would be covered from 01.02.2007. But later, after enquiry, they arrived at a finding that the establishment is covered from 02.08.2004 and arrived at a finding that the establishment has to pay a contribution of Rs.35,00,000/-. The said Rs.35,00,000/- was paid in installments by the employer.

3. The learned counsel appearing for the appellant had further contended that they received a notice on 16.06.2017 from the E.S.I corporation why damages should not be levied for delay payment for the period between April 2004 – July 2008, April 2009 – December 2009 and June 2010 – March 2012. The employer had appeared for personal hearing on 13.07.2014 and requested to waive off the damages. The said request of the employer was rejected and an order under Section 85-B of



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Employee's State Insurance Act (hereinafter referred as E.S.I Act) was passed directing the employer to pay a sum of Rs.15,02,320/- towards damages. The said order was challenged by the employer by filing a petition under Section 75 (1) (g) of the E.S.I Act before E.S.I Court, Tirunelveli. In view of Section 75 (2)-B of E.S.I Act, the petition cannot be numbered, unless 50% of the demand amount is deposited. However, as per the proviso to the above said sub Section, the Court has got powers to waive or reduce the said amount, if sufficient reasons are made out. Therefore, the employer had filed I.A.No.5 of 2018 to completely waive the pre-deposit. In the said application, the employer had contended that they were receiving job work from U.S.A and since the said job work had got gradually reduced, they have to reduce the employee strength also. Considering the said mitigating circumstances and due to the financial crisis of the employer, they had requested the Court to waive the pre-deposit fully.

4. The respondent Corporation had filed a counter contending that the reasons assigned in the petition are fake in nature and on the said reasons, the statutory pre-deposit cannot be waived fully. The Court after considering the submissions on either side, permitted the employer to deposit 25% of the amount due. The said order is under challenge in the present appeal.



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5. According to the learned counsel appearing for the appellant, as per the proviso to Section 75 (2)-B E.S.I Act, the E.S.I Court has got powers to waive the pre-deposit in entirety. In the present case, considering the fact that the employer was doing job work for various foreign companies and there was reduction of the business, the E.S.I Court ought to have exercised its discretionary power and should have waived the pre-deposit in entirety.

6. Per contra, the learned counsel appearing for the respondents corporation had contended that considering the financial crises expressed by the employer, the E.S.I Court has graciously reduced the pre-deposit from 50% to 25%. This 25% of the amount would be around Rs.3,00,000/-. The employer is a software company and receiving job work from abroad and hence they cannot be considered to be in such a financial crisis that they could not pay a sum of Rs.3,00,000/-. He further contended that uniformly such a policy is followed by the E.S.I Court and exemption cannot be granted to the employer for completely waiving of the pre-deposit.



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7. I have carefully considered the submissions made on either side and perused the records.

8. The employer had filed an application under Section 75 (2)-B of E.S.I Act to completely waive off the 50% pre-deposit as contemplated in the said Section. The E.S.I Court after considering the reasons assigned by the employer, had reduced the pre-deposit from 50% to 25% which would be around Rs.3,00,000/-. However, the present appeal has been filed by the employer seeking to completely waive off the pre-deposit on the ground that the company is under the financial crisis. It could be seen from the records that the company is a software company and still it is a running concern.

9. Considering the above said facts, this Court is of the view that no further concession could be granted in favour of the appellant/employer. As rightly pointed out by the learned counsel appearing for the respondents, when a uniform policy is being followed by the E.S.I Court in reducing the pre-deposit from 50% to 25%, unless extraordinary circumstances are made out by the employer, the Court will not be in a position to completely waive off the pre-deposit. Therefore, this Court does not find any illegality or infirmity in the order passed by the E.S.I Court.



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WEB COPY 10. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

20.04.2023

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

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To

- 1.The Labour Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Judgment made in
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20.04.2023