



C.R.P.(MD).No.2685 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2685 of 2018

M/s.Nellai Dresses
Through its Partner,
Sivanandham,
No.1-D, Kamarajan Salai,
Madurai – 625 009.

... Petitioner/Petitioner/Petitioner

-VS-

E.S.I.Corporation,
K.K.Nagar,
Madurai – 20,
Represented by its
Deputy Director.

... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 27.06.2018 made in I.A.No.204 of 2007 in E.S.I.O.P.No.46 of 2007 on the file of the E.S.I. Court, (Labour Court), Madurai.

For Petitioner : Mr.I.Irulappan

For Respondent : Mr.P.Ganapathisamy



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ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the order dated 27.06.2018 made in I.A.No.204 of 2007 in E.S.I.O.P.No.46 of 2007 on the file of the E.S.I. Court, (Labour Court), Madurai.

2. The learned counsel appearing for the petitioner would submit that the case was posted for enquiry on 25.06.2015. Further, when the petitioner's counsel sent a letter to the petitioner concern about the above hearing, the same was not served on the petitioner. So the petitioner was not be able to appear either in person or through their counsel. Hence, E.S.I O.P.No.46 of 2007 was dismissed for default. He would further submit that the application for condonation of delay has already been allowed. It is the further submission of the learned counsel for the petitioner that, the Court below having considered the existence of the balance of convenience in his favour, still imposed onerous condition directing the petitioner to deposit 25% of the disputed amount. Hence, he prayed to allow the Civil Revision Petition.



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3. However, the learned counsel appearing for the respondent would vehemently submit that, the petitioner is liable to pay contribution in sum of Rs.8,69,315/- as per Section 45-A of the ESI Act order, and unless such conditional order is confirmed, the petitioner will not pay the subscription. Hence prayed to dismiss this application.

4. This Court has given anxious consideration to the submissions of the learned counsel on either side.

5. From the perusal of the orders of the Court below, it is seen that the Court below has found that the balance of convenience is in favour of the petitioner and allowed the application, after imposing a condition of payment of 25% the disputed amount.

6. It is pertinent to mention here that, while the petitioner filing an appeal under Section 75 of the E.S.I Act, before the E.S.I. Court, as it is a pre-condition under Section 75(2B) of the E.S.I. Act to deposit an amount which



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would be ordered by the E.S.I. Court. Furthermore, even as per the findings of the Court below, the petitioner has already paid some cost while allowing the petition under Section 5 of Limitation Act. With the above background, this Court is of the view, that directing the petitioner to pay 25% of the disputed amount is onerous and therefore, the order is liable to be interfered with, by modifying the condition imposed by the Court below.

7. In the result, this Civil Revision Petition is **allowed** on condition that the petitioner is directed to pay a sum of Rs.1,000/- (Rupees One Thousand only) to the credit of Current Account No.7567821433, (IFSC IDIBI000H040), in Indian Bank High Court Branch, Madurai Bench of Madras High Court, Madurai, towards Kalaignar Centenary Library, within a period of four weeks from the date of receipt of the copy of this order failing which, this Civil Revision Petition shall stand dismissed without any further reference to this Court.



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8. In the event of complying the above condition, considering the long pendency of this case, the Court below is directed to dispose of the case in E.S.I.O.P No.46 of 2007 as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this order. There shall be no order as to costs.

16.08.2023
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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

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



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C.KUMARAPPAN,J.

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