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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1188 of 2022

and

C.M.P(MD)Nos.12127 of 2022 and 1874 of 2023

The Employees State Insurance Corporation,
Sub-Regional Office,
Second West Street,
K.K.Nagar,
Madurai – 625 020.
represented by its Deputy Director.

:Appellant/Respondent

.vs.

M/s.Safari Plasters,
1/300-B, Gopalapuram Road,
Near Muthukudi SIDCO,
Nallamanaickenpatti 626 102,
(via) Rajapalayam,
represented by its Partner,
Tr.A.N.Radhakrishnan

:Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948 against the fair and decretal order made in E.S.I.O.P.No.53 of 2015, dated 5.3.2022, on the file of the Labour Court(Employees State Insurance Court or in short ESI Court), Madurai and set aside the same.

For Appellant

:Mr.I.Pinaygash



For Respondent :Mr.S.Karthik

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JUDGMENT

Challenge has been made to the order passed by the Labour allowing the application of the respondent and setting aside the order, dated 16.12.2014 restraining the appellant from recovering any amount based on the notice.

2.The brief facts leading to the filing of the appeal are as follows:

Notices have been issued by the appellant on 4.10.2013 and 11.10.2014 proposing to levy contribution of a sum of Rs. 3,59,945/- and Rs.1,67,310/- respectively. It is the contention of the appellant that the respondent has engaged more than 24 persons, whereas, it is the contention of the respondent that they are small firm manufacturing Plaster of Paris by engaging 10 persons. Therefore, it is the contention of the respondent that they are not coming within the ambit of ESI Act and further it is the contention of the respondent that without inspecting the factory, the appellant has issued such notices and demanded contribution. Challenging the above notices, ESI OP has been filed before the Labour Court, Madurai. The Labour Court, Madurai issued the impugned order mainly on the ground that the Petitioner has not filed any



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document to show that they have employed only less than ten employers but they have had shifted the burden on the appellant that despite the so called inspection made by the Social Security Officer, no document has been filed to substantiate their stand that there were more than 10 employees engaged by the Petitioner and non-suited the contention of the appellant herein and an order has been passed setting aside the demand notices, dated 4.10.2013 and 11.10.2014 respectively. Now an application has also been filed by the appellant for receipt of additional documents to prove the contention that inspection has been carried out and several records have been verified. They are:

- 1.Xerox copy of the Inspection Report, dated 12.1.2012.*
- 2.Xerox copy of the Preliminary Survey Report, dated 12.1.2012*
- 3.Xerox copy of the Coverage Intimation Letter issued by the appellant, dated 12.1.2012.*
- 4.Xerox copy of the Implementation of Respondent Factory as ESI Act, dated 24.1.2012*
- 5.Xerox copy of Form-C-18(Adh) Notice, dated 4.10.2013*
- 6.Xerox copy of the Notice for personal hearing, dated 10.11.2014.*

3.Now the point for consideration that arose in this appeal for consideration are:

- 1.Whether the respondent has engaged only less than 10



employees or more than that?

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4. Admittedly, the Labour Court has non-suited the appellant's case only on the ground that no documents filed. Now additional documents filed to prove their contention.

5. The learned counsel for the respondent has submitted that those documents have to be proved in the manner known to law.

6. In such view of the matter, as those documents also not even proved in the manner known to law, receiving those documents by this Court will not serve any purpose. In such view of the matter, this Court is of the view that an opportunity has to be given to the appellant to adduce appropriate evidence which has emanated from the public records. If such option is given, the respondent may also be given an opportunity to cross-examine the witnesses.

7. In such view of the matter, the finding rendered by the Labour Court, Madurai vide order made in E.S.I.O.P.No.53 of 2015, dated 5.3.2022, is hereby set aside and the matter is remitted back to the Labour Court, Madurai for fresh consideration and the



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appellant is hereby directed to produced all the relevant documents, the copy of those documents filed before this Court by way of additional documents and also other connected documents, if any, connected with the issue. The Labour Court, Madurai shall give an opportunity to the respondent to adduce evidence for rebuttal and give an opportunity to them for cross-examination of the witness and accordingly, the Labour Court, Madurai is directed to decide the matter afresh within a period of six months from the date of receipt of a copy of this judgement.

8. With the above directions, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.03.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Judge,
Labour Court
(Employees State Insurance Court or
in short ESI Court),
Madurai



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

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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
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and
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