



C.M.A.(MD).No.270 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.270 of 2017

1. The ESI Corporation,
Represented by its Joint Director,
4th Main Road,
K.K.Nagar, Madurai – 20.

2. The Recovery Officer,
ESI Corporation (SRO)
4th Main Road,
K.K.Nagar,
Madurai – 625 020.

..... Appellants/ Respondents

-vs-

S. Jaffer Sadiq,
Proprietor, Arisma Wires,
18, Dr.Thangaraj Road,
Vinayaga Nagar,
Madurai - 20

.... Respondent /Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 21.12.2016 of the Labour Court, (Employees' State Insurance Court/ESI Court), Madurai, in ESI OP No.7 of 2006.

For Appellants : Mr.P.Ganapathisamy
For Respondent : No appearance



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the ESI Corporation, challenging the order passed by the ESI Court, setting aside the recovery notice issued by the Corporation.

2. The establishment under the name and style of “South India Iron Works” was inspected by the officials of the ESI Corporation, on 06.12.1994 and based upon a report of the Inspector, a coverage order was passed with effect from 06.12.1994. Admittedly, the said coverage order has not been challenged by the employer.

3. According to the learned counsel appearing for the appellants/ ESI Corporation, the establishment was originally owned by the Smt.S.Burkan Bibi. Several notices were issued to the said Smt.S.Burkan Bibi seeking contribution under the ESI Act. However, there was no response.



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4. According to the learned counsel appearing for the Corporation, at least nine orders were passed under Section 45-A of the ESI Act, determining the contribution to be paid by the employer. Thereafter, no proceedings were initiated for recovery. In the meantime, the said Smt.S.Burkan Bibi had passed away on 12.07.2001.

5. According to the learned counsel appearing for the Corporation, the son of the said S.Burkan Bibi had inherited the said establishment and he is running the said unit. Therefore, a recovery notice was issued to the respondent herein on 12.01.2006 relating to the recovery of the contributions that are payable by the establishment viz., “South India Iron Works” limited. The said recovery notice was challenged by the respondent herein by filing ESI OP No.7 of 2006, before the Labour Court, Madurai.

6. The main contention of the employer was that he had started a fresh unit and he had not inherited the units run by his mother. He had further contended that the impugned recovery notice has been issued by the Corporation without issuing any show-cause notice or conducting an enquiry. The Labour Court was pleased to accept the said contention and has allowed



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the petition, on the ground that the respondent herein was not given an opportunity before passing the impugned order. The said order of the ESI Court, is under challenge in the present appeal.

7. According to the learned counsel appearing for the appellants/ Corporation, the son has just inherited the business of the mother and he is running the same unit but under a different brand namely, Arisma Wires. Therefore, the present respondent is also liable under the statute to pay the contributions of the “South India Iron Works” limited. Merely by changing the name of the establishment, the respondent herein cannot escape from the liability to pay the contributions under the ESI Act. Therefore, he prayed for allowing the appeal and to set aside the order passed by the ESI Court.

8. Though notice has been served upon the respondent, he has not chosen to appear either in person or through his counsel.

9. Even assuming that the unit has been inherited by the respondent herein from his mother and he had operating the same, without issuing any notice or conducting any enquiry, the impugned recovery notice has been



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issued by the ESI Corporation. Therefore, the order dated 12.01.2006 seeking a recovery of a sum of Rs.3,25,358/- (Rupees Three Lakhs Twenty Five Thousand Three Hundred and Fifty Eight only) is clearly in violation of principles of natural justice. Therefore, I do not find any illegality or infirmity in the order of the ESI Court, in setting aside the recovery order of the Corporation. However, the ESI Corporation is at liberty to issue notice to the respondent herein and thereafter to proceed in accordance with law.

10. With the above said liberty, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

17.03.2023

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

To

1. The Labour Court,
(Employees' Insurance Court), Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR,J.

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