

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.974 of 2017

1. The Joint Regional Director,
Employees' State Insurance Corporation,
Sub – Regional Office,
Tirunelveli.

2. The Recovery Officer,
Sub Regional Office,
Employees' State Insurance Corporation,
“Panchdeep Bhavan”
4th Main Road, K.K.Nagar,
Madurai – 600 020.

..... Appellants/ Respondents

-vs-

The Management
The Sree Sivakumar Spinning Mills,
Sankar Nagar,
Tirunelveli – 627 357,
Represented Through its
Managing Director.

.... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, against the order in E.S.I.O.P.No.112 of 2008, dated 14.06.2012, on the file of the Labour Court (Employees' State Insurance Court), Madurai.

For Appellants : Mr.P.Ganapathisamy

For Respondent : No appearance

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 Labour Court/ ESI OP Court, Madurai, whereunder, the ESI Court has proceeded to reduce the damages by 80%.

2. There is no dispute that the respondent/ Spinning Mills is covered under the ESI Act. It is also not in dispute that the respondent Mills have paid the contribution amount belatedly for the period between 01.06.2003 to 30.09.2004. The ESI Corporation has issued a show cause notice under Section 85 (B) of the ESI Act, calling upon the respondent Mills to show cause why damages should not be levied. An explanation was offered by the respondent Mills to the effect that due to financial crisis, they have deposited the contribution belatedly. Not being satisfied with the explanation, the Corporation proceeded to pass an order under Section 85 B of the Act. The

said order was followed by recovery order. Thereafter, the Management had filed E.S.I.O.P.No.112 of 2008, before the ESI Court, (Labour Court) Madurai.

3. Before the Labour Court, Madurai, the one and only contention of the Management was that due to financial crisis, the Management was not able to deposit the contribution in time and the delay is not wilful. The Labour Court has arrived at a finding that there was no *malafide* intention on the part of the Management for the delayed deposit of the contribution. However, it could be seen from the records that the Management has not let in any oral evidence or any documentary evidence before the Labour Court to the effect that they were under the financial crisis to such an extent that they were not able to deposit the contribution in time. Without any oral or documentary evidence, the Labour Court has arrived at a finding that the delayed payment of contribution is not tainted with *malafides*. Without assigning any proper reasons, the Labour Court has also reduced the damages to an extent of 80% and has directed the Management to deposit only 20% of the damages that was sought to be recovered by the Corporation. Challenging the said order, the present appeal has been filed.

4. The learned counsel appearing for the appellants Corporation pointed out that the entire finding with regard to the fact that there are no *malafides* on the part of the Management is perverse in view of the fact that the said finding is not supported by any oral or documentary evidence on the side of the Management to establish the financial crisis. Mere pleading of financial crisis is not enough, unless it is supported by oral or documentary evidence. Therefore, the finding is not sustainable and he prayed for setting aside the order passed by the Labour Court.

5. Though the respondent/Management has been served, there is no appearance either in person or through his counsel.

6. From the narration of the facts above, it is clear that the Labour Court has arrived at a finding without basis of any oral or documentary evidence. Unless the Management proves before the Court that they were under the financial crisis during the relevant point of time, the Labour Court cannot exercise its discretion and reduce the quantum of damages, especially, to an extent of 80%.

7. In view of the above said facts, this Court is of the view that the order of the Labour Court is not sustainable in law and therefore, the same is set aside. This Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

10.03.2023

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

1. The Labour Court,
(Employees' State 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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