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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.435 of 2022

1.The Regional Director,
Employees' State Insurance Corporation,
Sub Regional Office,
Municipal Shopping Complex,
Sindupoonthurai,
Tirunelveli.

2.The Recovery Officer,
The Employees' State Insurance Corporation,
Municipal Shopping Complex,
Sindupoonthurai,
Tirunelveli.

:Appellants/Respondents

.VS.

1.R.Jeyasekar
2.A.Rajendrakumar
3.S.Ramu
4.Mahalakshmi
5.Nithuraj
6.N.Sadasivam

: Respondents/Petitioners

:Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of ESI Act, 1948, against the decree and judgment of the Employees' State



Insurance-cum-Labourer Court, Tirunelveli passed in E.S.I.O.P.No.14 of 2014, dated 10.04.2017.

For Appellants	:Mr.I.Pinaygash
For R1 & R2	:Mr.M.Azeem
For R5	:No appearance

JUDGMENT

This appeal has been filed challenging the order of the lower Court in allowing the application filed by the respondents 1 & 2.

2. Challenge has been made for the demand notice issued by the appellant for recovery of amount towards arrears of subscription. It is the case of the respondents 1 & 2 before the Labour Court that the respondents 1 & 2 are the transferee of the business and they are statutorily liable to pay subscription or any arrears. The Labour Court allowed the application mainly on the ground that admittedly the property was purchased from one N.Sadasivam. The said Sadasivam was not the previous employer and he was not running any business and he was not liable to pay any subscription to the appellants. The respondents 1 & 2 are transferees of the above said Sadasivam. When the said Sadasivam was not in arrears of any amount, and no demand was



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made against him, the respondents under Section 93 cannot be made liable to pay any amount. Accordingly, notice issued for recovery has been set aside. Challenging the same, the appellants have filed the present appeal.

3. The main contention of the learned counsel appearing for the appellants before this Court that the factory known as Ramesh Cashew Industries. This is run by on Ramu, S/o.Sadasivan and the authorities found that there are arrears of Rs.19,24,669/- payable by the said industry towards subscription and therefore, an order under Section 45A of the ESI Act, 1948 is also passed. Thereafter, the entire establishment has been transferred to the respondents 1 & 2 herein. Hence, action has been initiated under Section 93-A of the ESI Act, which has been challenged before the Labour Court. The Labour Court simply set aside the notice on the ground that since the property has been transferred by Sadasivan, he was not in-charge of the industry on the relevant time.

4. The learned counsel appearing for the respondents would submit that the said Sadasivan has in no way connected with the Ramesh



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Cashew Industries. No amount is payable by the said Sadasivan. The recovery effected from the said Sadasivan is erroneous. Therefore, the Labour Court Judge has rightly appreciated the evidence and allowed the petition.

5. Before the Labour Court the following substantial questions of law are framed:-

“ 1. Whether the demand made by the respondents 1 and 2 against the petitioners are valid?

2. Whether the petitioners are liable to pay the subscription prior to their purchase?

3. Whether the petition is to be allowed? ”

6. It is relevant to note that the Labour Court has set aside the impugned order mainly on the ground that Sadasivan is not the original employer of the Ramesh Cashew Industry since the Ramesh Cashew Industry is run by one Ramu. Sadasivam cannot be fastened with liability, as the property has been transferred by the said Sadasivan, his transferee also not fastened with liability for the so called arrears and the principal subscription payable by the principal employer namely Ramu.



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7. It is relevant to note that Section 93-A of the ESI Act

reads as follows:-

“Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer.

Provided that, the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.”

8. A perusal of the above section makes it very clear that an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the period upto the date of such transfer.



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9. Admittedly, the respondents 1 & 2 had purchased the property and established the same as Ramesh Cashew Industry run by one Ramu, who is none other than the son of Sadasivam. These facts have not been disputed.

10. As per Section 93-A, liability of the transferee shall be limited to the value of the assets obtained by him by such transfer

11. Section 2(17) of the Act defines, who is the principal employer which reads as follows:-

“17. “Principal employer” means

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948 (63 of 1948), the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no



authority is so appointed, the had of the Department:

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;”

12. On a careful perusal of the above definition even owner or occupier or the Manager of the factory had deemed to be a principal employer. Therefore, even a person, who was appointed as Manager to consider as a principal employer.

13. In such view of the matter, this Court is of the view that whether the said Sadasivam was Manager or occupier of the premises, where his son was running the industry at the relevant point of time to be seen. In this aspect, no evidence whatsoever was adduced to summon the documents from the public records and if the records are summoned from Inspector of Factories or other establishment, the same will give an idea about who was the Manager at the relevant point of time.

14. In such view of the matter, as the Labour Court has gone to that aspect. This Court is of the view that the finding of the Labour



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Court is required to be set aside and the matter is remitted back to the Labour Court in order to the parties to adduce evidence, particularly, to summon the public records to find out who is the principal employer of the Ramesh Cashew Industry and also to find out whether Section 93-A would be attracted against the respondents 1 & 2.

15. In such view of the above, the Civil Miscellaneous Appeal is allowed and the order of the Labour Court is set aside and the matter is remitted back to the Labour Court to give opportunity to both sides to produce the documents and decide the issue afresh within a period of one month from the date of receipt of a copy of this order.

31.03.2023

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

1. The Motor Accidents Claims Tribunal-cum-Special Subordinate Judge (MCOP Cases), Madurai.
2. The Record Keeper, Vernacular Section, Madurai Bench of Madras High Court, Madurai.



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N.SATHISH KUMAR.,J.

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