



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14077/2021 & CM APPL 44408/2021**

Date of Decision: **19.09.2023**

IN THE MATTERS OF:

DILIP MAITY

S/O SH. PANCHANAN MAITY
R/O B-281/3, FIRST FLOOR, GALI NO. 14,
MADANPUR KHADAR EXTN.,
NEW DELHI -110076

DINESH MAITY

S/O SH. PANCHANAN MAITY
R/O B-281/3, GROUND FLOOR, GALI NO. 14,
MADANPUR KHADAR EXTN.,
NEW DELHI -110076

..... PETITIONERS

Through: Mr.Sandeep Kumar, Advocate

Versus

SH. SHAUKAT ALI

THROUGH HIS WIFE MS. NAZMUN NISHA (Claimant)
R/O A-1/301, BLOCK-A1, JJ COLONY,
MADANPUR KHADAR EXTN.,
NEW DELHI-110076

PRASENJIT DOLUI

S/O SH. TAPAN DOLUI
R/O B-281/3, GALI NO.14
SECOND FLOOR
MADANPUR KHADAR EXTN.

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KUMAR KAURAV

NEW DELHI-110076

.....RESPONDENTS

Through: Mr. Athar Alam and Ms. Sumbul Athar,
Advocates for respondent No.1

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioners in the instant writ petition seek to challenge the *ex-parte* impugned order dated 03.04.2019 passed by the Commissioner, Labour Department, GNCTD, (hereinafter '*the Commissioner*') awarding compensation to respondent No.1 under the provisions of the Employees Compensation Act, 1923 (hereinafter '*the Act*'). The petitioners are also assailing the order dated 11.11.2021, whereby the petitioners' application under Order IX Rule 13 of CPC for setting aside the *ex-parte* award has been rejected.
2. Learned counsel appearing on behalf of the petitioners submits that the impugned award has been passed *ex-parte* and there is no material available on record to infer that notice of the claim petition filed by the respondent/original claimant was served upon the present petitioners.
3. Learned counsel appearing on behalf of the petitioners also points out that the husband of the claimant i.e. respondent no.1 was employed by *Prasenjit Dolui*, i.e. respondent No.2 in the present petition. He, therefore, submits that during the pendency of the claim petition and on a statement given by respondent No.2, the present petitioners were arrayed as parties. The summons were directed to be issued to them, without there being any

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reason recorded in the order sheet for their impleadment.

4. Learned counsel appearing on behalf of the petitioners, then, contends that the summons, which were sent *via* Speed Post were never received by the present petitioners and the Court, without extending any opportunity of hearing, proceeded *ex-parte* and awarded a compensation of ₹6,77,760/- along with interest @ 12% and a penalty of 50% of the awarded compensation.

5. Learned counsel for the petitioners further submits that if the entire material on record is carefully perused, the same would indicate that respondent No.2 was the principal employer of respondent No.1- *Sh. Shaukat Ali (deceased)* who was the husband of the claimant- *Ms. Nazmun Nisha*. The claimant herself had admitted in her statement that her husband was employed by respondent No.2. In the absence of there being any evidence that the petitioners had ever engaged the services of claimant's husband, the petitioners should not have been held liable, jointly or severally for the compensation.

6. He further submits that even in the FIR, the facts have come on record that there were two other co-workers who had also deposed that the claimant's husband was employed by respondent No.2. He, therefore, submits that had an appropriate opportunity of hearing been given to the petitioners, they would have satisfied the Commissioner that they were not liable for any compensation on account of death of the husband of the claimant.

7. Learned counsel appearing on behalf of respondent No.1 opposes the submissions made by learned counsel for the petitioners. He submits that the order passed by the Commissioner is strictly, in accordance with law, and the

application for setting aside the *ex-parte* order has also been rightly rejected.

8. He further submits that there is always a presumption of service of notice issued by registered post. He, then contends that in the instant case, the aforesaid fact has been noted by the Commissioner that the summons were issued to the petitioners by speed post on the correct address and were not returned unserved, based on which, the petitioners were proceeded *ex-parte*. Learned counsel for respondent No.1 has relied upon the decisions of the Hon'ble Supreme Court in the cases of *M.A. Mohamed Ismail v. State Government of Tamil Nadu and Ors.*¹ and *Vrinda Pareek (Minor) Through Guardian v. Union of India and Ors.*², decisions of the Delhi High Court in the cases of *Yogesh Jain and Anr. v. Rakesh Jain and Ors.*³ and *Purushottam Singhal Proprietor Prime Cable Industries v. Registrar of Trade Marks and Another*⁴ to supplement his stand that there is always a presumption of service by registered post when made to the correct address.

9. He further submits that this court in the exercise of power under Article 227 of the Constitution of India is not required to examine the legality of the impugned award. The court can only examine whether the impugned award is without jurisdiction. Since there is no jurisdictional error and the facts are true that the claimant's husband has expired while being employed by the petitioners, therefore, there is no reason to interfere in the impugned award.

10. Learned counsel for respondent No.1 further submits that in any case, the present petitioners have not been held solely liable, but the

¹JT 1999 (10) SC 372

²(2015) 13 SCC 438

³2017 SCC OnLine Del 7909

⁴2023 SCC Online Del 1641

Commissioner has held that the present petitioners and respondent No.2 are jointly and severally liable. He, therefore, submits that the instant petition deserves to be dismissed.

11. I have heard learned counsel for the parties and have perused the record.

12. The scope of interference by High Courts under Article 227 of the Constitution of India has been authoritatively outlined by a plethora of judgments rendered by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of *Iswarlal Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd. & Anr.*⁵, has held as under: -

“15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.”

[Emphasis supplied]

13. In light of the aforesaid, what needs to be decided now is whether the impugned decision in the present case suffers from any serious error of law or the findings of the Commissioner are so perverse that they may lead to a

⁵(2014) 6 SCC 434

grave miscarriage of justice unless interfered by this court.

14. The facts of the case would indicate that on 03.08.2016, the claimant's husband i.e. the late *Sh. Shaukat Ali* was working as a mason at *B-281/3, Gali No. 14, Madanpur, Khadar Extension, Delhi-110076*. During the course of his employment, the workman fell from the second floor and sustained injuries. Respondent No.2, who was the occupant of the second floor, took the workman to the hospital, where, during treatment, he was declared dead. An FIR No. 413/2016, under Sections 288/304-A of IPC was lodged against respondent No.2 at Police Station Jaitpur, Delhi. The matter was also referred to the Commissioner by the Director of an organisation known as Centre for Human Rights. On receiving the reference, the Commissioner directed for a show cause notice to be issued to respondent No.2.

15. It appears that respondent No.2 appeared before the Commissioner and on 18.12.2017, he made the following statement:

"I am the Respondent in this case. I wish to state that at the time of the said incident in which workman namely Sh. Shokat Ali aged about 40 years died on 03/08/2016, I was not the owner of the premises. The owners of the premises at the time of the said incident were Sh Dilip Maity and Sh Dinesh Maity out of whom Sh Dinesh Maity happens to be the husband of my elder sister namely Smt. Sushmita Maity and Sh. Dilip Maity is the elder brother of my brother-in-law Sh. Dinesh Maity. However, I am the owner of the premises as on date but not at the time of the said incident. My name has been included in the criminal case because I took the deceased workman to Apollo Hospital Jasola, New Delhi and the deceased workman was alive at time of the said hospitalization. In view of the factual position, it is requested to drop the proceedings pending against me in this Court under provisions of the Employees Compensation Act, 1923."

16. In view of the statement made by respondent No.2, the Commissioner directed for issuance of summons to the present petitioners.

17. The Commissioner in paragraph No.5 of the impugned order has noted the aforesaid aspects, which read as under:-

“Since in the above statement, the Respondent Sh. Prasenjit Dolui stated that on the day of the accident, he was not the owner of the premises and that Sh. Dilip Maity and Sh. Dinesh Maity out of whom Shi Dinesh Maity happens to be the husband of his elder sister namely Smt. Sushmita Maity and Sh. Dilip Maity is the elder brother of his brother-in-law Sh. Dinesh Maity, summons were issued to the said Sh. Dilip Maity and Sh. Dinesh Maity as Respondents No.2 &3 who never appeared before this Authority and therefore, the Respondents were proceeded ex-parte on 06.02.2018.”

18. Since no one appeared on behalf of the present petitioners, therefore, vide order dated 06.02.2018, the present petitioners were proceeded *ex-parte*.

19. It is seen that after framing of the issues, the evidence was recorded and in terms of paragraph Nos. 9 to 13 of the impugned order, the following observations have been made:-

*“9. Now given the above facts, circumstances of the case and pleadings as well as evidence of the Claimants and their witness, it also needs to be stated that as per rules laid down by the Hon'ble High Court of Delhi in Puran Lal case, I find it a mandate of law to order the depositing of compensation on the facts enumerated in the EAR though no formal claim application has been filed under Section 22 of the Employees Compensation Act, 1923. Given the facts and documents available on record, it is clear that an accident has taken place, in the said accident, injury had been caused to Shaukat Ali working on the building and the said workman succumbed to his injuries. **Hence it is proved that the death had been caused out of and during the course of employment and engagement of the deceased by the Respondents has been unchallenged and proved conclusively. Hence the said issue is decided in favour of the Claimants and against Respondents.***

10. Relief:

As per E.A.R, the deceased Shaukat Al was aged 45 years. As per the minimum rates of pay-prevalent at the time of accident, the wage per month payable to the deceased was R-9568.00 for an unskilled worker. But as per the Govt. notification his wage can be taken Rs. 8,000/- per month. Hence his wage is taken as Rs. 8,000/- per month.

That in view of the above facts and circumstances and on the basis of 45 years of age, the relevant applicable fapiomand Rs 8,000/- per month wages, the payable amount of compensation is calculated as under:

- | | | |
|------|------------------------------------|--------------|
| (i) | Relevant factor of 45 years of age | :169.44 |
| (ii) | 50% of wages @Rs. 8000/-pm | :Rs. 4,000/- |

(iii) Amount of compensation : 205.95X4000
:Rs. 6,77,760/-

11. The Applicants/Claimants also entitled to interest as per Section 4A of the Act @ 12% per annum from 30 days after the accident and Rs 5,000/- per month towards funeral charges.

12. Why penalty?

In the instant case, the L.d Counsel for the Applicants/Claimants has also argued for imposing penalty on the Respondents which was not rebutted by the Respondents as they were proceeded Ex-parte. It is submitted by Ld. Counsel for Applicants/Claimants that the fact of the death of the workman came to the knowledge of the Respondents immediately. No AV brew Nath reasons are forthcoming as to why the Respondents, did not proceed to forthwith deposit the compensation payable. It would not be irrelevant to note that the factum of injury and death, the nature of employment of the deceased workman and the fact of his death from an accident arising at the work site were all known. **When the Respondents received notice/summons from the Commissioner Employee's Compensation, all that was required to be done was to refer to the formula prescribed under the Employee's Compensation Act and apply the applicable indices to compute the compensation payable. This was not done.** A reasonable opportunity was available throughout to the Respondents to deposit the death compensation amount but the Respondents were in no mood to do the same Ld. Counsel of Applicants/Claimants repeatedly raised several justifications for imposing 50% penalty against the Respondents.

Ld. Counsel for Claimants also repeatedly submitted that the Respondents had not given, any justification of delay of non-payment of death compensation, since it fell due. He further submitted that he has repeatedly mentioned this fact during all proceedings/ arguments. It is also submitted that the family members of the deceased whose present and future was completely dependent on their deceased family members and the Claimants are also now left with no earning member in the family and all Claimants have also been finding it extremely difficult to meet their expenses and finding it impossible to carry on with their lives and livelihood in the absence of compensation which was due from the Respondents, since the date of accident in the course of employment with Respondents. He further states that the instant case is a lit case for directing the Employer/Respondents to pay a further sum of 50% of the death compensation amount by way of penalty. I accordingly allow the prayer of Claimants/Applicants and declare that the Respondents are jointly or severally bound to pay 50% of death compensation amount mentioned below as penalty.

13 Therefore, the Applicants/Claimants are entitled to receive death compensations from Respondents who are held liable jointly or severally as the workman, was employed and his death has been caused out of and during the course of his employment with Respondents. Hence Respondents ie 1. Sh. Prasenjit Dolui, S/o Sh. Tapan Dolui, R/o B- 281/3, Gali No. 14, Madanpur Khadar Extn., New Delhi-110076. 2. Sh Dilip Maity and 3. Sh. Dinesh Maity, R/o B-281/3, Gali No 14. Madanpur Khadar Extn. New Delhi 110076, are directed to deposit in this court 1/3 share of the death compensation amount of Rs. 6,77,760/-. (Rupees Six Lakhs Seventy Seven Thousand Seven Hundred Sixty Only) on account of compensation payable to the Applicants/Claimants along with interest @ 12% pa wef 03.09.2016 till its realization and funeral expenses of total of Rs. 5,000/- **The above named Respondents did not pay the compensation. They have been proceeded ex-parte whereby the claim of the claimants was lingered on without any justifiable reason.** Hence, I find this to be a fit case to impose penalty on the said Respondents which is 50% of the principal amount which comes to Rs. 3,38,880/-(Rupees Three Lakh Thirty Eight Thousand Eight Hundred Eighty Only). The said penalty is imposed on Respondents ie Sh Prasenjit Dolui, S/o Sh. Tapan Dolui. R/o B-281/3, Gali No. 14 Madanpur-Khadar Extn., New Delhi-110076, 2. Sh. Dilip Maity and 3. Sh. Dinesh Maity, R/o B-281/3, Gali No. 14. Madanpur Khadar Extn. New Delhi-110076, by exercising power under Section 4A of the Act. The said Respondents are also directed to deposit 1/3 share of the penalty as stated above through pay order in favour of "Commissioner Employee's Compensation VIII within a period of 30 days from pronouncement of the order in this court failing which the same shall be recovered as arrears of land revenue."

20. When the award dated 03.04.2019 was passed and a notice was issued to the petitioners for initiating recovery proceedings against them, they filed an application under Order IX Rule 13 for setting aside the *ex-parte* award, which was rejected by the Commissioner. *Vide* order dated 11.11.2021, the Commissioner observed as under:-

"I have heard the submissions of both the counsels in details. From the arguments, I have found that order was passed on 03/04/2019 impleading all the respondents with direction to pay awarded amount jointly and severally. The arguments adduced by AR counsel that no notice was ever received by respondents from this office and such order does not have any merit but as per record file then Ld. Commissioner has sent summon dated 28/12/2017 through speed post upon Respondent no. 2 & 3, since the said summons never received/ returned back with any ground in this Court. As such, it is

presumed that the said summons was duly received by Respondent no. 2 & 3 as such.

As such after more than 2 years applicant filed an application to recall order dated 03/04/2019 does not appear justified. Before passing order dated 03/04/20 19, the then Ld. Commissioner gave opportunity to respondent no. 2 & 3 for defence if any in this matter.

*Further, on para 4 of the said order dated 03/04/20 19 recorded by the then Commissioner and the case related to death of claimant/ deceased Shaukat Ali by which his family suffered a lot. In this accident husband of claimant expired and she lost all his earning capacity and facing difficulty to live social life which cannot be fulfilled. The money which has been awarded only can give financial support. **The ECA Act enacted by the parliament is the SW legislation. As such it was the responsibility of respondents to discharge their responsibility so that deceased's family would not suffer and it was not done and became insensitive towards deceased family.***

Considering the facts of the case, I do not find any merit and application dated 17/02/2020 is dismissed. Respondents are directed to comply the direction of my predecessor in toto. Copy of order be given dasti. File to be consigned to RR."

21. It is thus seen that the Commissioner has passed the impugned award based primarily on two grounds.
22. First, the Commissioner has recorded that the summons, which were dispensed by speed post, were duly received by the petitioners herein on their correct address as the same were not returned unserved.
23. Since the finding of fact has been recorded by the Commissioner in judicial proceedings, the same cannot be doubted, unless the contrary is proved conclusively. It is well settled law that there is a presumption of service of notice, if the same is sent by speed post on the correct address and is not returned unserved on any ground. The Hon'ble Supreme Court, in the case of **V. Raja Kumari v. P. Subbarama Naidu**⁶, relied upon the presumption under Section 27 of the General Clauses Act, 1913 to hold that if notice has been issued in the proper manner, it is presumed to have been served unless the converse is proved. In another decision in the case of **C.C.**

⁶(2004) 8 SCC 774

*Alavi Haji v. Palapetty Muhammed*⁷, the Apex Court has relied upon Section 114 of the Indian Evidence Act, 1872 read with Section 27 of the General Clauses Act, 1913 to hold as under:

“13. xxxxxxxx
xxxxxxx

When applied to communications sent by post, Section 114 enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of the GC Act is extracted below:

“27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression ‘serve’ or either of the expression ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647 : AIR 1992 SC 1604] ; State of M.P. v. Hiralal [(1996) 7 SCC 523] and V. Raja Kumari v. P. Subbarama Naidu [(2004) 8 SCC 774 : 2005 SCC (Cri) 393] .)

xxxxx
xxxxx”

[Emphasis supplied]

⁷(2007) 6 SCC 555

24. At this stage, learned counsel appearing on behalf of the petitioners submits that no tracking report or proof as such has been produced before the Commissioner to show that the summons were received by the petitioners herein.

25. Having regard to the existing legal position, as stated hereinabove, it is found that the tracking report, etc. is not necessary for proving the service of a notice once it is dispatched by speed post on the correct address and has not been returned as unserved. The Hon'ble Supreme Court, in the case of ***Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani***⁸ has held as under:

“8. There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service.

xxxxx
xxxxx”

26. It is not denied that the presumption of service by registered post is a rebuttable presumption. However, the onus of proving that the notice remained unserved lies on the petitioners herein. It is not the case of the petitioners that the notice was served on the wrong address or that the service was somehow interfered with. No evidence has been submitted to show that the petitioners never received the summons. In the absence of any evidence to the contrary and the fact that the summons were not returned with any ground for non-service, the Commissioner was correct in holding that the

⁸(1989) 2 SCC 602

petitioners were duly served with the summons.

27. The second ground taken by the Commissioner in the impugned order is that the respondent No.2 alone is not responsible for the payment of compensation but has been held jointly and severally responsible alongwith the petitioners herein, on account of the petitioners being the owners of the building where the deceased was employed.

28. Section 2(e) of the Act lays down the definition of the word 'employer' as under:

(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a 2 [employee] are temporarily lent or let on hire to another person by the person with whom the 2 [employee] has entered into a contract of service or apprenticeship, means- such other person while the 2 [employee] is working for him;

29. The Hon'ble Supreme Court, in its decision in the case of **Mohan Singh v. Railway Board**⁹, while elaborating on the scope of the definition of the term 'employer', observed as under:

"18. xxxxx

xxxxx

With regard to the Worker's Compensation Act, "premises of employer" is not restricted to the permanent site of the employer's business nor to the property owned or leased by him but contemplates any place under the exclusive control of the statutory employer where his normal business is conducted or carried out.

xxxxx"

30. Section 12 of the Act lays down the provisions for liability in case of contracting, as under:

12. Contracting.—(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or

⁹(2015) 10 SCC 759

business of the principal, the principal shall be liable to pay to any 1 [employee] employed in the execution of the work any compensation which he would have been liable to pay if that 1 [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the 1 [employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor 4 [,or any other person, from whom the 1 [employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the 1 [employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

xxxxx

xxxxx”

31. So far as the objections raised by learned counsel for the petitioners with respect to engagement of the deceased workman by respondent No.2 alone is concerned, it is to be noticed that the Act itself makes provisions for the liability of the principal employer even if the workman was actually employed by the contractor.

32. It has not been disputed that at the time of the incident, the petitioners were the occupants of the ground and first floor properties and were aware about the accident that had befallen the deceased workman. It is also noted that the present petitioners and respondent No.2 are family members, as can be deduced from the statement of respondent No.2 recorded in the impugned award. It is also true that the petitioners were impleaded only after the statement of respondent No.2. Respondent No.2 has also stated that the petitioners were the owners of the building.

33. It is thus seen that the petitioners were the principal employers and cannot be absolved of any liability merely on the ground that respondent

No.2 was the employer who actually engaged the services of the deceased workman.

34. This Court, in its decision in the case of *M.R. Khanna v. Union of India*¹⁰ had occasion to adjudicate upon the position of a 'principal employer' in the case of a company that was a family concern of the petitioners therein. Applying the doctrine of 'lifting of the corporate veil', the Court had held as under:

"10. I consider that in the present case also the Court has to lift the corporate veil and find out the reality. The petitioner and his son along with other family members opened a security company. They employed poor persons as security guards and from their salaries they deducted ESI contribution. This ESI contribution was to be paid to ESI for the benefit of the employees. Instead of paying ESI contribution to the employees this amount was swallowed by the company i.e. by its Directors. Father and son were living together when notices were issued to them to deposit the amount of poor employees. Son was not available at the house. Father did not provide address of the son who allegedly was the Managing Director of the company. Even during the arguments in the Court, the petitioner was asked to disclose his son's address but he stated that his son has separated from him and he does not know the address of his son. It is clear that the petitioner, on one hand, himself was not willing to deposit ESI contribution and took pleas of his old age, retirement from Government service, etc. and on the other hand was protecting his son from the authorities by not disclosing his address. I consider that both father and son were principal employers and equally responsible to deposit the amount jointly or severally. The plea taken by the petitioner that he was only a Director and not responsible for payment of the dues of ESI must fail.

xxxxx

xxxxx

13. I consider that in view of the peculiar facts and circumstances of this case it cannot be said that recovery proceedings against Mr. M.R. Khanna, petitioner, were unjust or illegal. The petitioner cannot be allowed to take the shield that he was not the principal employer, and his son, who is not traceable was the principle employer. ESI Act is a social beneficial legislation meant to protect the interest of the working class and an interpretation which defeat the very purpose of the ESI Act cannot be adopted. The provisions of a statute must be so interpreted so as to advance its social economic objective."

¹⁰2006 SCC OnLine Del 1064

[Emphasis supplied]

35. In view of the aforesaid decision of this Court and considering the subsisting relationship between the petitioners and respondent No.2, it can be held that the petitioners are the principal employers and hence, they have been held to be jointly and severally liable, meaning thereby that each of the employers are liable for the full amount of compensation individually as well as jointly and the amount of compensation can be recovered by the claimant from anyone individually, if the others refuse to pay or are unable to pay, while ensuring that the paying employer has the right to recover the said amount from the non-paying employers.

36. Hence, the finding of the Commissioner in holding the petitioners jointly and severally liable alongwith respondent No.2, is unimpeachable and is sustainable in law.

37. It is also of import that the Act is a social welfare legislation, which has been enacted with the object of providing a speedier and easier mechanism for the payment of compensation to workmen. An integral aspect of industrial laws is addressing the inequality that exists in employer-employee relationship. The bargaining power that employers possess can only be truncated by enacting strong legislations that are aimed at protecting the interests of the employees. It invariably means that Courts, while dealing with industrial disputes, have to consider the aspect of social justice involved. The same has been pithily observed by the Hon'ble Supreme Court in a decision in the case of *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India*¹¹ as under:

“19. xxxxxx

¹¹(1964) 3 SCR 724

Xxxxx

Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice.
xxxx”

[Emphasis supplied]

38. In view of the aforesaid, this Court is of the opinion that the impugned order has been passed after proper appreciation of the facts and evidence, in line with the legislative intent of the Act and therefore, does not merit any interference.

39. Accordingly, the instant petition is dismissed alongwith the pending application.

40. The amount deposited by the petitioners in terms of the interim order dated 10.12.2021 be released in favour of the claimant-Ms. Nazmun Nisha within two weeks from the date of receipt of this order, on due verification.

41. The claimant-Ms. Nazmun Nisha is at liberty to recover the remaining amount from the petitioners and/or respondent No.2, in accordance with law.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 19, 2023

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