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APOT/84/2024
IA No.GA/1/2024
GA/2/2024

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

M/s. DIAMOND ENTERPRISE AND ANR.

VERSUS

EMPLOYEES STATE INSURANCE CORPORATION AND ANR.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 24th May, 2024.

Appearance:
Mr. Uddipan Banerjee, Adv.
... for the appellant.
Mr. Mihir Kundu Adv.
...for the respondent.

1. Heard Sri Uddipan Banerjee learned counsel for the appellant and Sri Mihir Kundu, leaned advocate for the respondent.

IA No.GA/1/2024 :

2. This intra-Court appeal has been filed praying to set aside the order dated 24.01.2024 passed in WPO/1855/2023 (M/s. Diamond Enterprise & Anr. Vs. Employees' State Insurance Corporation & Anr.) by the learned Single Judge. By the impugned order, the writ petition filed by the appellant herein has been dismissed on being appraised by the respondent herein that an order under Section 45A of the Employees State Insurance Corporation Act, 1948, dated

12.07.2018 has been passed and in consequence thereto, the impugned garnishee order dated 21.11.2023 has been issued. The writ petition has been dismissed with costs of Rs.11,000/-.

3. This appeal has been filed beyond limitation by 27 days along with a delay condonation application being GA/1/2024. Learned counsel for the respondent does not seriously oppose the delay condonation application. Therefore, with consent of learned counsel for the parties, the delay is condoned and the application for condonation of delay (IA No.GA/1/2024) stands allowed.

Order on Appeal :

4. We have heard learned counsel for the parties and carefully perused the impugned order. It is stated by learned counsel for the appellant that the appellant/petitioner came to know of the order under Section 45A dated 12.07.2018 for the first time when that order was produced by the respondent before the writ Court on the date of hearing i.e., 4.1.2024. Learned counsel for the respondent submits that the aforesaid order under Section 45A is appealable under Section 45AA of the Employees' State Insurance Corporation Act, 1948. Learned counsel for the appellant submits that the appellant shall file appeal under Section 45AA within the time as provided by this Court and the cost imposed under the impugned order may be deleted.
5. We have carefully considered the submission of learned counsel for the parties and with their consent, this appeal is disposed of by giving liberty to the appellant/petitioner to file an appeal to challenge the order dated 12.07.2018 before the competent authority under Section 45AA of the Act, within one month from today. In the event, such appeal is filed within the stipulated

period, it shall be decided by the appellate authority in accordance with law, without raising any objection as to limitation. The cost of Rs.11,000/- imposed by the impugned order dated 04.01.2024 is hereby deleted.

6. With the above observation, the appeal (APOT/84/2024) and all pending applications are disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As