



C.M.A(MD)No.11 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM:

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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1. Employees' State Insurance Corporation,
Rep. by its Recovery Officer,
Sub-Regional Office, 4th Main Road,
K.K.Nagar, Madurai-20.

2. Employees' State Insurance Corporation,
Rep. by its Joint Director,
Sub-Regional Office, 4th Main Road,
K.K.Nagar, Madurai-20.

... Appellants / Respondents

Vs.

Raja Textile,
Rep. by its Proprietor,
D.Rajendran

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of ESI Act, 1948 praying this Court to set aside the order dated 23.03.2016 passed by the ESI Court (ie., Labour Court), Madurai in ESI O.P.No.81 of 2005 and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

For Appellants : Mr.R.Ravindran

For Respondent : No appearance



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JUDGMENT

The instant appeal has been preferred against the order dated 23.03.2016 passed by the ESI Court, ie., the Labour Court, Madurai in ESI O.P.No.81 of 2005, allowing the petition filed by the respondent against the demand made by the appellants.

2.The brief facts leading to the filing of the appeal are as follows:-

(a) The respondent's father one Duraipandi was a partner in a partnership firm called M/s.Duraipandi Handloom Factory, which had an office at Door No.28 A Suyarajyapuram, 2nd East Main Road, Sellur, Madurai-625 002. It is the claim of the appellants that M/s.Duraipandi Handloom Factory was due to pay some contributions to the appellants. The said Duraipandi died. Thereafter, the respondent started the proprietary concern called M/s.Raja Textile in the same address.

(b) The appellants, stating that the earlier partnership firm had transferred its business to the respondent concern, claimed dues payable by the erstwhile partnership firm from the respondent to the tune of Rs.9,93,390/- (Rupees Nine Lakhs Ninety Three Thousand Three Hundred and Ninety Only) and they also passed an order under Section 45A of the ESI Act.



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(c) Challenging the said order, the respondent preferred ESI O.P.No. 81 of 2005 before the Labour Court. The Labour Court, after considering all the documents, held that the appellants had not established that the partnership firm was transferred to the respondent herein and hence, held that they have no right under Section 93A of the ESI Act to demand a contribution from the respondent.

3. The learned counsel appearing for the appellants submitted that the proprietor of the respondent concern is the son of Duraipandi, who was running the partnership firm; that the nature of business run by both the partnership firm and the proprietor concern is similar and therefore, except for the name change and the constitution of the concern, the entire business was transferred to the respondent herein; that hence, the appellants are entitled to claim a contribution from the respondent; and that however, the Labour Court had not considered the evidence in a proper perspective.

4. Though notice was sent to the respondent and the name is printed in the cause list, none has entered appearance.



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5.This Court had carefully considered the submissions of the learned counsel for the appellants and the order passed by the Labour Court, which is impugned in the instant appeal.

6.The claim of the respondent is based on Section 93A of the ESI Act, which 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 licence 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”

7.Therefore, in order to maintain the claim, the appellants have to establish that there was a transfer of the factory either by sale, gift, lease or license to the present employer. Admittedly, the firm run by the father of the respondent was a partnership firm and therefore, the partnership firm was dissolved upon his death.



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8.It is not in dispute that the respondent is running a proprietorship concern in the same premises. That would not lead to the inference that the business of the partnership firm, which had other partners, was transferred to his concern. Be that as it may, the respondent had also marked several documents to show that the respondent concern had nothing to do with the previous partnership firm run by his father.

9.It is also not in dispute that in respect of earlier claim made against the erstwhile partnership firm, they had challenged the proceedings and approached this Court and there was a direction to them to pay a sum of Rs.3,51,465/- (Rupees Three Lakhs Fifty One Thousand Four Hundred and Sixty Five Only). However, the appellants had not taken any steps to recover the said amount from the erstwhile partnership firm and they have not produced any document to show that the factory was transferred either by way of sale, gift or lease to the respondent.

10.The representative of the appellants admitted in his cross-examination that they had no evidence of sale or for any other kind of transfer of the factory to the respondent. Therefore, this Court is of the view



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that the appellants, having failed to establish that their case would fall under Section 93A of the ESI Act, are not entitled to make any claim for the contribution. Therefore, the order of the Labour Court, allowing the petition of the respondent, which is impugned herein, is in accordance with law and hence, it is confirmed. That apart, the appeal does not raise any substantial question of law, so as to warrant interference. Therefore, the instant Civil Miscellaneous Appeal is dismissed. No costs.

13.08.2024

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

Yuva

To

1.The Labour Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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