



C.M.A.(MD)No.1227 of 2016

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Dated: 22.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1227 of 2016

Employees State Insurance Corporation
Rep. by its Deputy Director(Legal)
K.K.Nagar, Madurai- 20

.. Appellant/ Respondent

Vs.

M/s. The Vijayakumar Mills Ltd
Palani- Dindigul District
Rep. by its Managing Director

.. Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I Act, 1948 to set aside the order dated 15.04.2010 passed in E.S.I.O.P. No. 7of 2010 by the Labour Court, Madurai and allow this appeal

For Appellant : Mr. R.Ravindran

For R-1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred to set aside the order dated 15.04.2010 passed in E.S.I.O.P. No. 7of 2010 by the Labour Court, Madurai, wherein the respondent herein has



C.M.A.(MD)No.1227 of 2016

filed petition before the ESI Court to set aside the order passed by the appellant under Section 85(B) of the ESI Act, 1948.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The case of the petitioner before the ESI Court is that the petitioner received notices in form D.18 dated 03.07.2009, 18.09.2009 and 18.09.2009 from the respondent alleging that the petitioner has paid contribution belatedly for the period from 04/1993 to 03/1997, 08/1998 to 03/2003 and from 07/1985 to 03/2000 respectively proposing to levy damages of Rs.45,935/-, Rs.22,59,448 and Rs.34,26,330/- totally a sum of Rs. 57,41,713/- and required the petitioner to attend personal hearing. The petitioner also attended the personal hearing and explained the reason for the delay that the mill was facing stringent financial difficulties and the mill remitted entire contributions to the respondent after getting amounts from the third parties by selling the machineries and that mill ceased to function from 1997 and the same was declared as sick unit and belated remittance is neither wilful nor wanton. In spite of that the respondent has chosen to pass impugned order



C.M.A.(MD)No.1227 of 2016

dated 05.10.2009 and demanded a sum of Rs.57,41,713/- being 100% of the contributions as damages. The respondent without considering the order of BIFR and AIFR, the financial difficulties faced by the petitioner as well as there was no wilful or wanton delay in remitting contributions. Therefore the order passed by the authority under Section 85(B) dated 05.10.2009 is liable to be set aside.

4. According to the respondent in the main petition the petitioner unit was covered under the ESI Act and the employer was quite irregular in the payment of contribution. The arrears of contribution and interest could only be recovered through recovery process and there was a delay in the payment of contributions and there is no justification for the delay in the payment of contribution. As per the provisions of the act and regulations the petitioner unit is entitled to get relief in the rehabilitation scheme as sanctioned by BIFR. There is absolutely no contention raised by the representative of the employer at the time of personal hearing. Therefore the order passed by the authority is valid. Therefore the petitioner is liable to pay the damages as fixed under the order passed by the appellant under Section 85(B) of the ESI Act, 1948, hence the petition is liable to be dismissed.



C.M.A.(MD)No.1227 of 2016

WEB COPY

5. Before the Tribunal no witnesses were examined either on the side of the petitioner or on the side of the respondent. Petitioner has marked Ex.P.1 to P.6 and on the side of the respondent no documents were marked. The Tribunal after hearing both sides perusing the records, reduced the damages and only awarded 15% . As against the order passed by the Tribunal, the present appeal has been preferred on various grounds.

6. The learned counsel appearing for the appellant would contend that the respondent/petitioner company have not paid the contributions in time and there is an inordinate delay and thereby the authorities have issued notice and personal hearing also conducted and the respondent/petitioner company have not filed any document and thereby the appellant/corporation authorities have issued order under Section 85(B) and regulation 31(C) of the General Regulations, 1950. Before the Tribunal they have not examined any witnesses and filed only documents, but the Tribunal without any basis reduced the damages as 15%, therefore the order passed by the Tribunal is liable to be set aside and the respondent/appellant is liable to pay the entire amount of damages as fixed by the ESI Authorities.



C.M.A.(MD)No.1227 of 2016

WEB COPY

7. In this appeal after receipt of notice respondent did not appear. Though name printed in the cause list, none appeared on behalf of the respondent.

8. Hence this Court has heard the petitioner side and perused the records.

9. The point for determination in this appeal is

i) Whether any substantial question of law is involved in this case?

ii) Whether the appeal is liable to be allowed or not?

10. In this case it is an admitted fact that this respondent/petitioner company is covered under the ESI Act and there was a delay in payment of contributions. The only contention of the respondent/petitioner is that belated payment is neither wilful nor wanton and due to financial crisis they have not paid the amount within time. There is no wilful or wanton delay in payment of contribution. According to the appellant/respondent the appellant/respondent have given opportunity to the respondent/petitioner to putforth the defence of respondent/petitioner but at the time of



C.M.A. (MD) No. 1227 of 2016

personal hearing the respondent/petitioner have not filed any documents thereby the order has been passed by the authorities. The respondent/petitioner filed petition before the ESI Court and the ESI Court after taking into consideration all the facts that the delay is neither wilful nor wanton and the respondent/petitioner fairly admitted the delay and there is no intention for the delay and thereby the Tribunal has reduced the amount of damages from 100% to 15%. The respondent/petitioner have not denied the powers of the Tribunal to reduce the quantum of amount and there is no bar to reduce the quantum of damages amount. Therefore the Tribunal after recording the reasons only reduced the damages, therefore the order passed by the Tribunal is correct and there is no perversity or infirmity found in the order of the Tribunal. Though the respondent/ petitioner has not adduced any oral evidence the respondent/petitioner has filed documents and the Tribunal also admitted the delay payment but reduced the damages on the ground that there is not wilful default on the side of the respondent/petitioner. It is well settled law that as per ESI Act, appeal will lie only on the substantial question of law, but in this case there is no substantial question of law involved and the grounds raised by the appellant/respondent are all factual aspects.



C.M.A.(MD)No.1227 of 2016

11. In view of the above discussions, this Court finds no merits in the appeal and it deserves to be dismissed.

12. In the result, the Civil Miscellaneous Petition stands dismissed confirming the order of the Tribunal. No costs.

22.02.2024

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

1. The Labour Court, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1227 of 2016

P. DHANABAL,J.

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C.M.A.(MD)No.1227 of 2016

22.02.2024