

08.01.2025.
Item No.18.
Court No. 13
ap

M.A.T. No. 2126 of 2023
With
I.A. No. CAN 1 of 2023

Sri Shyamal Banerjee
Versus
The State of West Bengal & Ors.

Mr. Ranjay De, Id. Sr. Advocate,
Mr. Nayan Rakshit,
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

...For the appellant.

Mr. Shiv Chandra Prasad.

...For the respondents.

1. The instant intra court appeal is directed against the judgment and order dated 3rd October, 2023 passed by the learned Single Judge of this Court in W.P.A. No. 4457 of 2021. This Court does not find any infirmity in the impugned order. The order has not decided any liability of the appellant/shop owner. The appellant has been asked to approach the Employees' State Insurance Court (in short 'ESI Court') for adjudication.

2. The appellant is aggrieved by the quantum of pre-deposit directed by an order dated 28th January, 2020 by the ESI Court.

3. It is now well-settled that the requirement of pre-deposit in respect of statutory appeals, cannot be waived except as provided under the Statute.

4. If the quantum itself assessed by the First Authority is excessively high and has ignored the

applicability of the Employees' State Insurance Act, this Court finds that the conduct of the appellant has been equally reprehensible. He has not produced any document as regards the number of his employees and records relating thereto, despite five opportunities given by the Corporation.

5. In that view of the matter, since Mr. De, learned Senior Advocate appearing on behalf of the appellant has agreed to approach the ESI Court, as directed by the learned Single Judge of this Court, after making the pre-deposit of 25% of the quantified amount by the Corporation, he is permitted to do so.

6. Let such pre-deposit be made within a period of one month from date and if such pre-deposit is deposited, the ESI Court shall consider the appellant's appeal in accordance with law. The said appeal shall be decided by the ESI Court within a period of six months from date mandatorily and positively.

7. All the questions including the applicability of the Act are kept open to be decided by the ESI Court.

8. With the aforesaid observations, M.A.T. No. 2126 of 2023 shall stand disposed of.

9. In view of the disposal of the appeal itself, the connected application being CAN 1 of 2023 shall also stand disposed of.

10. There will be no order as to costs.

11. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)