



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 349 OF 2025
IN
FIRST APPEAL st. NO. 33920 OF 2024

Yojana Constructions

...Appellant.

Versus

The Regional Director, Employees
State Insurance Corp and Another.

...Respondents.

Mr. P. M. Bhagat for the Appellant.

Ms. Seema Chopda for the Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : January 15, 2025.

P. C. :

1. Heard.
2. Interim Application has been preferred seeking stay of the impugned judgment and order.
3. Learned Counsel appearing for the Appellant submits that the Appellant has already deposited an amount of Rs.4 lakh in the Employees' Insurance Court [for short "ESI Court"]. He would submit that the principal amount is Rs.12,02,703/- and the interest imposed by the ESI Court is Rs.11,29,377/-. He would submit that under Section 40 of the Employees' State Insurance Act, 1948, it is the principal employer who is liable to pay the contribution in respect of every

employee whether directly employed by him or through an immediate employer, both the employer's contribution as well as the employee's contribution. He submits that employees of the Appellant were employed on the establishment of CIDCO and thus the liability was upon the principal employer to pay the contribution in the first instance. He submits that as there was default on the part of principal employer to pay the amount, order under Section 45A of the ESI Act, 1948 was passed and the ESI Court, without noticing the provisions of Section 40 of the ESI Act, 1948, has imposed the liability on immediate employer. He further submits that the amount of Rs.11,29,377/- being the interest amount, the contractor would not be liable to pay the same for the default on the part of principal employer.

4. *Per contra* learned Counsel appearing for the Respondent-ESI Corporation would dispute the said position and submit that the Appellant was an immediate employer who was covered under the ESI Act, 1948 and therefore liability was on the immediate employer. She submits that under Section 41(2) of the ESI Act, 1948, the immediate employer is entitled to recover the employee's contribution from the employee and therefore the liability was on the immediate employer along with the principal employer, as rightly determined by the ESI Court.

5. I have considered the submissions.

6. By an order of even date, the Appeal has been admitted on the question of law as regards the joint and several liability of principal employer and immediate employer for payment of contribution under the ESI Act, 1948.

7. *Prima facie*, upon reading of Section 40 of the ESI Act, 1948, the liability to pay in respect of every employee employed even through an immediate employer, both employer's contribution and employee's contribution appears to be on the principal employer. The ESI Court has held that due to directions of CIDCO officers, the Appellant did not pay the contribution in respect of employees working with the CIDCO, however has paid the contribution in respect of employees working with other principal employers, which means that the Appellant cannot be called as willful defaulter.

8. In the light of statutory provisions *prima facie* appearing in favour of the Appellant and considering that only in respect of the employees employed with the principal employer-CIDCO, the contributions were not paid apparently under the directions of CIDCO, the impugned judgment and order deserves to be stayed subject to deposit of principal amount of contribution. The principal amount of contribution is Rs.12,02,703/- and as submitted by learned Counsel appearing for the Appellant, already an amount of Rs.4 lakh has been deposited by the Appellant in ESI Court.

9. In that view of the matter, the impugned judgment and order dated 29th April 2024 is stayed subject to deposit of balance amount of principal contribution, i.e., Rs.8,02,703/-. The deposit be made in the ESI Court within a period of six weeks from today. It is open for the ESI Corporation to recover the interest amount from the CIDCO as there is no challenge by CIDCO and considering the provisions of Section 40 of the ESI Act, 1948.

10. Interim Application is allowed in above terms.

[Sharmila U. Deshmukh, J.]