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**W.P. No.33684 of 2012**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 08.01.2025**

**CORAM**

**THE HONOURABLE Mr. JUSTICE P.DHANABAL**

**W.P. No.33684 of 2012**  
**and W.M.P. Nos.1 and 2 of 2012**

Booma Realty Private Limited,  
(Purchaser of Kongarar Textiles Limited)  
represented by its Director  
Mr. P.K. Ganeshwar .. Petitioner  
vs.

1. The Joint Director,  
Employee State Insurance Corporation,  
Sub-Regional Office, Trichy Road,  
Coimbatore - 45.

2. The Recovery Officer,  
Employee State Insurance Corporation,  
Sub-Regional Office, Trichy Road,  
Coimbatore - 45.

3. Alchemist Asset Reconstruction Co. Ltd.,  
(Formerly Dhir and Dhir Assets Reconstruction  
and Securitisation Co. Ltd.,)  
represented by its authorized officer,  
Registered office at D.55 (FF),  
Defence Colony, New Delhi - 100 024.

4. Industrial Development Bank of India,  
(Operating Agency appointed by the BIFR),  
represented by its Chairman, IDBI Tower,  
Cuffe Parade, Mumbai-400 001.

5. Standard Chartered Bank,  
represented by its authorized officer,



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No.90, Mahatma Gandhi Road,  
Fort, Mumbai - 400 001.

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6. ICICI Bank,  
represented by its Chairman,  
163, Backway Reclamation,  
Mumbai - 400 020.

7. Canara Bank,  
represented by its Chairman,  
112, JC Road, Bangalore - 560 002. .. Respondents

**PRAYER:** The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records from the file of the 1st respondent made in (3 orders) (1) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 8/1997 to 9/1999, (2) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 12/99 to 12/2002 and (3) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 4/02 to 7/02 and quash the same.

For Petitioner : Mr. B. Kumarasamy  
for Mr. R. Manoharan

For Respondents : Mr. C.V. Ramachandramoorthy  
[for R1 & R2]  
Notice sent - No appearance  
[for R3 to R5]

Mr. Aditya Reddy [for R6]  
Mr. V. Adhivarahan [for R7]

### **ORDER**

This Writ Petition has been filed by the petitioner to quash the orders



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passed by the 1st respondent in (1) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 8/1997 to 9/1999, (2) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 12/99 to 12/2002 and (3) Ref. No.56-00-016877-000-0101/MEC/UDT dated 13.07.2011 for the period 4/02 to 7/02.

**2. The shorts facts necessary to dispose the Writ petition are as follows:-**

The petitioner Management purchased the property of Kongarar Textiles Limited from Alchemist Asset Reconstruction Company Limited under SARFAESI Act proceedings. The sale certificate dated 30.03.2010 was also issued in favour of the petitioner. The said Kongarar Textiles Limited was engaged in manufacturing of Textiles and the same was covered under Employees State Insurance Scheme. It was only due from 1997, due to financial difficulties and there was delay in remittance of contribution. Due to industrial recession, the company had sustained loss from the year 1997 and became sick and was declared as 'sick industrial company' under Section 3(1)(1)(O) of SICA. The Mill has become unviable and faced permanent closure and ceased to function from February 2003. This petitioner after purchase of the property on 06.10.2012, remitted a sum of Rs.9,02,982/-



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towards interest for the default of Kongarar Textiles Limited for the belated remittance of ESI contributions. The 1st respondent issued a Show Cause Notice to Kongarar Textiles after the petitioner purchased the Mill and fixed the damages. No notice was served to the petitioner, though they purchased the property in the year 2010 itself. However, the impugned order was passed on 13.07.2011, but the petitioner came to know about the order only after receiving a Summon dated 18.07.2012. Subsequently, the representatives of the petitioner appeared for enquiry on 30.07.2012 and after securing the impugned order, the petitioner has filed the Writ petition challenging the impugned order.

3. The learned counsel appearing for the petitioner would submit that the petitioner has purchased the property of Kongarar Textiles Limited through auction under SARFAESI Act proceedings and the Sale Certificate was issued on 30.03.2010. The said Kongarar Textiles was declared as 'sick industry' and therefore, there was a delay in payment of contribution, due to the loss. This petitioner purchased the property in the year 2010 and thereafter, they remitted a sum of Rs.9,02,982/- towards interest for the default made by Kongarar Textiles and now the respondents 1 and 2 were served notice dated 13.07.2011 by imposing penalty for the delayed payment.



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Already this petitioner has remitted interest for the said amount. However, without considering that already the said Kongarar Textiles Limited was sick and thereby, delay in payment of contribution and the petitioner after purchase of the property has also paid interest for the default of Kongarar Textiles Limited, levied damages. Though the petitioner has an appeal remedy, notice was served, the above order was served belatedly and thereby, he challenged those orders through this Writ petition. There was no *mensrea* and this petitioner is a subsequent purchaser and thereby, levy of damages is to be waived. But the ESI authorities failed to consider the said facts, therefore, the order passed by the 1st respondent is liable to be quashed.

4. The learned counsel appearing for the respondents would submit that the erstwhile owner of the property 'Kongarar Textiles Limited' had not paid the contributions in time and there was a delay, thereby already interest was awarded and the same was paid by the present purchaser. Therefore, as per Section 85-B of the act, they are liable to pay damages, hence, they passed order in accordance with law. Already a Show Cause Notice was issued and thereafter, this petitioner also appeared before the 1st respondent. Only after hearing the petitioner, the 1st respondent has passed a reasoned order. Therefore, the order passed by the 1st respondent is in accordance with law



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and the same is liable to be confirmed by dismissing the Writ petition.

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5. Heard both sides and perused all the materials available on record.

6. In this case, there is no dispute that the petitioner has purchased the property 'Kongarar Textiles Limited' and there was a delay in payment of ESI contributions and it is also an admitted fact that after purchase of the property by the petitioner, he paid interest for the delayed period. Now, these orders have been passed for the damages. It is also an admitted fact that this petitioner has also participated in the proceedings before the 1st respondent and 1st respondent after hearing the petitioner only, passed the impugned orders.

7. As far as the orders passed by the 1st respondent dated 13.07.2011 are concerned, there is an appeal remedy available to the petitioner before the ESI Court. However, according to the petitioner, the order has not been served in time and belatedly served after the limitation period. Therefore, he approached this Court. Though there is an appeal remedy, since the order has been served belatedly, the petitioner has approached this Court and now the case is pending for more than 12 years. Therefore, at this stage, it is not



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appropriate to direct the petitioner to approach the Appellate Authority. In such circumstances, this Court can invoke power under Section 226 of Constitution of India.

8. In this case, the 1st respondent passed an order for damages under Section 85-B of the ESI Act and it is also not disputed by the petitioner that there was a delay in payment of contribution and the petitioner himself paid the interest for the delayed contribution payments. Since the erstwhile company was under sick and this petitioner also paid interest for the delayed payment of contributions, it is appropriate to reduce the damages awarded by the ESI Authority.

9. Considering the facts and circumstances of the case and that the petitioner has purchased the property in the year 2010 and the payments were delayed, due to the sickness of the erstwhile management and this petitioner has also paid interest for the delayed payments, this Court is inclined to reduce the damages from 100% to 50%. Therefore, the award passed by the 1st respondent in respect of the damages for the period from August 1997 to September 1999 is reduced from Rs.1,06,347/- to **Rs.53,173.50**. The damages for the period from October 1999 to December 2002 is reduced from



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Rs.38,54,994/- to **Rs.19,27,497/-** and the damages for the period from April 2002 to July 2002 is reduced from Rs.3,29,499/- to **Rs.1,64,749.50.**

**10.** In the result, this Writ petition is **partly allowed** and the damages levied by the 1st respondent has been reduced into 50% as stated above. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No  
Speaking order/non-speaking order  
mjs

To  
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Employee State Insurance Corporation,  
Sub-Regional Office, Trichy Road,  
Coimbatore - 45.

2. The Recovery Officer,  
Employee State Insurance Corporation,  
Sub-Regional Office, Trichy Road,  
Coimbatore - 45.

**P. DHANABAL, J.,**

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