
(2017) 02 MAD CK 0102

In the Madras High Court

Case No : C.M.A. No. 1330 of 2003 and C.M.P. No. 9028 of 2003

Chandan and Chandan Industries

APPELLANT

Vs

The Regional Director

RESPONDENT

Date of Decision : 23-02-2017

Acts Referred:

Employees State Insurance Act, 1948 — Section 7

Citation : (2017) 2 LLJ 252

Hon'ble Judges : Mr. G. Chockalingam, J.

Bench : Single Bench

Advocate : Mr. A. Abdullah, Advocate, for the Appellant; Mr. K.C. Ramalingam, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. G. Chockalingam, J.—This civil miscellaneous appeal is directed against the judgment and decree dated 09.10.2000 passed by the learned I Additional Judge, City Civil Court, Chennai, in E.S.I.O.P.No.13 of 1993.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3. The learned counsel for the appellant would mainly contend that the trial Court, without considering the facts and circumstances of the case, erroneously passed an order dismissing the petition filed by the appellant. Further, the trial Court has not perused the documents filed on the side of the appellant and no opportunity was given to the appellant/industries to produce further documents to prove their case. The learned counsel for the appellant also contended that even according to the appellant, the appellant/industries will not come under the purview of the ESI Act, since less than 5 number of persons were working in the appellant/industries. Hence, the learned counsel for the appellant prayed that the order of the trial Court may be set aside and the appeal may be allowed.

4. The learned counsel for the respondent would mainly contend that the trial

Court, after perusing the entire documents, correctly passed an order dismissing the petition filed by the appellant herein. It is further contended that the documents produced in the appeal stage were not supported the case of the appellant. At any rate, the appellant/industries is coming under the purview of the ESI Act. Hence, there is no illegality or infirmity in the order passed by the trial Court and therefore, the learned counsel prayed that the order of the trial Court may be confirmed and the appeal may be dismissed.

5. In support of his contentions, the learned counsel for the appellant has relied on a decision of the Gauhati High Court in the case of Employees State Insurance v. Steel Engineers and another (Equivalent citations : 2002 (93) FLR 764, (2001) II LLJ 1714 Gau. The learned counsel also relied on a decision of the Kerala High Court in the case of Regional Director, ESI v. Mookken Devassy Ouseph and Sons (Equivalent citations : 2003 (96) FLR 1133, (2003) ILLJ 94 Ker.

6. Learned counsel for the respondent has relied on a decision of the Bombay High Court in the case of Regional Director, Employees State Insurance Corporation, Panchadeep Bhavan, Panaji Goa v. Sunil Pai, Proprietor of Mahalsa Service Station, Opp. Essar Colony, Borbhatt, Taleigao, Goa reported in 2015-IV LLJ- 85 (Bom). Learned counsel for the respondent has also relied on a decision of the Karnataka High Court in the case of Employees" State Insurance Corporation, Bangalore v. New Forge Company, Bangalore reported in 2011 (2) LLN 232 (Kar.).

7. In this case, the learned counsel for the appellant, at the time of filing the appeal, filed a petition before this Court in C.M.P.No.9029 of 2003 under Order 41, Rule 27 of CPC to permit the appellant to produce the cash book for the period from 23.10.1987 to 31.03.1989, 01.04.1989 to 31.03.1990 and 01.04.1990 to 31.03.1991 and the liberal English translation of the relevant pages from the books mentioned. This Court, after hearing both the parties, on 22.08.2011 has passed an order allowing the said petition. The operative portion of the order reads as follows:-

"8. In view of the above circumstances, the Civil Miscellaneous Petition is allowed and the petitioner and the respondent are directed to appear before the ESI Court which is the Principal Labour Court, Chennai only for the purpose of admitting the documents through proper witness and the respondent is also at liberty to cross examine the witness in respect of those documents.

9. Registry is directed to forward the documents along with the translated English version of the cash books to the Principal Labour Court, Chennai and the parties are directed to appear before the ESI Court on 12.09.2011 and the petitioner is permitted to produce the document and adduce evidence and the respondent is at liberty to cross examine the witness and challenge the documents. The Principal Labour Court, Chennai, is directed to record evidence after admitting the documents and forward the documents and the evidence to this Court within a period of four (4) weeks thereafter."

8. As per the order of this Court dated 22.08.2011, the matter was sent to ESI Court and the ESI Court, after recording the evidence of the parties relating to the documents produced on the side of the appellant, returned the documents and evidence recorded to this Court.

9. This Court heard the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the entire documents produced before the trial Court and this Court also perused the evidence recorded by the ESI Court as per the order of this Court dated 22.08.2011.

10. In this case, the main contention of the learned counsel for the appellant is that since less than five number of persons prescribed in the ESI Act were working in the appellant/industries, the appellant industries is not coming under the category of Sub Section (6) of Section (1) of the ESI Act, since the amendment Act came into force only on 20.10.1989. The further contention put forth on the side of the appellant is that the trial Court, without perusing the documents produced by the appellant, came to a wrong conclusion stating that the documents were written in Gujarathi. At the time of appeal alone, the appellant/industries had produced additional documents under Order 41, Rule 27 of CPC and evidence was recorded by the ESI Court as per the order of this Court. In this case, the learned counsel for the respondent vehemently contended that the trial Court, after perusing the entire documents came to a correct conclusion dismissing the petition filed by the appellant.

11. At paragraph Nos.8 and 9 of the order dated 09.10.2000, the trial Court has held as follows:-

"8. The consistent case of the petitioner is that the petitioner has not engaged ten or more persons at any point of time. For the purpose of establishing the above aspect on the side of the petitioner, Ex.P.13 to P.15 have been filed. Ex.P.13 to P.15 are all attendance registers for the period from 1.1.1989 to 31.3.1991. Ex.P.13 to P.15 have been filed through P.W.1. P.W.1 has initially been examined on 4.1.2000. On 4.1.2000, P.W.1 has not filed Ex.P.13 to P.15. But after a lapse of eight months he has been examined on 12.9.2000 and on that day, he has filed Ex.P.13 to P.15. In Ex.P.13 to P.15, it is mentioned that only four persons were working under the petitioner during the said period. Even a cursory look reveals considerably that Ex.P.13 to P.15 are all nothing concoction made for the purpose of filing in the present petition. Ex.P.13 to P.15 are all new. If really Ex.P.13 to P.15 have been used from 1989 to 1991 definitely, it would not have such a kind of new look. Therefore, it is needless to say that Ex.P.13 to P.15 have been created only for the purpose of filling in the present petition. Since Ex.P.13 to P.15 are concocted purposely personally and also schemingly no credence could be attached to Ex.P.13 to P.15. At this juncture, the Court has to look into the evidence of P.W.1 and also R.W.1. P.w.1 would say in his evidence during the course of cross examination that the attendance register have not been produced at the time of inspection. If really, Ex.P.13 to P.15 were in existence at the time

of inspection definitely the petitioner could have produced the same to the scrutiny of the Inspector. R.W.1 would say in his evidence that one Sri.Ganga Prasad assisted him during the course of inspection and no records have been produced by him. Therefore, it is very clear that the petitioner has purposely created Ex.P.13 to P.15 and in fact he has made an abortive attempt to cheat the Court.

9. It is already stated that the learned counsel for the petitioner has emphatically contended that no sufficient opportunity has been given to the petitioner. In fact, before passing the impugned orders under section 45A of the Act so many C.18 notices have been given to the petitioner and the petitioner has also been given personal hearing. Therefore, it is too much on the part of the petitioner to contend that the petitioner has not been given sufficient opportunity. The next contention is that the Inspection Report does not contain particulars of employees. It is an admitted fact that an inspection report should contain all particulars of employees. In the instant petition, the inspection report has been marked as Ex.R.1. In Ex.R.1 it is clearly stated that at the time of inspection fifteen employees were working and no records had been produced by the petitioner. Without relevant records it is highly impossible on the part of the Inspector to furnish all the particulars regarding employees of the petitioner who were working at the time of inspection. Therefore, the contention raised on the side of the petitioner cannot be accepted. The main contention urged on the side of the petitioner is that during the relevant period the petitioner has not engaged ten or more persons. But, even though it is the duty of the respondent to prove that ten or more persons were working at the time of the inspection, the petitioner has tried to draw the attention of the Court by way of marking Ex.P.13 to P.15. Ex.P.13 to P.15 are all concocted documents for the purpose of filing in the present petition and they have not been used in the regular course of business."

12. On reading of the above order, it is clear that the trial Court, after perusing the documents, held that the documents relied on by the appellant are concocted only for the purpose of filing in the present petition and therefore, the trial Court, correctly not relied upon the said documents to arrive at a conclusion that how many workers were employed in the appellant/industries. Further, it is an admitted case of the appellant that one Mr. Ganga Prasad, who is a worker of the appellant, was attending and assisting the inspection of the appellant/industries and during the time of inspection, Exs.P.13 to P.15, which were produced in the appeal stage, were not produced before the inspecting authority. If the said documents are genuine and they are maintained in the day-to-day course of business, there cannot be any reason for non-production of the documents before the inspecting authority and since the documents are not available during that stage, they were not produced at the time of inspection. Now, after passing of the impugned order by the ESI Court, the appellant/industries had created some documents and produced before the ESI Court and also before the Appellate Court. The Inspecting Authority clearly recorded the name of the

workers, who were working, during the time of inspection. According to the Inspecting Authority, more than ten persons are working during the inspection. After the inspection, notice was sent to the appellant/industries. It is admitted on the side of the appellant that after receipt of the notice regarding inspection, they have not sent any reply or any explanation regarding the objection to the inspection report. Hence, it has to be presumed that since the inspection report is correct one, they have not sent any explanation or objection. According to the inspection report, more than ten persons were working and admittedly, Ganga Prasad was also signed in the inspection report. Since the names of the other workers are not mentioned in the inspection report, it cannot be considered as there are more than ten persons were working in the appellant/industries. Hence, the trial Court correctly came to a conclusion that there are more than ten persons were working in the appellant/industries and therefore, the appellant is liable to pay contribution.

13. The learned counsel for the appellant mainly relied upon the fact that Section 1(6) of the ESI Act came into force with effect from 20.10.1989 and hence, the order of the trial Court is not valid. Admittedly, this case is for the period before the ESI Act came into force and further, it is clearly proved that as per the inspection report, more than ten persons were working in the appellant/industries and therefore, the appellant/industries will come under the purview of the ESI Act. Hence, the appellant is liable to pay contribution as per the order of the trial Court. The authorities cited on the side of the appellant are not applicable to the facts of the present case and the authorities cited on the side of the respondent are squarely applicable to the facts of the present case.

14. Considering the above facts and circumstances of the case, this Court is of the view that there is no infirmity or illegality in the order passed by the trial Court. This Court finds no reason to interfere with the order passed by the trial Court which does not warrant any interference by this Court and hence, the civil miscellaneous appeal deserves to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.