

(2011) 06 AP CK 0064
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16347 of 2008

Doshi Industries

APPELLANT

Vs

Employees's State Insurance Corporation and Andhra
Pradesh State Financial Corporation

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B
Employees State Insurance Act, 1948 — Section 75, 75(1), 93A
State Financial Corporations Act, 1951 — Section 29

Citation : (2011) 5 ALD 830

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; P. Srinivasulu, for B.G. Ravindra Reddy and 3 and Durga Reddy, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to set aside proceedings No. 52. Q/1037-09, dated 08.02.2008 of Respondent No. 3 by holding that the same is illegal, arbitrary and without jurisdiction and that the Petitioner is not liable to discharge any of the dues of M/s. Inter Food (P) Limited, as No. such dues can be recovered from the Petitioner company or from its property purchased under registered sale deed dated 30.04.2002.

2. The Petitioner is the owner of land admeasuring 5000 square meters out of 15,458.90 square meters situated at B-4, IDA, Uppal, Ranga Reddy District having purchased the: same under registered sale deed dated 30.04.2002 from the A.P. State Finance Corporation, Respondent No. 2. The said sale has taken place in pursuance of a public auction held following the procedure of advertisement in newspaper. The Petitioner got the property registered for a sale consideration of Rs. 32 lakhs. The said property originally belonged to M/s. Inter Food Private Limited, which committed default in payment of loans availed by it from Respondent No. 2. In order to recover the dues, the sale was held u/s 29 of the State Financial Corporation Act, 1951.

3. It is the pleaded case of the Petitioner that M/s. Inter Food Private Limited was due to Respondent No. 1 an amount of Rs. 17,83,777/-, which includes interest, that when Respondent No. 1 approached it and demanded the said amount, the Petitioner brought the said fact to the notice of Respondent No. 2, which in turn convinced the Petitioner and gave assurance that it is not liable to pay the said amount. But, Respondent No. 3 has issued attachment order dated 08.02.2008 attaching the immovable property of the Petitioner for recovery of the said amount of Rs. 17,83,777/-, which was due by M/s. Inter Food (Private) Limited and affixed a xerox copy of the order on its gate on 05.03.2008. Assailing the said order, the Petitioner filed the present Writ Petition.

4. At the hearing, Sri M. Ravindranath Reddy, learned Counsel for the Petitioner, placed reliance on the judgments of three High Courts comprising Orissa, Bombay and Kerala in *Suburban Ply and Panels (P) Ltd. v. Regional Provident Fund Commissioner and Ors.* 2004 LAB I.C. 1190, *Ank Seals Vs. Employees' State Insurance Corporation and Others*, and *E.S.I. Corporation Vs. Balaraman*. In all these cases, a common view was expressed by the High Courts that the sale by statutory corporations for recovery of dues cannot be construed as voluntary transfer of the units by the erstwhile employer and therefore they do not fall either u/s 17-B of the Employees Provident Fund Act, 1952 or Section 93-A of the Employees State Insurance Act, 1948 (for short, "the 1948 Act), as the case may be.

5. The learned Counsel for Respondent No. 1 Corporation has not brought out anything to persuade this Court to take a different view from those taken by the three High Courts, referred to above. Even though the above judgments of the High Courts may not have the binding effect on this Court, they nevertheless have a persuasive value. Having carefully gone through the said judgments, I respectfully concur with the views expressed by the three High Courts.

6. The learned Counsel for Respondent No. 1, however, raised an objection as to the maintainability of the Writ Petition on the ground of availability of alternative remedy u/s 75 of the 1948 Act. The learned Counsel for the Petitioner submitted that u/s 75(1)(g), a dispute of this nature between the purchaser of a unit in respect of which dues were payable by the previous management and the corporation is not amenable to the jurisdiction of the Employees' Insurance Court. In my opinion, it is not necessary to render a finding on this aspect because assuming that the Petitioner has an alternative remedy, the Writ Petition has been pending for the last three years. Moreover, the issue raised in this Writ Petition was adjudicated by as many as three High Courts, as noted above. This apart, the doctrine of alternative remedy is only a self-imposed rule by the High Courts and it does not create an absolute bar for entertainment of a Writ Petition. In my opinion, as the dispute raised in this Writ Petition is No. longer res integra, it is wholly unnecessary to drive the Petitioner to avail the alternative remedy, as pleaded by the learned Counsel for Respondent No. 1.

7. For the abovementioned reasons, the Writ Petition is allowed as prayed for.

8. As a sequel to disposal of the writ petition in the manner indicated above, WPMP. No. 21171 of 2008 filed by the Petitioner for interim relief is disposed of as infructuous.