

(2014) 01 GUJ CK 0043
In the Gujarat High Court
Case No : First Appeal No. 1100 of 1996

Employees State Insurance Corp.	Vs	APPELLANT
M J. Textile-Proprietor-Malar J. Shah 2 and Others		RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80 96
Employees State Insurance Act, 1948 — Section 54A 55A 68 70 74 74

Citation : (2014) 01 GUJ CK 0043

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Hemant S. Shah, for the Appellant; Prabhakar Upadhyay, Advocate for the Defendant(s) No. 1 and Mr. Alkesh Shah, AGP for the Defendant(s) No. 2-3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—This appeal is directed against the judgment and decree passed by City Civil Court, Ahmedabad, in Civil Suit No. 4928 of 1985 dated 28.08.1990 u/s 96 of the Code of Civil Procedure, 1908. The facts that are relevant to be noted are as under:--

1.1 Respondent No. 1 herein is carrying on business of Power-loom at Maneklal Estate, behind Vikram Mills, Bapunagar, Ahmedabad, which according to the record, was started in the Month of April 1975. Record further indicates that the notice came to be issued by the appellant under the provisions of the Employees' State Insurance Act ("the Act" for short) dated 23.07.1977, whereby it was stated that the provisions of the Act would be applied to respondent No. 1 with effect from 01.12.1974 and respondent No. 1 was allotted Code No. 27-9438-19.

1.2 It further appears from the record that respondent No. 1 filed a representation before the Joint Insurance Commissioner, New Delhi. It was contended by respondent No. 1 before the trial Court that notice dated

23.01.1979, which came to be issued asking to recover an amount of Rs. 25,930.03/- along with interest @ 6% per day from 24.07.1979, is itself erroneous.

2. After considering the evidence on record, vide impugned judgment and decree, the City Civil Court, Ahmedabad allowed the suit.

3. It may further be noted that earlier respondent No. 1 filed a suit being Civil Suit No. 789 of 1979 challenging the notice dated 23.07.1977 without issuance of any statutory notice. It appears from the record that notice u/s 80 of the Code came to be issued to the appellant on 01.03.1979 and thereafter, another suit being Civil Suit No. 306 of 1980 was filed, however, the said suit was dismissed for want of prosecution and thereafter, present suit was filed.

4. It appears from the impugned judgment and decree that the trial Court framed issues at Exh. 29 and ultimately, decreed the suit as aforesaid.

5. Heard Mr. Hemang Shah, learned counsel for the appellant, Mr. Prabhakar Upadhyaya, learned counsel for respondent No. 1 and Mr. Alkesh Shah, learned Asst. Government Pleader for respondent Nos. 2 and 3.

6. Learned counsel for the appellant has submitted that the appellant had specifically and categorically raised the contention before the trial Court that in view of the provisions of Section 75 of the Act, the Civil Court had no jurisdiction to try and entertain the suit. However, the same has not been correctly dealt with by the trial Court and even though, the jurisdiction of the trial Court is barred under the provisions of Section 75(3) of the Act, the suit was entertained and allowed in favour of respondent No. 1. The lower Court has further interpreted the memorandum on which much reliance is placed by respondent No. 1.

7. Learned counsel for the appellant relying upon the judgment of the Division Bench of this Court in the case of Employees' State Insurance Corporation Vs. Himatram Ramdas, contended that the Civil Court has no jurisdiction to try and entertain the suit, as special forum is provided by the Act, which is competent to give relief. It was therefore, contended that that the impugned judgment and decree is without jurisdiction, erroneous and illegal and wrong interpretation of Section 75 of the Act, hence, the appeal deserves to be allowed.

8. Learned counsel for respondent No. 1 original plaintiff has contended that when the provisions of the Act itself are not applicable as per the memorandum, which was relied upon, the Civil Court has jurisdiction to try and entertain the suit and therefore, the impugned judgment and decree is legal and proper and the same does not require any interference of this Court in its appellate jurisdiction.

9. Learned Assistant Government Pleader has adopted the arguments made by learned counsel for the appellant.

10. It is an admitted position that the suit was filed wherein the challenge was to the notice issued by the appellant under the provisions of the Act. Section 75 of the Employees' State Insurance Act, 1948 reads as under:

75. Matters to be decided by Employees' Insurance Court-(1) If any question or dispute arises as to -

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purpose of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

[(ee) any direction issued by the Corporation u/s 55A on a review of any payment of dependents' benefit, or]

(g) an other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute [subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) [Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely-

(a) claim for the recovery of contribution from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(d) claim against a principal employer u/s 68;

(e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical

appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of Section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

[(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation.

Provided that the Court may, for reasons to be recoded in writing, waive or reduce the amount to be deposited under this sub-section.]

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court].

11. This Court in the case of Employees' State Insurance Corporation Vs. Himatram Ramdas, in paragraph No. 6 has observed thus:--

6. Mr. Vin's argument is that the questions whether the opponent is the principal employer in respect of the employees in his factory and other six factories and whether he is liable to pay special contribution in respect of the employees in all these factories are matters which are included within clause (d) and clause (g) of sub-section (1) of sec. 75. Therefore, according to Mr. Vin, these questions have to be decided by the Employees Insurance Court and consequently the Civil Court has no jurisdiction to decide or deal with them. Mr. Vin argued that the provisions of sub-sec. (3) of Sec. 75 contain an express ouster of the jurisdiction of the Civil Court and therefore, effect should be given to that provision in this case. It is an admitted position before us that so far as the local area in which the factories in dispute are situate, as yet, no Employees' Insurance Court has been established under the provisions of sec. 74 of the Act and hence it is not possible for anyone to approach that Court and obtain its decision on questions and disputes mentioned in sec. 75(1) of the Act. The provisions of Chapter VI of the Act should be read as a whole. The scheme adopted by the Legislature is clearly stated in secs. 74 to 82 in that Chapter. The scheme is that there shall be in the first instance, establishment of the Employees' Insurance Court; it is thereafter only that matters which are enumerated in sec. 75(1) can be brought before that Court for decision. It is only when such a situation arises that the provision ousting the jurisdiction of the Civil Court can become effective. The

provisions of sec. 75(3) cannot be read in isolation and without regard to the context in which they appear. The arrangement in secs. 74 and 75 clearly indicates that the Insurance Court is to be established first and the ouster of jurisdiction of Civil Court is to be a consequence of the establishment of that Court. If Mr. Vin's argument were correct, it would follow that there is no Employees' Insurance Court to decide these questions and yet the Civil Court will be denied jurisdiction to decide these questions. In our opinion, the existence of the Employees' Insurance Court is a necessary condition precedent to bring into play the provisions of sub-sec. (3) of sec. 75 so as to oust the jurisdiction of the Civil Court. In so far as the Insurance Court has not yet been established, the provisions of sec. 75(3) have not become operative. We are, therefore, not prepared to accept this first contention of Mr. Vin.

12. It is not the case of respondent No. 1 that ESI Court is not established in the city of Ahmedabad. Bare reading of sub-section 3 of Section 75 of the Act clearly establishes that the Civil Court shall have no jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court. Even on the date on which the notice is issued and the suit was filed and entertained by the Civil Court, Special machinery under the Act was available, hence, the Civil Court lacks jurisdiction to try and entertain the suit which arose, as provided u/s 75(3) of the Act.

13. Contention raised by learned counsel for respondent No. 1 to the effect that as the Act does not apply in view of the memorandum which was brought on record in the suit would not in any manner mean that the same would give jurisdiction to the Civil Court, which is expressly barred u/s 75 of the Act as what was challenged was the notice, which was issued under the provisions of the Act, which pertains to the liability to pay the contribution. It is therefore, clearly established that what was challenged before the Civil Court was the question or dispute which arose under the provisions of the Act, which is expressly barred u/s 75(3) of the Act. This Court, therefore, is of the opinion that the Civil Court has wrongly entertained the suit even though special forum as provided under the Act is available. In light of the aforesaid, the present appeal is allowed. The impugned judgment and decree dated 28.08.1990 passed by City Civil Court, Ahmedabad, in Civil Suit No. 4928 of 1985 deserves to be quashed and is hereby quashed. It is clarified that this Court has allowed the present appeal on the sole ground of jurisdiction. In the facts of the case, there shall be no order as to costs.