

(2018) 04 CAL CK 0142
In the Calcutta High Court
Case No : C.O 133 of 2004

Employees' State Insurance Corporation	APPELLANT
Vs	
Birla Corporation Ltd.	RESPONDENT

Date of Decision : 30-04-2018

Acts Referred:

Employees' State Insurance Act, 1948 — Section 75(2B)

Citation : (2018) 04 CAL CK 0142

Hon'ble Judges : ASHA ARORA, J

Bench : Single Bench

Advocate : Saumya Majumder, Manoj Kumar Tiwari

Final Decision : Disposed Of

Judgement

Affidavit in opposition filed by the petitioner be kept on record. An order dated November 19, 2003 passed by the learned Judge, Employeesâ??

Insurance Court, West Bengal, Kolkata in Tender Case No.91 of 2003 (ESI Case No.14 of 2004) has been assailed by the petitioner/Employeesâ??

State Insurance Corporation. By the impugned order the learned Judge disposed of an application under Section 75(2B) of the Employeesâ?? State

Insurance Act, 1948 (for short referred to as the ESI Act) along with an application for temporary injunction filed by the applicant (opposite party

herein) which is quoted as follows:

â?? The petition of the applicant under Section 75(2B) of the ESI Act and the petition for temporary injunction are taken up for hearing. The learned

advocate for the O. P. verbally opposes the petitions. By the present petition the applicant has prayed for exemption from depositing 50% of the

demand sum of Rs.2,02,390/-. The applicant has filed the present case under section 75(1) (g) of the ESI Act. Now, the deposit of 50% of the

demand sum is a condition precedent in filing a case under section 75(1) (g) of the ESI Act.

Proviso to section 75(2B) envisages that the court may waive or reduce the amount of deposit. The points raised in the main application are to be

decided after evidences are adduced by the parties. But considering the facts and circumstances of the case and the materials on record, I direct the

applicant to deposit a sum of Rs.20,000/- by 24.12.03 with the O.P.-E.S.I Corporation who shall hold the same in trust and the ultimate appropriation

thereof shall abide by the final decision of the case. The main case will be registered thereafter. In default, the case shall be dismissed.

As regards the petition for temporary injunction I am satisfied that a prima facie case has been made out. Moreover, the applicant will suffer much if

the prayer for temporary injunction is refused. On the other hand, the opposite party will not suffer much if the said prayer is allowed. Considering the

submissions made by the learned advocates of both sides and the prima facie case of the applicant as well as the balance of convenience and

inconvenience and the irreparable loss the prayer for temporary injunction is allowed. The O.P.-E.S.I Corporation, their men and agents are hereby

restrained from realising the demanded sum on the strength of the impugned order under section 45A of the ESI Act being Annexure-A to the main

application and the connected notice being Annexure-B to the main application till 24.12.03 for the present. To 24.12.03 for deposit and further

order.â??

Petitioner is aggrieved by the first part of the aforesaid order whereby the learned Judge reduced the amount to be deposited by the opposite party

herein under section 75(2B) of the Act. It is the contention of the learned advocate for the petitioner that in view of section 75(2B) of the ESI Act,

1948 the opposite party herein was required to deposit with the Court 50% of the amount due from him as claimed by the Corporation but the learned

Judge reduced the aforesaid amount to be deposited to a sum of Rs.20,000/- without assigning any reason as stipulated in the proviso to sub section

(2B) of Section 75 of the said Act.

Placing reliance upon a decision reported in 2013(1) CHN (CAL) 504 in the case of Tushar Kanti Roy versus Eighth Industrial Tribunal, Kolkata,

learned counsel for the opposite party sought to impress that the petitioner

having not indicated that the acceptance of the amount was without prejudice to his rights and contentions, no objection can now be raised regarding the said deposit. Learned counsel for the opposite party pointed out that the deposit of the aforesaid amount by the applicant Company and its acceptance by the Corporation was a condition precedent for the continuation of the order of temporary injunction and the registration of the case. Section 75(2B) of the Employees' State Insurance Act provides as follows:-

“(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 recorded in writing, waive or reduce the amount to be deposited under this subsection.”

It is clear from a plain reading of the proviso to sub section (2B) that the Court may waive or reduce the amount to be deposited for reasons to be recorded in writing. Though the impugned order does not categorically and unequivocally mention the reasons for reducing the amount to be deposited under sub section (2B), it is evident that the learned Judge, upon “considering the facts and circumstances of the case and the materials on record” was satisfied that it was a fit case for exercising the discretion to reduce the amount to be deposited.

In the circumstances, I am not inclined to interfere with the impugned order. The case is pending before the Employees' Insurance Court since 2003. The learned Judge is requested to expedite the hearing of the case and dispose of the same preferably within three months from the date of communication of this order without granting unnecessary adjournment to either of the parties. The application being C.O. 133 of 2004 is thus disposed of. No order as to costs. A copy of this order be sent forthwith to the learned Judge Employees' Insurance Court, Kolkata. Urgent photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.