

(2004) 06 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No. 2065 of 1998

Employees" State Insurance Corporation	APPELLANT
Vs	
Gloster Jute Mills Ltd.	RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (2004) 102 FLR 1004 : (2004) 3 LLJ 1005

Hon'ble Judges : Alok Kumar Basu, J

Bench : Single Bench

Advocate : Subal Moitra, for the Appellant;

Judgement

Alok Kumar Basu, J.—In spite of service of notice, nobody appears to contest this application on behalf of the opposite party company. Heard the learned advocate for the petitioner-Employees" State ; Insurance Corporation, which shall be referred to hereinafter as Corporation, for the sake of brevity.

2. The Corporation has raised a question j of law through this application filed under Article 227 of the Constitution of India, challenging the propriety of the order, dated September 9, 1997, passed by the learned Judge, Employees" Insurance Court, Calcutta in Case No. 126 of 1997, so far that order¹ contained a direction for refund of the amount which was earlier realised by the Corporation through an execution proceeding against the defaulting opposite party-company.

3. Appearing for the petitioner, Sri Moitra, contends that there was a long background behind the present proceeding which arose out of an application filed by the opposite part)/-company u/s 75 of the Act to call in question legality and propriety of the demand notice issued on behalf of Corporation and also the subsequent execution proceeding taken out by the Corporation on the asis of that demand notice.

4. Sri Moitra, contends that it will appear from different documents annexed to the petition that although the opposite party-company contested the claim of the

Corporation at different levels up to the stage of recovery officer, at no point of time, the opposite party challenged the notice before the Employees' Insurance Court and only when " after much pain the Corporation was able to realise a small part of the total demand through onerous execution proceeding, the opposite party approached the Employees' Insurance Court u/s 75 and subsequently filed an application for injunction to restrain the Corporation from realising further money by way of attachment of bank account of the opposite party-company.

5. Sri Motira contends that in the order impugned in this proceeding the learned Judge of the Employees' Insurance Court directed the petitioner at one stage to deposit a sum of Rs. 18,000, which is a condition precedent for a hearing as contemplated in Section 75(2b) of the Act, but, subsequently by an impugned order the learned Judge, exempted the company from depositing that amount on the ground that since Corporation has already realised Rs. 23,000 from the company that Rs. 18,000 will be taken as security as contemplated in the Act, and accordingly there was an order of refund of balance amount of Rs. 23,000 to the opposite party-company. Sri Moitra, contends that under the scheme of the Act until and unless the learned Judge has disposed of the entire dispute raised by the company thereby holding inter alia that the claim of Corporation was not tenable in law, there could not have been any order of refund whatever the Corporation realised through the execution proceeding. Sri Moitra, in this regard has relied on a decision of this Court reported in 1999 (83) F.L.R. 805, which exactly dealt with an identical situation and it was the observation in the said reported judgment that unless the Employees' Insurance Court dispose of the pending application filed u/s 75 of the Act, no interim order regarding refund of any amount lying with the Corporation can be made.

6. I have heard the submission of Sri Moitra, and I have also examined the impugned order in the light of the documents annexed to the petitioner.

7. The position of law is very much clear which has been buttressed by the decision of the reported case as indicated above. The law indicates that unless the petition pending before the Court is finally disposed of on merit, there ; cannot be any order of refund of the amount of Rs. 23,000 to the opposite party-company. That being the position in law, the order of the learned Judge, directing the Employees' State Insurance Corporation for refund of the money and to treat Rs. 18,000 as security cannot be sustained and that part of the order is set aside. The application, accordingly, succeeds, but, there will be no order as to costs. Affidavit of service filed be kept with the record.

8. Let urgent xerox certified copy of this order be made available to the learned advocate appearing for the petitioner.