

(2000) 11 KL CK 0051
In the High Court Of Kerala
Case No : M.F.A. No. 1012 of 1992

E.S.I. Corporation

APPELLANT

Vs

Balaraman

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 77(1A), 93A

Citation : (2001) 88 FLR 848 : (2001) 1 KLJ 118 : (2001) 1 LLJ 777

Hon'ble Judges : N. Krishnan Nair, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P. Sankarankutty Nair, for the Appellant; A. Jayasankar, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Employees" State Insurance Corporation challenges the judgment of the Employees" Insurance Court in I.C. No. 93/89. A Tile Factory owned by one Francis was attached by the Civil Court at the instance of his creditors. The Sub-Court, Irinjalakuda appointed a Receiver. The respondent herein took the possession of the factory on lease arrangement from the Court Receiver. Prior to his taking over, for two years the factory was not working. After the renovation when the factory started functioning he engaged more than the required employees and started the coverage of the employees under the E.S.I. Scheme. Contributions were regularly paid. Thereafter he purchased the factory in Court auction. The ownership was vested in a partnership firm in which respondent was the Managing Partner. Then the factory was sold by him in 1985 to M.D. John & Sons and they are running the factory now. But contribution was demanded for the period from 5.7.1975 to 26.11.1977 by letter dated 4.10.1989 (Ext. D4). The respondent filed a representation questioning the above demand on the contention that he was not running the factory during the relevant time. It was contended that he got possession from the Court Receiver and therefore he is not liable to pay the arrears of contribution even if there are arrears of

contribution payable by the previous owner. It was again contended that the demand for provisional contribution was made after 12 years of the period in question and therefore it is barred by limitation. Finally it was contended that in 1985 he sold the establishment and therefore if at all a demand will lie, that will lie against the present employer. The Employees Insurance Court accepted all the three contentions and allowed the application with cost.

2. The main contention taken up before this court is that under S. 93A of the Employees' State Insurance Act, when transferee received the factory by sale, lease or gift, he is liable to pay the contribution. S. 93A of the ESI Act reads as follows:

"93A. Liability in case of transfer of establishment

Where an employer, in relation to a Factory or establishment transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

As stated in S. 93A the above section will be applicable when the employer transfers the establishment in whole or part by sale, gift, lease or licence or in any other manner. Therefore, it is very clear that the section will be applicable only when the employer transfers the establishment. Here the respondent bought the establishment from the Court Receiver free from such liabilities, and not from the previous employer. Therefore, S. 93A is not applicable in this case. Hence, for the prior period before the respondent took the factory on lease or purchased the factory from the Court Receiver, respondent cannot be made liable for the arrears of contribution.

3. It is stated that the respondent had transferred the establishment again in 1985 and the demand was made only in 1989, after the transfer. If the contention of the Corporation is correct, as per the very same S. 93A, it is for the Corporation to demand contribution from the present employer. But even after the name was pointed out in the pleadings by the respondent, Corporation did not make any demand against the present employer. Since respondent was not in possession of the establishment from 5.7.1975 to 26.11.1977 and he was not running the establishment as that time or at present, he is not liable to pay contribution for the above period.

4. The Employees' Insurance Court found that the matter is time barred in view of S. 77(1A)(b) proviso. It is submitted by the learned counsel for the ESI Corporation that interpretation of the above section is the subject matter of a reference now pending in Full Bench. Here, the delay is not three or four years.

It is more than 12 years. At this distance of time, records will not be available. Even if the same employer conducts the business he will not be able to challenge the provisional assessment as nobody is required to keep the records for more than 12 years. The appellant Corporation is a "State" and it cannot demand contribution for unreasonably long periods especially when the person against whom demand was made is in no way responsible for payment of contribution to the Corporation during the relevant period as, admittedly, he was not running the establishment during the period in question. Therefore, even if limitation under S. 77(1A) is not applicable, this demand is unduly and unreasonably delayed and such delayed demand has become stale and no demand can be made. We see no reason to interfere with the judgment of the Employees' Insurance Court.

5. The appeal is dismissed.