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(2016) 12 MP CK 0041

In the Madhya Pradesh High Court

Case No : W.P. No. 5747 of 2016

M/s. Apna Sweets APPELLANT

Vs

E.S.I Corporation RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:
Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 75(2-B)

Citation : (2017) 1 LLJ 476

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Shri P. Patwardhan, counsel, for the Petitioner; Shri Vivek Seth, counsel, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J. - Heard finally with consent.

This writ petition has been filed by the petitioner challenging the order of Labour Court dated 9.08.2016 whereby the petitioner has been required to deposit 50% of the disputed amount in terms of section 75(2-B) of Employees State Insurance Act, 1948.

2. Learned counsel appearing for the petitioner submits that since the petitioner has already deposited a sum of Rs.13 Lacs, therefore in terms of section 75(2-B) of the Act, the petitioner should be exempted from depositing the remaining amount and the order under challenge cannot be sustained.

3. As against this, learned counsel for respondent submits that disputed sum is Rs.10 Lacs and odd, therefore the Tribunal has rightly directed the petitioner to deposit 50% of the said amount. He further submits that notice dated 20.06.2014 only contains the calculation of amount upto the date of issuance of notice and subsequently the liability of the petitioner had increased and vide notice dated 16.5.2016 the petitioner was informed that after adjusting sum of

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Rs.13 Lacs already deposited, the balance amount was Rs.20,86,686/-, therefore he ought to have been directed to deposit 50% of the amount due and payable on the date of filing of the application before the Tribunal. He has also submitted that in the notice dated 16.5.2016, it was clearly revealed that amount payable was Rs.30,67,707/- plus interest amounting to Rs.3,18,979/- and the 50% of this amount has not been deposited by the petitioner.

4. Having heard learned counsel for the parties and on perusal of the record, it is noticed that under section 75(2-B) of the Employees State Insurance Act, 1948, the principal employer has been permitted to raise the dispute in respect of any contribution or other dues in the Employees Insurance Court on the pre-condition of deposit of 50% of the amount due from him as claimed by the Corporation. The proviso empowers the Court to waive or reduce the amount to be deposited, by recording reasons in writing. The petitioner had filed the application under section 75(2-B) of the Act seeking exemption from deposit of the amount. The stand of the petitioner before the Insurance Court was not that he had deposited 50% of the amount due, hence the condition contained in subsection (2-B) was satisfied but the application was in terms of the proviso seeking exemption from deposit. While deciding the said application, in the impugned order, Labour Court has taken note of the plea of the petitioner that Rs.13 Lacs was deposited by him but it has found that sum of Rs.10,22,652/- was due and payable, therefore it has directed deposit of 50% of the said amount in terms of section 75(2-B) of the Act. That apart, counsel for the petitioner has not disputed that calculation of the amount due and payable to the tune of Rs.23,33,652/- was done in the notice dated 20.06.2014 whereas the said notice was challenged by the petitioner in the year 2016 and counsel for the respondent has also pointed out that meanwhile the amount due and payable after adjusting Rs.13 Lacs, was Rs.20,86,686/-. Though the petitioner has moved an application for exemption under section 75(2-B) of the Act but counsel for the petitioner has failed to point out any justifiable grounds on the basis of which the requirement of pre-deposit as contained in subsection (2-B) could be waived or reduced in the present case. In the aforesaid circumstances, I am of the opinion that no ground for interference in the impugned order in exercise of the limited supervisory jurisdiction under Article 227 of the Constitution of India is made out. Even otherwise, the Supreme Court in the matter of Jai Singh and others v. Municipal Corporation of Delhi and Another reported in 2010(9) SCC 385 while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to correct all errors of judgment of a court, or Tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Writ Petition is accordingly dismissed.

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