

(2017) 01 GUJ CK 0002
In the Gujarat High Court

Case No : First Appeal No. 1287 of 2015 With Civil Application No. 7346 of 2015
In First Appeal No. 1287 of 2015

Regional Director

APPELLANT

Vs

Shilpakala Sadi and Skirt Centre

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : (2017) 1 CLR 924 : (2017) LabLR 660

Hon'ble Judges : Mr. Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : Mr. Shashikant S Gade, Advocate, for the Appellants No. 1; Mr. Yogi K Gadhia, Caveator, for the Defendants No. 1; Notice Unserved, for the Defendants Nos. 1 - 3

Final Decision : Dismissed

Judgement

Mr. Rajesh H. Shukla, J.—The present First Appeal is filed by the Appellant ? Original Opponent ? Employees State Insurance Corporation under Section 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the ESI Act") being aggrieved with the judgment and order passed by the ESI Court at Ahmedabad in Application (ESI) No. 52 to 54 of 2002 dated 16.9.2014 allowing the Application of the Respondent (Original Applicant) ? Shilpa Sadi and Skirt Centre and declaring clubbing with the other two firms Shilp Kala and Shilpa Selection (Respondent Nos. 2 and 3 herein) for the reasons recorded in detail in the judgment.

2. Head learned Advocate Shri Shashikant S. Gade for the Appellant ESI Corporation.

3. Learned Advocate Shri Gade has tried to refer to the discussion and the reasons recorded by the court below to emphasize about the fact that all the three Institutions were run, managed and owned by the same family as well as managed by the family members. He has also tried to show that the letter pads

were also common and therefore the impugned judgment is erroneous declining to club the Respondents / Original Applicants. He has also referred to the other papers including the discussion about the visit report by the Inspector.

4. Though the submissions have been made, it is required to be considered that the present Appeal is filed under Section 82 of the Act which provide:

"Appeal ? (1) Save as expressly provided in the section, no appeal shall lie from an order of an Employees" Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees" Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this section."

Thus, it is clearly provided in the statute that an appeal shall lie to the High Court from an order of the ESI Court if it involves the substantial question of law.

5. As could be seen from the background of the facts, there can hardly be said to be any question of law much less any substantial question of law involved in the matter. The emphasis given by learned Advocate Shri Gade referring to the appreciation of the evidence would also suggest that it is only a matter of appreciating the evidence and therefore as there is no question of law or substantial question which can be said to have been involved, the present Appeal cannot be entertained.

6. Apart from the aforesaid legal aspect, even on merits, the reasons recorded by the court below as discussed in paragraph 16 of the judgment, has discussed referring to the material and evidence that the provisions of the ESI Act would not be attracted. In the said discussion it has been observed that assuming that all the three Institutions / Firms are run and managed by the same persons and are therefore clubbed, even then the provisions of the ESI Act would not be attracted as the number of persons employed are less than 20 relying upon the inspection report as well as the evidence of the Inspector of the ESI Corporation.

7. The Court below has discussed about the inspection or the visit report of the Inspector or rather more than one Inspector who had verified and had clearly made a report that the ESI Act would not be attracted. One of the Inspector Shri Devenra Raval has been examined at Exh. 63 and his evidence has also been discussed elaborately and therefore on the basis of the appreciation of the evidence of the ESI Corporation itself, the court below has observed that there is no functional integrity for the reasons recorded and therefore the provisions of the ESI Act would not be attracted. Therefore, in view of the aforesaid findings of facts as well as having regard to the provisions of Section 82 of the ESI Act providing specifically that the appeal would lie only if substantial question of law is involved, the present First Appeal along with Civil Application cannot be

entertained and deserve to be dismissed and accordingly stands dismissed.