

(2007) 03 AHC CK 0163

Allahabad High Court

Case No: First Appeal From Order No. 499 of 2007

Suresh Chandra Gupta

APPELLANT

Vs

Employees State Insurance
Corporation through Regional
Director, ESIC Nidhi
Bhawan, Sarvodaya
Nagar, Kanpur

RESPONDENT

Date of Decision: March 16, 2007

Acts Referred:

- Employees State Insurance Act, 1948 - Section 25

Hon'ble Judges: S.K. Singh, J

Final Decision: Disposed Of

Judgement

S.K. Singh, J.

Heard Sir C.B. Gupta, learned Advocate in support of this appeal.

2. Challenge in this appeal is the order passed by the Civil Judge (Senior Division)/Judge Employees State Insurance Court, Kanpur Nagar by which appellant has been directed to deposit an amount to the tune of 50% of the disputed amount within one month so that his petition under Section 75 of the Employees State Insurance Act may be registered.

3. Submission is that E.S.I. Act has no application to the facts of the present case as there has never been any sort of employment of any one in the ♦Pahun Pratiksha♦ the premises for which the Act has been applied. Submission is that so called inspection purported to have been conducted is suo moto without any opportunity to the appellant and copy of the Inspection note has never been given to the appellant and thus the coverage of the petitioner's accommodation is based on conjunctures and surmises. It is further submitted that notice dated 8th May, 2006 and 5th July, 2006, have been issued in arbitrary manner without there being any

adjudication about applicability of the Act on the premises in question and liability of the appellant to pay. Lastly, it has been submitted that the Court below has not considered the contention of the appellant on the merits while passing the impugned order as the Court has ample power to waive the condition of deposit or in suitable case the amount of deposit can be reduced.

4. In view of the aforesaid submissions this Court has examined the matter.

5. As controversy/matter appears to be very small this Court is of the view that keeping the matter pending by giving notices to the respondents to appear will be an step towards lingering on the matter and will engage both sides and this Court also for quite long and therefore, on consideration of facts this Court proposes to pass a final order which will be in the ends of justice.

6. The Court below has given a finding that the appellant has not moved any application for exemption/waiver from making deposit to a tune of 50% in terms of Section 752(B) of the Act. It is only on this premises the Court has passed order that appellant is to deposit required amount so that his petition can be registered. During course of argument learned Counsel for the appellant submitted that prayer was made in the Court below in that respect but in the record of this Court no such application has been annexed.

7. Be as it may, this may not be an issue for the further progress in the matter as for moving the E.S.I. Court under Section 75 of the Employees State Insurance Act, 1948 no time is provided and therefore, for getting the dispute resolved the aggrieved person can move the Court as and when he feels aggrieved by any action of the Employees State Corporation authorities. Thus, if appellant has not moved any application for waiver he can very well move the same for being considered on merits. Section 75 (2) (B) of the Act has its proviso which clearly speaks that the Court may for reasons to be recorded in writing waive/reduce the amount to be deposited under this subsection. Thus, it is clear that this discretion of the Court to either waive the condition of the depositor reduce the amount so to be deposited has to be found out on the analysis of the each case. Thus, just like the grant of injunction in any suit or proceedings if the Tribunal is satisfied with the prima facie case/merits in the contention of the appellant and there is balance of convenience and irreparable injury is to be caused, the Court can exercise its discretion and if the Court is not satisfied with the prima facie contention of the claimant then for the reasons to be recorded can decline to accept the claim/prayer of the claimant. In view of the aforesaid, it is clear that the Court has to apply its mind to the facts of each and every case and then to pass appropriate orders on the waiver application. As the Court below has given a finding that no such application has been moved, certainly this Court cannot find any fault in the order if no reason/finding has been recorded in this respect. It is for the appellant to move appropriate application in respect to his claim of waiver of deposit/for reducing the amount to be deposited if not already moved, so that appropriate orders may be passed by the Competent

Court.

8. By making this observation this Court should not be interpreted to have permitted the review of the order of the Court below for the simple reason that for want of particular fact, the consideration so required has not been made and therefore on the fresh facts as observed appropriate decision in respect to the claim of the appellant can be taken up.

9. Accordingly, without finding any fault in the impugned order as on today, this appeal is disposed off in the light of the observations as made above and as and when the Court below passes fresh orders, the impugned order will stand confirmed/modified/varied accordingly.

10. The appeal stands decided accordingly.