

(2011) 04 MAD CK 0410

Madras High Court

Case No: C.R.P. No. 4267 of 2010

Aakavi Spinning Mills Pvt. Ltd.

APPELLANT

Vs

Employees State Insurance
Corporation, Puducherry-605004

RESPONDENT

Date of Decision: April 27, 2011

Acts Referred:

- Employees State Insurance Act, 1948 - Section 75(2B), 82, 93A

Citation: (2011) 4 LLJ 82

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: S. Sounthar, for the Appellant; G. Bharadwaj, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Subbiah

1. This revision petition has been filed by the petitioner in unnumbered E.S.I..P. No./2009 on the file of Additional District Court, Puducherry at Karaikal as against the order dated March 23, 2010 passed by the learned Additional District Judge, Puducherry at Karaikal in I.A. No. 1204/2009, whereby the petition filed u/s 75(2-B) of the Employees' State Insurance Act to dispense with the deposit was dismissed.

2. The petitioner mill, namely, AAKAVI Spinning Mills Private Limited, is a partnership firm. The case of the petitioner mill, represented by its Authorised Director that they purchased the said mill owned by Karaikal Spinning Mills Private Limited at No. 72/11, Mela Subrayapuram, Thirunallar, Karaikal District under a legal proceedings initiated by Lakshmi Vilas Bank Limited, Karaikal under the Securitization and Reconstruction of Financial Assets and Enforcement of Security (Interest) Act, 2002 ("SARFAESI Act") against the said Mill. After necessary payment, a sale certificate

dated March 30, 2006 was also issued in favour of the petitioner and they also took possession of the same and commenced the production and they also complied with all the legal requirements of Employees State Insurance. There is no due of Employees State Insurance contribution by the petitioner mill after purchase of the said mill. But there were some intermittent claims by the Respondent against the petitioner company for the arrears payable by Karaikal Spinning Mills Private Limited preceding to the date of purchase of the petitioner Mill and they also issued an order of attachment dated October 27, 2009, ignoring the objections made by the petitioner. Challenging the said order, the petitioner filed a petition before the Employees' State Insurance Court/Additional District Court, Puducherry at Karaikal, along with a petition (I.A. No. 1204/2009) to dispense with the deposit of 50% of the contribution amount, which is pre-requisite u/s 75(2-B) of the Employees' State Insurance Act (ESI Act). But the said interlocutory petition was dismissed by the Court below by its order dated March 23, 2010. Hence, the present revision petition.

3. learned Counsel for the petitioner submitted that the petitioner is a bona fide purchaser of the Mill and there is no voluntary transfer of property by the previous employer and under such circumstances, the petitioner cannot be made liable to pay the arrears of contribution left by the erstwhile owner of the mill, namely, Karaikal Spinning Mills Private Limited. Since there is no voluntary transfer made by the erstwhile owner, the trial Court ought to have allowed the petition filed by the petitioner by waiving the payment of 50% of the contribution amount and ought to have numbered the main petition filed against the attachment order passed by the Respondent.

4. On the contrary, the learned Counsel for the Respondent Corporation, by relying upon Section 93-A of the ESI Act, would submit that if the transfer of factory is made either by sale deed or in any other manner, 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 and under such circumstances, the order passed by the Court below directing the petitioner to pay 50% of the amount as per Section 75(2-B) of the ESI Act cannot be found fault with. In this regard, the learned Counsel has also relied upon the judgments [Satyam Glass Works Industries Vs. The Employees State Insurance Corporation](#), and [Venkata Naga Devi Picture Palace Vs. ESI Corporation and Another](#), .

5. Keeping the submissions made by the learned Counsel on either side, I have gone through the materials available on record. It is, no doubt, proviso to Section 75(2-B) says that "the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited". In my "considered opinion, the Court below, by applying its mind mainly to the facts of the case, on its discretion, rejected the petition filed by the petitioner to waive the deposit of the amount. I do not find any infirmity in the impugned order passed by the Court below. Further, I find that no extraordinary circumstances have been made out by the petitioner to dispense them from paying

the 50% of the amount, except saying that the property has been purchased in the proceedings initiated under SARFAESI Act. In this regard, an useful reference could be placed in the judgments relied on by the Respondent. In [Satyam Glass Works Industries Vs. The Employees State Insurance Corporation](#), at p. 75 (Head note):

The High Court observed rejection was a discretionary power and could not be said to raise a substantial question of law to sustain the appeal (under Section 82 of the E.S.I. Act). It added that reasons needed not be stated for rejection.

6. Further, in [Venkata Naga Devi Picture Palace Vs. ESI Corporation and Another](#), at p. 403 (Head note):

The High Court observed that Section 75(2-B) of the Employees' State Insurance Act, 1948 was mandatory. Deposit of 50% of the amount claimed had to be deposited by the Appellant. There was no attempt by Appellant to seek waiver or reduction of the amount. Hence the O.P. itself made without compliance of Section 75(2-B), was not maintainable. The High Court added even on merits the findings in the Order under appeal could not be faulted.

7. A reading of the above judgments would show that it is mandatory on the part of the petitioner firm to make a deposit of 50% of the amount due, as claimed by the Respondent Corporation. It is not in dispute that, in case the petitioner succeeds in the main petition, filed challenging the attachment order passed by the Respondent Corporation, the deposit amount will be refunded to them. Hence, I do not find any infirmity in the order passed by the Court below.

In the result, the civil revision petition fails and, accordingly, the same is dismissed. No costs.