

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.163 of 2016

1. Employees State Insurance Corporation, Panch Deep Bhawan, Jawaharlal Nehru Marg, Patna- 800001
2. Dupty. Director cum Authorized Officer, Bihar Region of Employees State Insurance Corporation, Panch Deep Bhawan, Jawaharlal Nehru Marg, Patna
3. Branch Manager Branch Office, Biharsharif, Employees' State Insurance Corporation, First Floor, Sagar Suman Place, Khandak More, Station Road, Biharsarif, Nalanda
4. Recovery Officer cum Dupty Director, Employees' State Insurance Corporation, Panch Deep Bhawan, Jawaharlal Nehru Marg, Patna-800001

... Defendants / Petitioners

Versus

Roy Umesh Chandra, Son of Late Rajendra Prasad Singh, Proprietor of R.P.S. School, Kachahari Road, Bihar Sharif, Nalanda.

... Plaintiff/ Opposite party

Appearance :

For the Petitioner/s : Mr. Dr. Anshuman
Mr. Sanjay Kumar, Advocates
For the Respondent/s : M/s. Nitu Kumari
Yogendra Kr. Singh
Ratneshwar Prasad, Advocates

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 22-04-2019

Heard.

2. This civil revision application has been filed for setting aside the order dated 19.05.2016 passed by learned Sub-Judge-II, Biharsarif, Nalanda in Title Suit No.371 of 2013 by which application filed by the defendants/petitioners under Order VII Rule 11 CPC has been rejected.

3. Plaintiff has filed title suit no.371 of 2013 pleading that he runs R.P.S. Public School, Kagji Mohalla, Biharsarif and his brother Arvind Kumar Singh is running a



school, namely, R.P.S. School, Kachari Road, Biharsarif and he has no concern with the school or with its income and both the schools are different schools located in different places.

4. Plaintiff was surprised to receive two letters dated 11.12.2013 in the form of notice of demand and another for recovery of contribution under the provision of E.S.I. Act 1948.

5. It has further been contended that before filing an application for recovery of contribution under Section 45 of the E.S.I. Act 1948, no verification of the school or any document was ever demanded nor any inspector visited the school and none of the provisions of the E.S.I. Act 1948 was followed. No notice under Section 45(g) of the E.S.I. Act 1948 for recovery was served as such recovery of contribution from July 2008 till March 2013 was illegal and without jurisdiction. A notice for realization of Rs.7,45,666/- has been issued to the plaintiff and plaintiff has sought declaration that Employees State Insurance Corporation is not authorized to recover the amount from plaintiff.

6. Written Statement was filed on behalf of defendants/petitioners in which it was stated that school in question was visited by two insurance Inspectors during course



of survey on 7.7.2008 in which owner /occupier has been mentioned as Roy Umesh Chandra (plaintiff) as per information given by the Principal Arvind Kumar Singh. School is run and managed by Kunti Shiksha Sah Samaaj Vikash Sansthan which is represented by Roy Umesh Chandra (plaintiff) as mentioned in the visit note by two Insurance Inspectors duly acknowledged by the Principal Arvind Kumar Singh. Letter dated 29.8.2008 in form C 11 and speaking order under Section 45 A was issued in the name of Roy Umesh Chandra (plaintiff) and same was never disputed by him. All correspondences were made in the name of plaintiff.

7. An application under Order VII Rule 11 CPC was filed on behalf of defendants/petitioners that suit was not maintainable and barred under Section 75 of the E.S.I. Act 1948 and if plaintiff had any grievances against demand notice, he had remedy to approach the Employees Insurance Court at Patna which is a specialized court established under the E.S.I. Act 1948 and is competent court for redressal of grievances of plaintiff.

8. It has been contended on behalf of counsel for the defendants/petitioners that civil court has no jurisdiction to entertain suit for these matters and the applicability of the E.S.I.



Act 1948 or otherwise can be agitated under the Forum constituted by the E.S.I. Act 1948, which has created the liability and gives special remedy which can be availed. Where liability is not existing in common law and is created by special statute which at the same time creates the special and particular remedy for enforcing it, the remedy provided by the statute is to be followed, and it is not open to pursue any remedy in the Civil Court.

9. Under Section 9 of the CPC, the civil court have jurisdiction to try all kinds of suit of Civil nature except which are expressly or impliedly barred. Chapter VI of the E.S.I. Act, 1948 envisages that all disputes of any kind is to be adjudicated by E.S.I. Court and Section 75(3) excludes jurisdiction of civil Court. Section 75(3) of the ESI Act, 1948 reads as under:-

“75(3) No civil court shall have jurisdiction to decide or deal with any question or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees’ Insurance Court.”

10. Section 75- Matters to be decided by Employees’ Insurance Court.

75(1) If any question of dispute arises as to

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the



employee's contribution, (b) (c) the rate of contribution payable by the principal employer in respect of any employee, or (d) the person who is or was the principal employer in respect of any employee, (c) ... (cc)(g) Any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

11. The issue raised by plaintiff/respondent in the Civil Suit for permanent injunction, restraining ESI Corporation from realizing Contribution determined under Section 45A of ESI Act, 1948 and also demanding further relief that Section 40 of E.S.I. Act are the issues which are to be adjudicated under the forum created and remedy available within the provisions of ESI Act, 1948 and not the Civil Court.

12. The dispute raised by plaintiff squarely falls



under Clause (g) of Section 75 (1) of the E.S.I. Act, 1948 which can only be adjudicated and agitated before E.S.I. Court and by virtue of sub-section (3) of Section 75 of the E.S.I. Act,1948, the jurisdiction of the civil court is barred.

13. Accordingly, the order passed by the trial court is set aside and the plaint is rejected under Order VII Rule 11 CPC and suit is dismissed as not maintainable being barred by law.

14. The civil revision application is allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	30.04.2019

