

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

C.M.A. No.104 of 2014.

(Arising out of E.S.I. Misc. Case No.130 of 2007.)

M/s. Hindustan Electronics, a partnership Firm having its registered office at 108-E, Station Square, Bhubaneswar, Dist. - Khurda, represented through its Managing Partner, Jitendra Hans.

... **Petitioner.**

-V e r s u s-

1. Regional Commissioner, Employees State Insurance Corporation, Panchadeep Bhawan, Janapath, Unit-IX, Bhubaneswar, Dist. - Khurda.
2. Deputy Director (Rev.), Asst. Regional Director-cum-Recovery Officer, Employees State Insurance Corporation, Panchadeep Bhawan, Janapath, Unit-IX, Bhubaneswar, Dist. - Khurda.

... **Opp. Parties.**

O R D E R

Order No.44, Dated 25.11.2014. This is an application for restoration of E.S.I. Misc. Case No.130 of 2007 to its original position.

2. The case of the petitioner, in brief, is that he filed Misc. Case No.130 of 2007 under section 75(g) of the Employees' State Insurance Act, 1948; but he was asked to deposit fifty per cent of the contribution amount demanded by the opposite parties and after several adjournments the case was posted to 11.03.2014 for the self-same purpose as last chance. As the petitioner became ill, he could not intimate his Advocate to deposit the amount in question.

Consequently, Advocate for the petitioner took time. Since the matter is of the year 2007, the petition seeking time was rejected and finally the E.S.I. Misc. Case was dismissed. Hence, the present application.

3. It was submitted by learned counsel appearing for the petitioner that since the petitioner was ill and could not deposit the required amount, there is sufficient reason for not complying with the orders of the Court and seeking for time. Since the required amount has been deposited in the meanwhile, it was submitted to consider the illness of the petitioner sympathetically and restore the case to its file.

4. Learned counsel appearing for the Employees' State Insurance Corporation has no serious objection to the prayer for restoration of the case to file.

5. Perused the petition, objection and materials on record. It appears that the case was filed on 06.04.2007. The petitioner also filed a petition to exempt him from depositing fifty per cent of the amount due from him as claimed by the opposite parties, which was rejected vide order dated 11.10.2007 and the petitioner was directed to deposit fifty per cent of the amount i.e. Rs.98,171.50 paise in the Court by 07.11.2007. Thereafter, the petitioner started taking time to deposit the said amount and, finally, on 11.03.2014, the petition praying for time was rejected and the Misc. Case was also dismissed. Of course, the petitioner filed affidavit of its Managing Director wherein he has stated that he has been authorised to look after the

case and on 11.03.2014 he became ill for which he could not come to his Advocate to deposit the money. In the meantime, it is found that Rs.98,171.50 paise has been deposited through challan.

6. In view of the illness of the petitioner and the deposit of fifty per cent of the amount due from him, as ordered earlier, I am inclined to take a lenient view to restore the case by observing that there is sufficient reason which prevented the Managing Partner of the petitioner-establishment, who is looking after the case, from depositing the sum on the date when further adjournment seeking time was rejected. Since after elapse of a period of seven years, fifty per cent deposit has been made, cost has to be paid by the petitioner while allowing the petition. Hence ordered :

O R D E R

The application for restoration is allowed on contest but subject to payment of cost of Rs.500/- (Rupees Five Hundred) by the petitioner to the opposite parties by 02.12.2014. After payment of cost, Misc. Case No.130 of 2007 will be restored to file.

**District Judge, Khurda
at Bhubaneswar.
25.11.2014.**

Dictated & corrected by me.

**District Judge, Khurda
at Bhubaneswar.
25.11.2014.**

Order No.51, Dated 16.04.2014. Though learned counsel for the petitioner files hazira, none appears on repeated calls. Perused the case record and it is seen that the revision petition under section 115, C.P.C. has been preferred by the petitioner against an order dated 22.05.2008 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in C.S. No.535 of 2007, rejecting the petition preferred under section 8 of the Arbitration and Conciliation Act, 1996 (“the Act” for short) for referring the dispute to arbitration.

It appears from the impugned order and hearing advanced in the revision petition that the present petitioner being defendant No.1 filed the petition for arbitration in the Court below claiming that the agreement between him and the plaintiff for development of the suit plot has an arbitration clause and, as such, without proceeding with the trial of the suit, the dispute should be referred for arbitration. The learned Court below rejected the claim of the petitioner holding that the stay petition is not maintainable as the revisionist–petitioner failed to file the original agreement or duly served copy thereof as per the requirement of section 8 o the Act as

well as the settled principles of the Hon'ble Apex Court in ***Atul Kumar Singh Vs. Sunil Kumar Singh (AIR 2008 S.C. 1016)***.

Being aggrieved by such an order, the petitioner filed the revision application before this Court on 19.09.2008, along with an application under sections 5 & 14 of the Limitation Act, with a prayer to condone the delay for admission of the revision on the ground that inadvertently he had preferred a revision before the Hon'ble High Court challenging the impugned order; and when it came to his lawyer's knowledge that the revision lies to this Court, the revision petition filed before the Hon'ble High Court was withdrawn with liberty to file the same before this Court.

The opposite parties were noticed without admission of the revision for a hearing on the point of limitation and admission of the matter. Pursuant to the notice, the opposite parties appeared and filed objection to the limitation petition, taking a stand that the petitioner projected the issue before the Hon'ble High Court deliberately to prolong the litigation and there is no sufficient reason to condone the delay and, as such, the matter be dismissed in limini.

As none appears from either side, I am inclined to go through the case record and it is found that the revision application as well as C.M. Application registered for condonation of delay are being adjourned from time to time for non-taking of steps by the petitioner. At times, haziras are being filed and on almost all adjournments steps are not taken by the petitioner. In the premises, I am constrained to dismiss the petition for condonation of delay.

Accordingly, the C.M. Application is dismissed for default of the petitioner.

(Dictated & corrected by me.)

District Judge, Khurda at Bhubaneswar.

16.04.2014.