

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7016 of 1998
With
CIVIL APPLICATION No. 11946 of 1998
In FIRST APPEAL No. 7016 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy
of the judgment ? **-No.**

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge
? **-No.**

=====

EMPLOYEES STATE INSURANCE CORPORATION - Appellant(s)

Versus

HATHIWALA SIZING WORKS & HATHIWALA DYING & FINISHING -

Defendant(s)

=====

Appearance :

MR MAYUR S BAROT for Appellant(s) : 1,

MS KJ BRAHMBHATT for Defendant(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2008

ORAL JUDGMENT

1. By way of this appeal, the appellant-corporation has challenged

the judgment and order dated 30/9/1998 passed by the ESI Court, Surat in E.S.I. Application No.2 of 1990 whereby the ESI Court has allowed the application of the applicant.

2. Brief facts of the case are that partnership firm of applicant is situated at Begampara Falsawadi Surat and registered under the Partnership Act. They are doing work of sizing of silk yarn. They are doing this work by engaging labourers. The appellant inspected the factory of the respondent on 18/9/1972 and allotted code for coverage under ESI Act. The respondent challenged the same by way of ESI Application No.2 of 1990 which came to be allowed, against which the resent appeal has been preferred.
3. At the time of inspection of the factory, less than 19 workers were working in the factory and therefore, ESI Act is not applicable to the same. Defendant's Inspector has visited the factory on 20/11/1968 and checked presence sheet and salary sheet. At that time, less than 20 workers were working and therefore, ESI Act is not applicable. Defendants' say is that ESI Act is applicable to them.
4. Heard the learned advocates for the respective parties.
5. The learned ESI Court has accepted the arguments of present respondent-original applicant and held that establishment is not

covered under the ESI Act. The learned counsel for the appellant has made endeavor to show that there are more than 20 workers. However, before the authority they have not led any evidence for the same. From the record it is seen that at the time of inspection, there were only less than 19 workers working in the factory. No other evidence is also shown. Nothing is pointed out to take a contrary view of the matter. I am in complete agreement with the reasonings given and the findings arrived at by the learned ESI Court. No case is made out to interfere with the matter.

6. In the premises, First Appeal deserves to be dismissed. Hence, the same is dismissed. No order as to costs.
7. As the First Appeal is dismissed, Civil Application for stay would not survive. Hence the same is disposed of accordingly. Rule is made discharged. Interim relief, if any, stands vacated.

(K.S.Jhaveri, J.)

(ila)