



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
**106+245** **CR-938-2024 (O&M)**  
**Date of decision: 07.02.2025**

**M/s Nahar Industrial Enterprises Ltd.**

**...Petitioner(s)**

**Vs.**

**Employees State Insurance Corporation & Others**

**...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Aalok Jagga, Advocate  
Mr. Harkirat S. Jagdev, Advocate  
Mr. APS Madaan, Advocate  
for the petitioner.

Mr. H.S. Bhatia, Advocate  
for the respondents No.1 and 2.

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**NIDHI GUPTA, J.**

Present petition under Article 227 of the Constitution of India is filed seeking setting aside of order dated 20.12.2022 (Annexure P9) passed by the Court of learned Civil Judge, Senior Division-cum-Employees Insurance Court, Ludhiana to a limited extent whereby the impugned order under Rule 18(1) has been passed instead of Rule 18(2) of the Employees Insurance Court Rules, 1951 (hereinafter referred to as "the Rules"); and plaint has been ordered to be 'returned', rather than 'transferring' the application to the learned Employees Insurance Court at Dera Bassi to be continued from the stage of proceedings already culminated before it.



2. Mr. H.S. Bhatia, Advocate puts in appearance on behalf of respondents No.1 and 2 and files Power of Attorney, which is taken on record.

3. The petitioner company is a company registered under the Companies Act having its head office at Ludhiana. Brief facts of the case in chronological sequence are as follows: –

25.09.2017 - The Respondent issued Show cause notice U/s 45A of Employee State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act'), claiming Rs.58,30,683/- as deficit contribution payable by petitioner for 2012-13 to 2015-16.

21.12.2017 –The petitioner submitted reply to the said Show cause Notice.

29.12.2017 –The respondent issued Order dated 29.12.2017, assessing final deficit contribution payable by petitioner as Rs.3,78,55,800/- U/s 45A of ESI Act, 1948.

18.05.2018 –The Appeal filed by the petitioner U/s 45AA of the ESI Act, 1948 was partly allowed vide order dated 18.5.2018, holding payable deficit contribution to be Rs. 1,24,61,552/-.

30.05.2018 –The petitioner filed Application dated 30.5.2018 bearing CS/2920/2018 (Annexure P-10), U/s 75 of the ESI Act, 1948 before the ESI Court in Ludhiana challenging order dated 18.05.2018.



30.05.2018 - In the said application Notice was issued by ESI Court to Respondent for 5.7.2018. On 5.7.2018 matter is adjourned for filing written statement to 18.07.2018.

18.07.2018 –On 18.7.2018, on the 3<sup>rd</sup> date of hearing, without filing written statement, the respondent filed Application (Annexure P-1), for transfer of suit from ESI Court Ludhiana to ESI Court Mohali.

08.08.2018 –The petitioner filed reply (Annexure P-2), to application for transfer.

09.10.2018–Vide order dated 9.10.2018 (Annexure P-3), the respondent's Application for transfer was dismissed.

29.05.2019 –In the meantime, the trial commenced, and vide order dated 29.5.2019 (Annexure P-6), PW1 tendered his affidavit along with exhibits Ex.P-1 to Ex. P-3726.

10.09.2019 –The respondent challenged order dated 9.10.2018 before this Court by way of CR-5613/19 titled as 'Employees State Insurance Corporation V/s M/s Nahar Industrial Enterprises Ltd.' in which notice of motion is issued vide order dated 10.9.2019 (Annexure P-4), for 18.11.19, however no stay is granted.

18.12.2019 –Vide Zimni order dated 18.12.2019 - available at page 32 of the paper book- the evidence of the Plaintiff/ petitioner is closed and matter is adjourned for defendant evidence.

08.11.2021 -Vide order dated 8.11.2021 (Annexure P-7) the Defendant/ respondent also closed his evidence.



22.09.2022 – In the meantime, vide order dated 22.9.2022(Annexure P-8), the aforementioned CR-5613/19 was allowed by this Court, and Order 09.10.18 was set aside and Matter was remanded back to decide issue of jurisdiction afresh.

20.12.2022 –Vide impugned order dated 20.12.2022 (Annexure P-9) the Id. Trial Court disposed of the transfer application thereby also rejecting the Plaint.

20.02.2023 –In view of the above, CS-204/23 was filed before ESI Court, Dera Bassi.

25.10.2023 –In the said suit, the petitioner filed Application (Annexure P-12) for attaching the pleadings and evidence led by the parties at Ludhiana to be treated as part of the record of Courts at Dera Bassi.

22.11.2023 –Vide 2<sup>nd</sup> Impugned order dated 22.11.2023 (Annexure P-14) passed by the Id. Trial Court Dera Bassi, the said application of the petitioner was dismissed.

4. It is in this factual background that the present civil revision petition has been filed, challenging the orders dated 20.12.2022 (Annexure P-9) passed by the learned ESI Court, Ludhiana, disposing of the transfer application and the plaint of the petitioner; and the order dated 22.11.2023 (Annexure P-14) passed by the learned ESI Court Dera Bassi, directing fresh trial in the matter.

5. Learned counsel appearing on behalf of the petitioner submits that the impugned orders are unsustainable, being violative of



Rule 18 of the Punjab Employees Insurance Court Rules, 1951 (hereafter referred to as 'the 1951 Rules').

6. Learned counsel refers to the said provision to submit that by way of impugned order dated 20.12.2022 (Annexure P9) the learned ESI Court at Ludhiana had 'returned' the petition under Rule 18 of the Rules to be presented before the Court of competent jurisdiction as per law. Learned counsel contends that 'returning' of plaint is permissible under Rule 18(1) only at the initial stage where on receiving an application it appears to the Court that it should be presented to another Court. It is submitted that at any stage subsequent thereto the only option for the Court is to 'transfer' the matter as stipulated under Rule 18(2). It is submitted that therefore, firstly the learned ESI Court at Ludhiana was an error in 'returning' the plaint vide 20.12.2022 (Annexure P-9) whereas the same ought to have been transferred. Thereafter, the learned trial Court at Dera Bassi was in patent error in dismissing the application of the plaintiff/petitioner for attaching the written statement and record pertaining to the suit and to proceed with the present petition from the stage at which it was transferred vide the impugned order dated 22.11.2023 (Annexure P14). It is accordingly prayed that the present petition be allowed in the interest of justice.

7. Learned counsel for respondents No.1 and 2 does not dispute the contentions made on behalf of the petitioner.

8. No other argument is made on behalf of the parties.



9. I have heard learned counsel for the parties and perused the case file in great detail.

10. I find merit in the arguments advanced on behalf of learned counsel for the petitioner. The provision of Rule 18 of the 1951 Rules reads as follows: –

*“18. Application presented to wrong Court:*

*(1) where on receiving an application it appears to the Court that it should be presented to another Court, it shall return it to the applicant after endorsing upon it the date of the presentation and return, the reason for returning it and the name of the Court to which it should be presented.*

*(2) Where it appears to the court at any stage subsequent to the presentation of an application, that the application should have been presented to another court, in the same state the first mentioned Court shall send the application (and the opposite party if he has received a copy of the application under rule 19) accordingly.*

*(3) The Court to which an application is transferred under sub rule (2) may continue the proceeding as if the previous proceeding or any part of it has been taken before it, if it is satisfied that the interest of the parties will not thereby be prejudiced.”*

11. A bare reading of Rule 18(1) clearly shows that the option to return an application is available to the learned trial Court only at the nascent stage of presentation of application. Whereas at any stage subsequent thereto, the plaint is to be transferred. In the present case, a perusal of the zimni order dated 29.05.2019 (Annexure P6) shows that there is voluminous documentary evidence (Ex.P1 to Ex.P3726) adduced by the petitioner/plaintiff. A perusal of further Zimni orders dated 18.12.2019 and 8.11.2021 (Annexure P-7), shows that the plaintiff and



defendant evidence also stood closed. It is therefore, undisputed that the evidence of the parties stood concluded and even the final arguments had been advanced before the ESI Court at Ludhiana. In view of the above facts, Rule 18(2) of the 1951 Rules would come into play, as per which the learned ESI court at Ludhiana could have only transferred the matter. For this reason, the order dated 20.12.2022 (Annexure P-9) suffers from error apparent and cannot be sustained.

12. The above facts have been noticed by the learned trial Court in impugned order dated 22.11.2023 (P-14) itself as follows:-

*“3...So, from the above said order it is clear that petition was returned on the technical ground of jurisdiction only. Now, the applicant/plaintiff wants to get the pleadings, documents, record, etc. of the said petition attached with the present petition to cut short the trial by stating that in the earlier petition the trial of the case at Ludhiana was got concluded and if the present application is allowed and trial is continued from the said stage, it will save the time of the court and the parties. This court feels that in the earlier petition No. CS/2920/2018 filed at Ludhiana pertaining to the exactly same matter, both the parties as well as the court had put their full efforts and invested their time and resources to mature the case which took around 5 years, so it would have been better if the trial could have been continued from the same stage as both the parties had lead their respective evidence and brought material on record in the said petition which is required to be brought on record in the present petition also, as matter in both the cases is same. Opposite counsel for the defendants has also given his no objection to the application keeping in view the above said facts. Therefore, if trial of this case is continued from the same stage, it will definitely save the time of court and parties, however, this court lacks competence and power to allow such kind of application as no such power is conferred by the CPC upon this court in this regard. Therefore, keeping*



*in view of these circumstances, the present application is dismissed.”*

13. It is the considered view of this Court that in the above noted peculiar facts and circumstances of the present case, and the order dated 20.12.2022 (Annexure P-9) stands set aside, provision of Rule 18(3) would come into play. As per Rule 18(3) the Court to which the matter is transferred (which is the ESI Court Dera Bassi in the present case), is vested with the discretionary power to continue with the trial at any of its previous stage, if the interest of the parties will not be prejudiced.

14. Accordingly, in view of the above noted peculiar facts and circumstances of the present case, present petition is **allowed**; the order dated 20.12.2022 (Annexure P9) and order dated 22.11.2023 (Annexure P14) are set aside; and the ESI Court Dera Bassi is directed to proceed with the trial from the stage where it had been left, before the ESI Court at Ludhiana.

15. Pending application(s) if any also stand(s) disposed of.

**07.02.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**