

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.5464 of 2012 (O&M)

Date of Decision: 04.02.2015

Apra Motels

....Appellant

v.

ESIC and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Vikas Suri, Senior Standing Counsel for respondent No.1.

Navita Singh, J.

C.M. No.24815-CII of 2012

There is delay of 24 days in filing the appeal. The application is strongly contested.

Counsel for the applicant- appellant submits that hyper-technicalities should not be taken into consideration and merely because the affidavit filed along with the application was not properly worded or validly sworn one and the date of execution on the special power of attorney was not given, the appellant should not be debarred from being heard on merits. The question here is not of hyper-technicalities but is that the applicant-appellant has not brought the true facts before the Court.

In the application, it is mentioned that the Company authorised Mr. K.M. Gupta, Accounts Manager through a Special Power of Attorney to file the appeal. The date of execution of the document was not given. In any case, it was mentioned thereafter that after getting the instructions, which would mean execution of the power of attorney, Mr. K.M. Gupta had fallen sick for two weeks. Also he was under the impression that the

limitation for filing the appeal in the High Court was 90 days. He contacted his lawyer on 12.8.2012 and filed the appeal on the next date thereafter.

The Special Power of Attorney placed on record shows that it does not bear any date of execution. The witness signed it on 9.8.2012 and it was attested on that date. The date put by the witness is, therefore, the date of execution.

It is, therefore, absolutely unexplained as to how the holder of the power of attorney Mr. K.M. Gupta remained sick for two weeks after getting the instructions through that document.

The affidavit filed along with the application is also on identical lines on which the application was filed, showing that after execution of the special power of attorney, the holder fell ill but the gap between the execution of the document and filing of the appeal is only four days. The affidavit is not verified as per law because the deponent showed that the contents of the affidavit were correct to his knowledge as derived from office record and he did not verify on personal knowledge the fact that he was ill.

It would also be seen that para 3-A was added in the affidavit later on with a different typewriter while rest of the affidavit was typed from a different computer/ machine. The same was, therefore, added after signatures of the deponent and attestation of the affidavit. The affidavit was typed on 12.8.2014 but the date was then changed to 27.9.2012 and was attested on that day.

In view of all the hanky panky situation above, it is clear that the condonation of delay is not being sought on clear grounds and clean

hands.

Question of hyper technicalities is not involved here. In certain matters, delay of two days may be fatal and in certain others, delay of 200 days may not be. The application is dismissed.

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Since the application for condonation of delay has been dismissed, the appeal being time barred, is also dismissed.

**(NAVITA SINGH)
JUDGE**

**February 04, 2015
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