

CM No.26519-CII of 2014 AND
FAO No.9563 of 2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.26519-C-II of 2014 and
FAO No.9563 of 2014
Date of Decision:12.02.2015

M/s A.B. Motors Private Ltd.

....Appellant

Versus

Commissioner, Employees Compensation and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. M.S. Bedi, Advocate for the applicant-appellant.

NAVITA SINGH, J.

1. There was a delay of 450 days in filing the appeal stating that the appellant was ex parte before the Commissioner under the Workmen's Compensation Act and only of coming to know about the impugned order, he could file an application before the Commissioner for setting aside the ex parte proceedings against him but the application was rejected. The appeal was filed thereafter.

2. The application for condonation of delay is not satisfactorily explained as would be observed in the lines below and the reason for dismissal of the application and of the appeal would be same, for which reason both are being decided together.

3. The case of the appellant was that the petition was filed by respondent No.2 on 17.8.2009 and it was wrongly mentioned in the order dated 4.1.2013 that Mr. R.P. Singh, Advocate had appeared for the appellant herein and filed memorandum of appearance. Rather no counsel had appeared for him. After notice ordered to be sent on 8.5.2013, the Commissioner did not wait for

the service of notice validly on the appellant and heard the matter ex parte against him.

4. Record would show that on 4.1.2013 counsel for both the parties were present and there was a categorical mention of the order that from the side of the respondent (now appellant) Mr. R.P. Singh, Advocate had appeared and filed memorandum of appearance. Copy of the petition was supplied to him and the matter was adjourned to 30.1.2013 for filing reply. On that date, counsel for both the parties were present and the matter was adjourned to 26.2.2013. On next date, reply to the petition was not filed and the case was adjourned to 20.3.2013.

5. On 20.3.2013, counsel for the appellant was present but no one was present for the respondent. Notice through registered post was ordered to be sent for 8.5.2013. On that date, nobody appeared for the respondent and ex parte proceedings were ordered to be taken. No fault can be found with the order because notice sent through registered was not received back undelivered and, therefore, it would be presumed that that it reached the addressee as there was a gap much larger than 30 days. Also it was not imperative for the court below to send notice when nobody appeared on 20.3.2013 and rather ex parte proceedings could have been ordered on that very day. The court, in the interest of justice, issued notice but still no one appeared.

6. It is very pertinent to mention here that record of the proceedings below shows that memorandum of appearance was filed by Mr. R.P. Singh, Advocate for the present appellant on 4.1.2013 and the same is available at page 57 in the lower court record. The appellant, therefore, blatantly lied while pleading that Mr. R.P. Singh, Advocate had never appeared for him and filed memorandum of appearance.

7. It would also have to be noticed that the application under Order 9 Rule 13 of the Code of Civil Procedure had been filed by the appellant before the court passing the impugned order through Mr. R.P. Singh, Advocate but the counsel did not make even a whisper in the application that he had not appeared and filed memorandum of appearance on 4.1.2013. It was simply pleaded that the applicant i.e. the appellant was never served in terms of order dated 8.5.2013 and he was wrongly proceeded against ex parte. The absence was neither willful nor intentional. Mr. R.P. Singh, Advocate also very cleverly concealed that he had appeared on 4.1.2013 and filed memorandum of appearance for the present appellant. The document is there on record as already mentioned from which falsehood of the appellant and his counsel below is exposed.

8. Therefore, there is no thus valid reason to condone the delay in filing the appeal and also it cannot be said that the appellant was wrongly proceeded against ex parte. The application for condonation of delay of 450 days in filing the appeal as also the appeal, both, are dismissed.

**(NAVITA SINGH)
JUDGE**

12.02.2015
Ishwar

Whether to be referred to reporter: No