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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 83/2016**

M/S NARAIN SERVICE STATION Appellant

Through: Mr. Pankaj Agarwal, Advocate.

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr. Siddharth Dutta, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **19.02.2016**

C.M. No.6267/2016 (for exemption)

Allowed, subject to the deficiency being rectified.

The application stands disposed of.

F.A.O. No.83/2016 & C.M. No.6266/2016

1. By virtue of the present appeal, the appellant has challenged the orders dated 21.12.2015 and 4.2.2016 passed by the learned DLC (North).

2. I have heard the learned counsel for the appellant as well as learned counsel for the respondent/State and have also gone through the record. The grievance of the appellant is that he was not permitted to cross-examine the Labour Inspector despite the fact that he was present on the dates after 21.12.2015, when he was proceeded *ex parte*. The law regarding *ex parte* is very clear. A party is proceeded

ex parte for that particular date and the person who is proceeded *ex parte* cannot set the clock back unless and until the *ex parte* proceedings are set aside but he is permitted to participate in the proceedings on subsequent dates. On 21.12.2015, the Labour Inspector was neither present nor had he produced any record though he was directed to do so. The authorized representative of the appellant was also not present because of which it got proceeded *ex parte*. The Labour Inspector was specifically given directions to file his written evidence, which has been filed subsequent thereto. Once the evidence by way of affidavit or written evidence has been filed by the Labour Inspector, the authorized representative of the appellant was well within his right to cross-examine the witness if he was represented by a counsel or authorized representative. This right has been wrongly and illegally denied to the appellant as is borne from the order sheets dated 21.12.2015 and 4.2.2016 when the authorized representative of the appellant was present. Therefore, to that extent, the order which has been passed by the learned Labour Commissioner, DLC, North deserves to be set aside.

3. With regard to the submission made by the learned counsel for the respondent/State that the appellant himself is responsible for delaying the disposal of the matter inasmuch as he did not produce the evidence or the record as was directed to him, the only thing which can be observed by the court is that Section 114 (g) of the Evidence Act clearly lays down that if a party is directed to produce evidence and he does not produce the said evidence despite opportunity having been given, presumption of fact can be drawn against him that in case

the evidence is directed to be so produced and is not produced, it will be against the party who has been directed to produce the evidence. Meaning thereby that at best an adverse inference can be drawn against the party to whom direction is given to produce the evidence and yet he does not produce the evidence. Therefore, merely because the appellant was directed to produce the record and he did not do so, that should not have deterred the Labour Commissioner in expeditious disposal of the matter. It could have at best drawn an adverse inference against the appellant.

4. Be that as it may, the order dated 21.12.2015, even if it is set aside, the appellant well within its right, is to be given the right of cross-examination of Labour Inspector. Accordingly, the orders dated 21.12.2015 and 4.2.2016 are set aside to denying the right of cross-examination of the Labour Inspector to the appellant.

5. The parties are directed to appear before the Labour Commissioner on 14.3.2016 and the appellant shall be made available the right of cross-examination of the Labour Inspector. Any observation expressed herein before shall not be treated as expression on the merits of the case. The Labour Commissioner, without being influenced by any of such directions, shall dispose of the matter as expeditiously as possible.

6. With these directions, the appeal stands disposed of.

V.K. SHALI, J.

FEBRUARY 19, 2016
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