IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.01.2017

R.A. No.404 of 2016 (O&M) in
CWP No.21026 of 2014

Central Board of Trustees …Petitioner

Vs.

M/s Kalyan Filling Station ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjiv Gupta, Advocate,
for the applicant-respondent.

RAJIV NARAIN RAINA, J. (ORAL)

Notice.

Mr. Rajesh Hooda, Advocate, who is present in Court, accepts notice on behalf of the non-applicant/petitioner.

Having heard learned counsel for the parties at length, I have no reason to distrust the service of this petition by the process serving agency on the Manager of the respondent – Kalyan Filling Station. I have seen the original summons from the Tablaq duly signed by Surender Sharma, Manager, Kalyan Filling Station, Karnal. Therefore, the agent of the owners admittedly had due knowledge of the proceedings after receiving the summons from this Court. If there is a dispute between the Manager and the owners of the Filling Station, they may sort it out before the Civil Court or in some other proceedings, but that will not have any impact on this case at the review stage as there is nothing to be reviewed or modified in the main judgment and order.

As far as the review application is concerned. I have considered the arguments of Mr. Gupta on merits where he argued that this is not only a review application, but more actually an application under Order 9 Rule 13 CPC for recall of the ex parte order. I am afraid it would not be possible to return a finding in writ jurisdiction without the help of oral or documentary evidence produced to come to a conclusion as to whether there was due service on the respondent.

As far as the numerical strength of the employees of the Kalyan Filling Station is concerned, which is stated to run two separate fuel filling stations/pumps, it is not possible to interdict the work of Provident Fund Authorities in making their calculations and counting heads of hands found on the premises by a surprise check carried out on the premises of the two Kalyan Filling Stations that both numbers added up to 20 employees. In case, the respondents have any grievance as far as these issues are concerned, they are free to appeal against the order.

There is no bar in law to club two establishments provided there is functional integrality in the two with the common management even if the licenses are separate as Mr. Gupta asserts today. Otherwise, establishments can always dupe the law so easily. The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 has been designed to safeguard the interests of the workers and to keep managements within the regulatory law in the Act and the schemes framed there under.

On the other hand, Mr. Sanjiv Gupta does not dispute either in the application or during the course of hearing that Surender Sharma was not the Manager of the Kalyan Filling Station/s. In fact, the stand in the affirmative is at Pg.15 of the application stating that the Manager did not inform the owners of the proceeding in this court. If the owners were incarcerated in jail during the relevant period as Mr. Gupta asserts then this flimsy argument alone is not acceptable as it tries to pass on the buck conveniently to get rid of the liability. If this line of reasoning and defence is to be permitted, it would tend to reopen concluded cases where reasoned orders are passed.

Consequently, I find no reason or justification to review my order dated 17.10.2016 even though it was ex parte respondent and would, therefore, dismiss the instant application.

17.01.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**