

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

+ **FAO No. 186/2017**

% **1st May, 2017**

MANOJ KUMAR Appellant

Through: Mr. Avinash Trivedi, Advocate.

versus

SUNNY GOPAL Respondent

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 15500/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 15498/2017 (for condonation of delay of 339 days in filing the appeal)

1. This is an application seeking condonation of a very substantial delay of 339 days in filing the present appeal on the ground that counsel for the appellant misled the appellant and after promising to do so, yet failed to file the present appeal.

2. In my opinion, this plea is not believable because if the appellant's earlier counsel deliberately committed fraud against the

appellant, then, leave aside sending of a complaint to the Bar Council, even a legal notice has not been issued to the earlier counsel. Really, therefore, there is no reason for condonation of delay as there are no sufficient grounds, however, since I have heard the appeal on merits, only in the interest of justice, this application for condonation of delay is allowed.

3. The application stands disposed of.

FAO No. 186/2017 and C.M. Appl. No. 15499/2017 (for stay)

4. This First appeal under Section 30 of the Employee's Compensation Act, 1923 impugns the order dated 14.3.2016 by which the Employee's Compensation Commissioner has dismissed the application under Order IX Rule 13 CPC filed by the appellant, and who was the respondent before the Employee's Compensation Commissioner.

5. Respondent herein had filed a claim petition against the appellant and which was allowed as per the order of the Employee's Compensation Commissioner dated 29.1.2016, and which was sought to be set aside by the subject application under Order IX Rule 13 CPC dated 29.2.2016.

6. Though, the application is not titled as one under Order IX Rule 13 CPC, the application is under Order IX Rule 13 CPC in view of Rule 41 of the Employee's Compensation Rules.

7. It is seen that the appellant was first served in the proceedings before the Employee's Compensation Commissioner by speed post and since he failed to appear he was proceeded *ex-parte* vide order dated 25.4.2014. Thereafter, once again fresh notice to appear was issued to the present appellant by the Employee's Compensation Commissioner vide order dated 15.10.2014 in the interest of justice, and the appellant again failed to appear. Appellant thereafter suddenly appeared before the Employee's Compensation Commissioner on 27.7.2015 and sought time for filing of the written statement along with an application to set aside the order dated 18.3.2015 proceeding the appellant *ex-parte*. The case was thereafter re-fixed before the Employee's Compensation Commissioner for filing of amended memo of parties and yet again a fresh notice was again issued to the appellant. Appellant once again failed to appear in spite of service, and hence the case was proceeded *ex-parte* on 18.1.2016.

8. In the application the reason given for setting aside *ex-parte* order dated 29.1.2016 allowing the petition is that the wife of the

appellant was suffering from dengue fever and the document of Jaipur Golden Hospital was filed showing the date of admission of the wife of the appellant as 10.9.2015 and discharge as 16.9.2015. This document is also filed at page 45 of the paper book of this appeal. Accordingly, it was argued that the *ex-parte* order allowing with the claim petition be set aside. The application however has been dismissed by the Employee's Compensation Commissioner vide the impugned order observing that not only the case was only dragging on since three years, but the plea of dengue fever which has been put forth was not convincing.

9. I completely agree with the findings and conclusion of the Employee's Compensation Commissioner, inasmuch as, appellant was repeatedly served in the proceedings before the Employee's Compensation Commissioner, but he had chosen to remain *ex-parte*. Even assuming that appellant had reason not to appear on 16.9.2015 as his wife was being discharged from the hospital, thereafter there was no reason as to why the appellant should not have made inquiries from the office of the Employee's Compensation Commissioner because appellant was not proceeded *ex-parte* on 16.9.2015, but thereafter there were three dates of hearing before the Commissioner on 2.11.2015,

30.11.2015 and 7.1.2016. It is only, thereafter that on the fourth day of hearing i.e on 18.1.2016 that the appellant was proceeded *ex-parte*.

10. Therefore, no substantial question of law arises for this first appeal to be entertained under Section 30 of the Employee's Compensation Act. Dismissed.

MAY 1, 2017

AK

VALMIKI J. MEHTA, J

