

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 8494 of 2018(O&M)

Date of decision: 21.1.2019

M/s Gupta Filling Station

.....Appellant

VERSUS

Employees State Insurance Corporation

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjay Mittal, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.27531-CII of 2018

Prayer in this application is for condoning delay of 26 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Pawan Kumar Gupta, proprietor of the appellant, the application is allowed. Delay of 26 days in filing the appeal stands condoned.

Disposed of accordingly.

CM No.1045-CII of 2019

Heard.

Allowed as prayed for.

Documents Annexure P-1 to P-4 are taken on record subject to just exceptions.

Disposed of accordingly.

FAO No.8494 of 2018

The present appeal directs challenge against order dated 06.09.2018 passed by the Civil Judge (Senior Division), Narnaul whereby petition filed by M/s Gupta Filling Station, Narnaul challenging the orders dated 21.10.2013, 23.09.2015 and the subsequent proceedings on the premise that the appellant-firm is not an establishment under the provisions of Section 75 of the Employees State Insurance Act, 1948 (in short 'the Act') was dismissed.

Apart from the fact that the appellant has not deposited 50% of the amount in question in compliance with the provisions of Section 75 of the Act that is mandatory in nature, the appeal is not meritorious and liable to be rejected.

Counsel for the appellant would argue that the Court has wrongly held that statement of Chander Kant Gupta, Manager of the appellant- firm is silent with regard to obtaining his signatures on blank papers under fear. It is further argued that due to some inadvertent mistake, Chander Kant Gupta in his affidavit filed by way of examination in chief had stated in para 2 that on 10.06.2014, some unknown person came to the petrol pump stating himself to be from the Department of Labor and Other Department and threatened him and asked about the names of employees and customers present on the petrol pump and further threatened to call police and register a case and under fear he signed the blank paper. When he gave information to his father Pawan Gupta, proprietor of the petrol pump, they left the place.

The Court has noticed in para 12 of the order impugned, reads thus:-

“12. The petitioner has sought to challenge the letter dated 21.10.2013 on the ground that the signatures of the Manager were obtained on blank papers. Manager Chanderkant appeared in the witness box as PW-2. In his entire examination-in-chief, he is conspicuously silent with regard to any inspection of the premises in the year 2013 or obtaining his signatures on any blank papers under threat. He has only deposed with regard to inspection dated 10.06.2014 whereas PW-1 Pawan Gupta, the proprietor of the petitioner firm admits in his cross examination-in-chief that in the year 2013 the firm was inspected by the officer of the respondent. As per the inspection, the respondent allotted code to the petitioner firm vide letter dated 21.10.2013 informing him that the Act has been implemented and the Code No.6900053298000912 has been allotted to the petitioner firm. Admission being best evidence, inspection of the firm in the year 2013 and the allotment of the code pursuant to the said inspection vide order 21.10.2013 stands proved. It was incumbent upon the petitioner to show that inspection note was obtained by force or coercion. The averments in the petition are that the signatures of the Manager were obtained on blank papers under threat. PW-1 Manager Chanderkant while appearing in examination-in-chief is conspicuously silent with regard to any inspection carried out in the year 2013 or any signatures obtained under threat on blank paper. As such, the petitioner failed to prove this issue.”

Perusal of the testimonies of Chander Kant Gupta and Pawan Gupta makes it evident that Chander Kant talks about visit of some official on 10.06.2014 when his signatures were purportedly obtained on blank papers. However, Pawan Gupta, his father has admitted that the firm was inspected by officer of the respondent-Corporation in the year 2013 and the Corporation allotted a code to the appellant-firm vide letter dated 21.10.2013. As is being said that man may tell lie but not the circumstances. Equally settled is that truth is bound to come on the surface if the proceedings are conducted properly. The whole story propounded by the appellant with regard to blank signatures of Chander Kant Gupta who is none else but son of the proprietor of the appellant-firm demolishes case set up by the appellant that illegality was committed by officials of the Corporation by getting his blank signatures and thereafter prepared the report, basis of covering the appellant-firm under the purview of the Act. This apart, an appeal can be preferred to the High Court only on a question of law. Analyzed from any angle, I do not find any merit in contention of the appellant that the order impugned suffers from legal infirmity and liable to be set aside.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine without any order as to costs.

JANUARY 21, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no