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

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Date of Decision: 08.07.2019

+ **LPA 429/2019**

SUSHMITA SUNDARAM

..... Appellant

Through: Mr. T.V. George, Advocate.

versus

M/S DELTA AIRLINES INC

..... Respondent

Through: Ms. Mohna M. Lal and Ms. Geetali
Talukdar, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

C.M. Appl. No. 29891/2019 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. C.M. stands disposed of.

C.M. Appl. No. 29892/2019 (for delay)

3. This is an application seeking condonation of delay of 82 days in filing the appeal.
4. For the reasons stated in the application the application is allowed and the delay is condoned.
5. C.M. stands disposed of.

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6. The appellant is aggrieved by para 5 of the order dated 13.3.2019 passed by learned Single Judge of this Court in W.P.(C) 2031/2007.

7. Learned counsel for the appellant while relying on the judgment of the Supreme Court titled as ***Raj Kumar Dixit Vs. Vijay Kumar Gauri Shankar, Kanpur Nagar, (2015) 9 SCC 345***, more particularly, paras 24 and 25, submits that the Single Judge cannot call for additional evidence while deciding the writ petition filed by the management arising out of an award passed by the Labour Court. Paras 24 and 25 are reproduced as under:-

“24. The contention urged on behalf of the respondent Firm that the award of compensation of Rs.2 lakhs in lieu of the reinstatement and 50% back wages by the High Court is on account of the alleged closure of the respondent establishment is neither supported by any pleading nor any evidence has been adduced before the Labour Court or this Court in that regard by the respondent establishment. If any additional material is produced before the High Court, the same would be impermissible in law for the reason that the respondent employer was required to plead with regard to the alleged closure and substantial evidence must be produced in support of the same before the Labour Court at the first instance, and no such plea has been taken before the Labour Court by them. In the absence of such a plea, producing additional documents by the respondent establishment before the High Court is totally impermissible in law for the reason that the High Court’s

jurisdiction is to examine the correctness of the award passed by the Labour Court in exercise of its judicial review power under Article 227 of the Constitution of India which is very limited.

25. In the present case, even if we consider the facts, there is no additional material evidence produced on record before the High Court and it has no jurisdiction to receive the same and render its findings. Apart from the said reason no other reason has been assigned by the High Court in its judgment and other for modifying the award passed by the Labour Court. Therefore, the legal contention urged in this regard on behalf of the respondent establishment is misconceived and the same is liable to be rejected.”

8. Learned counsel for the respondent, who enters appearance on an advance copy, submits that the submissions of the petitioner so made are not borne out from the record, inasmuch as, that the management had raised a plea that workman was working during the pendency of the matter, before the Labour Court. Even before the High Court, an application has been filed giving relevant details to show that the workman continues to work. She has produced in the body of the application, the details of the employer, the Income Tax Returns and the salary drawn. She submits that in this backdrop the aforesaid order has been passed.

9. With the consent of the parties, we dispose of this appeal leaving this question open to be decided by the learned Single Judge at the time of final hearing, keeping the rights and contentions of both the parties open in the light of the fact that the respondent has

submitted that this ground has not been taken for the first time in the writ petition but was also raised before the Labour Court.

10. The appeal stands disposed of accordingly.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 08, 2019/AK

