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

+ LPA 85/2020

RABINDAR KUMAR SHARMA Appellant

Through: Mr. V.P. Sharma, Advocate.

versus

THE ORIENTAL INSURANCE CO LTD Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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14.02.2020

C.M. No. 6058/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No. 6056/2020

By this application, the applicant seeks condonation of 3 days' delay in filing the appeal.

For the reasons stated in the application, the same is allowed. The delay is condoned. The application stands disposed of.

LPA 85/2020 and C.M. No. 6057/2020

The appellant has preferred the present appeal to assail the order dated 11.09.2019 passed by the learned Single Judge in W.P. (C.) No. 5307/2019. The said writ petition had been preferred by the respondent Insurance

Company to assail the order dated 11.03.2019 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 directing the respondent to pay a sum of Rs. 10 Lakhs to the petitioner as gratuity along with simple interest @ 10% per annum from 16.01.2014 till the date of the actual payment.

It appears that the writ petition was taken up for hearing on 11.09.2019. Learned counsel for the appellant put in appearance and raised a preliminary objection with regard to the maintainability of the writ petition in the light of the respondent/ writ petitioner having an equally efficacious remedy of an appeal under Section 7 (7) of the Payment of Gratuity Act. In view of the said preliminary objection being raised, the writ petition was withdrawn by the respondent with liberty to file an appeal. The Court, while granting the said liberty, continued the interim order dated 15.05.2019 passed in favour of the respondent/ writ petitioner for a further period of four weeks from the date of the order. The Court further observed that if the appeal is filed within four weeks, the same may not be treated as time barred.

The grievance of the appellant is that the Court could not have extended the interim protection to the respondent and also could not have directed the entertainment of the appeal on merits and that the same should not be considered as time barred if the appeal were to be preferred within four weeks.

The respondent, on the preliminary objection being raised by the appellant herein, immediately proceeded to withdraw the writ petition. Therefore, in our view, the learned Single Judge was justified in permitting the respondent to withdraw the writ petition with liberty to prefer the appeal

before the Appellate Authority within four weeks.

The submission of learned counsel for the appellant is that the Court could not have continued the interim order dated 15.05.2019, whereby the operation of the order dated 11.03.2019 was stayed. In our view, the learned Single Judge was well within her powers to continue the stay for a period of four weeks to enable the respondent to exhaust the appeal remedy.

We are, therefore, not inclined to interfere with the impugned order.

Dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 14, 2020

B.S. Rohella