

Esic Vs. Malik Sweet House

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Court : Delhi

Decided On : Apr-03-2013

Judge : V.K.Shali

Appellant : Esic

Respondent : Malik Sweet House

Advocate for Pet/Ap. : Mr. Bhupesh Narula

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + FAO No.129 OF 201.& CM 4114/2013 (for condonation of delay) Decided on :

3. d April, 2013 ESIC Through: Appellant Mr. Bhupesh Narula, Advocate. Versus MALIK SWEET HOUSE Through: Respondent Nemo CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is an appeal filed by the appellant under Section 82 of the ESI Act, 1948 against the order dated 17.9.2011 passed by Sh.Ajay Goel, Sr. Civil Judge, dismissing the demand raised by the appellant against the respondent.

2. The present appeal has been filed along with an application bearing CM No.4114/2013 seeking condonation of 456 days delay in refilling the appeal.

3. I have heard the learned counsel for the appellant. The learned counsel has contended that the appeal though was filed in time, however, on account of

objections, the same was collected and thereafter, the file was got misplaced in shifting of the department of the appellant and was untraceable and the moment the file was traced, it was re-filed and therefore, the delay of 456 days has been occasioned. Accordingly, it is prayed that the delay of 456 days may be condoned.

4. I have considered the submissions.

5. The appeal was originally filed on 15.11.2011. On the same date, the objections were pointed out and the appeal was taken back by the appellant and was re-filed only on 4.3.2013. According to Rule-5 Chapter I Part A(a) Volume-V of the Delhi High Court Rules and Orders, once an appeal/application is filed and objections are raised and the brief is collected, it has to be re-filed within a period of seven days from the date of collection.

6. In the instant case, after filing and collecting the appeal on the same day, no steps were taken by the appellant for the purpose of rectifying the defects and the explanation which has been given in the condonation of delay application, is that the original record and fair copies of the dim annexures could not be prepared as in the month of October-November, the file of the present case as well as the original record was not traceable in shifting and therefore, the appeal could not be filed in time.

7. The file is stated to have been traced recently and thereafter, the objections were removed and the matter was re-filed on 4th March, 2013.

8. No details of the person who was handling the file after collecting the same, name of the Advocate who had originally filed the appeal, the date on which the file was traced and how it was traced, the date or the details of the file with which it was tagged have been given. So much so that the appellant has not even pleaded sufficient cause in the application, as per the requirement of Section 5 of the Limitation Act. It has only been averred in the application that the delay was unintentional and not deliberate. The name of the official has not been mentioned and no action seems to have been taken against the delinquent who was handling the file. The same law of limitation is applicable both to the private parties and to the public sector organizations or Corporations. Therefore, in the present case, the

conduct of the appellant in filing the appeal was grossly negligent. It seems that the appeal was filed more with a view to do lip service and complete the paper work rather than a serious measure to assail the order of the trial court. By condoning 456 days delay in re-filing the appeal, the Court will be only putting premium on the delinquent and gross negligent behaviour of the employees of the appellant. The minimum which was expected by the appellant /corporation was that it should have initiated some disciplinary action against the delinquent employees for not having acted with due care and attention.

9. I therefore, feel that the appellant has not shown any sufficient cause for condoning 456 days delay in re-filing the appeal which has to be treated as a delay in original filing as it exceeds more than seven days and accordingly, the application seeking condonation of 456 days delay is dismissed.

10. Since the application for condonation of delay is dismissed, therefore, the appeal is also dismissed as being time barred. V.K. SHALI, J APRIL 03 2013 RN

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