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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.47/2016 & IA No.1536/2017 (under Section 151
CPC), IAs No.2176/2017 & 2177/2017 (both of defendants for leave
to defend and for condonation of 123 days delay in re-filing thereof)
AVIRAL ELECTRONICS Plaintiff
Through: Mr. Kuldeep Balhara, Adv.
versus

SOFTGRIP POWER SOLUTIONS PVT LTD & ANR..... Defendants
Through: Mr. Vikas Sharma with Ms. Garima Thapa
and Ms. Anurag Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.05.2017**

1. The plaintiff instituted this suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.1,21,83,133/- jointly and severally from defendant no.1 Softgrip Power Solutions Pvt. LTD. and defendant no.2 Balu Pandhari Nath Mute Pawar.
2. The suit was entertained and summons for appearance and thereafter summons for judgment were served on the defendants. The defendants failed to file leave to defend within the prescribed time and also failed to appear.
3. On 6th February, 2017 the counsel for the plaintiff sought decree forthwith. However on going through the plaint, and for the reasons stated in the order of that date it appeared that the suit claim is barred by time. Opportunity was given to the counsel for the plaintiff to address.
4. The counsel for the plaintiff on 21st February, 2017 fairly stated that the judgment of this Court in *Empire Home Appliances Pvt. Ltd. Vs. Suraj Enterprises* MANU/DE/1498/2016 citing which it was in the order dated 6th

February, 2017 observed that the suit claim was barred by time applied squarely to the facts of the case. He however sought time to verify whether the matter had gone to the Supreme Court or if there is any other judgment to the contrary.

5. In the meanwhile application for leave to defend was filed by both the defendants along with an application for condonation of 173 days delay in re-filing thereof.

6. The counsel for the plaintiff today states that though *Empire Home Appliances Pvt. Ltd.* was not appealed against but similar view taken by the Punjab & Haryana High Court at Chandigarh in *Shaminderpal Singh Vs. Gamdoor Singh* 2014 SCC OnLine P&H 23510 was subject matter of SLP No.12526/2015 of which notice has been issued and which is stated to be listed in the Supreme Court in July, 2017. He seeks adjournment of the matter till then.

7. I am of the view that once it is not in dispute that the suit claim as per averments in the plaint and the documents filed therewith is barred by time, adjournment is not justified.

8. The suit is accordingly dismissed as barred by time, leaving the parties to bear their owns costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 04, 2017

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