

201

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

**Civil Revision No.2274 of 2015 (O&M)
Date of Decision:14.02.2019**

**M/s Magma Fin Corp. Ltd.Petitioner
Vs
Dada Motors Ltd. and othersRespondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Manuj Nagrath, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 06.02.2015 passed by the Addl. District Judge, Fast Track Court, Ludhiana, whereby the application filed by the petitioner under Section 5 of the Limitation Act (for short 'the Act') was dismissed.

[2]. Though condonation of delay has to be liberally construed, but in an appropriate case where the party tries to play smart, the same can be declined also. In the instant case, a civil suit was filed by M/s Dada Motors Pvt. Ltd., i.e. respondent No.1 against M/s Consortium Finance and Leasing Ltd. and others. The suit was decreed vide judgment and decree dated 20.08.2010. In the written statement filed by defendant No.1, the

factum of taking over assets of defendant No.1 i.e. M/s Consortium Finance and Leasing Ltd. by M/s Magma Leasing Ltd. was disclosed, but defendant No.1 did not lead any evidence to that effect. Defence made in the written statement was not substantiated by way of leading any evidence. Resultantly, the suit was decreed against M/s Consortium Finance and Leasing Ltd. and the plaintiff was held entitled to recover an amount of Rs.4,74,290/- as balance sale price of vehicle in question and Rs.1,42,287/- as interest w.e.f. 29.03.1999 to 28.11.2000 i.e. total Rs.6,16,577/- with future interest @ 9% per annum till final realization of the amount. The amount was recoverable from defendants No.1 and 2 only and their liability was held to be joint and several.

[3]. In the execution filed by the decree-holder, M/s Consortium Finance and Leasing Ltd. was impleaded as judgment-debtor No.1. The factum of taking over the aforesaid Company by Magma Finance Corporation Ltd. was recited in a way that M/s Consortium Finance and Leasing Ltd. has changed its name to Magma Shrachi Finance Ltd., on the basis of certificate dated 19.06.2007.

[4]. The aforesaid insertion was on account of the stand taken by the defendant No.1 in the suit itself for which no evidence was led by the defendant No.1 and decree was

suffered in a very calculated manner. Thereafter first appeal was filed by M/s Magma Fin. Corp. Ltd., along with an application under Section 5 of the Act seeking to get huge delay condoned which was not even specified in terms of days.

[5]. Filing of appeal by M/s Magma Fin. Corp. Ltd., in my considered opinion is a tool to deprive the decree-holder the fruits of the decree which was passed on 20.08.2010. The decree was passed when no evidence was led by defendant No.1, whose assets and liabilities have been taken over by the petitioner Company. If at all petitioner Company is having any grievance in respect of the decretal amount, it can resort to lawful proceedings against the assets of M/s Consortium Finance and Leasing Limited, which have already been taken over by it. Delayed filing of appeal cannot be construed to be a *bona fide* exercise by the petitioner and no indulgence can be granted in an application under Section 5 of the Act in which no specified days in terms of delay have been mentioned. This revision petition is accordingly dismissed.

February 14, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No