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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CS(OS) 159/2013**  
**PEPSICO, INC & ANR**

..... Plaintiff

Through: Mr.Dheeraj Nair, Adv. with Mr.Kunal  
Mimani, Adv. for the plaintiffs/non-  
applicants

versus

**CR ASSOCAITES & ANR**

..... Defendant

Through: Mr.M.B.Elakkumanan, Adv. for the  
applicants/defendants

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**  
% **29.02.2016**

**IA 2757/2016 & IA 2758/2016**

By IA 2757/2016 (under Order 9 Rule 13 CPC), the applicants-defendants are seeking setting aside of the ex parte judgment and decree dated August 26, 2015.

By IA 2758/2016 (under Article 123 of the Limitation Act, read with Section 151 CPC), the applicants-defendants are seeking condonation of delay of 109 days in filing the IA 2757/2016.

The relevant averments in IA 2758/2016 are as under:

*“4. That the Applicant No.2/Defendant No. 2 came to know about the said ex-parte judgment and decree through the demand notice sent by the Non Applicants/Plaintiff vide post received on 25.11.2015 by one of his family member, only on 20.12.2015 as he was away on spiritual trip.*

*5. It is relevant to mention here that Applicant No. 2 being resident of Hosur, Tamil Nadu which about 2170 kms away from Delhi.*

*6. As soon as the Applicant No.2/Defendant No.2 came to know about the aforesaid Ex-parte Judgment and Decree dated 26.08.2015, he went the local District Court within their jurisdiction and contacted the local Advocate. The Applicant No.2/Defendant No.2 was advised that since the proceedings pertain to jurisdiction of Delhi, he have to contact the Advocate in Delhi for seeking their remedy. The Applicant No.2/Defendant No.2 then approached present Advocates at New Delhi and apprised the copy of the ex-parte Judgment received by them”.*

That apart, I note, in IA 2757/2016, which is an application under Order 9 Rule 13 CPC, the relevant averments are as under:

*“3. It is submitted that the Applicants/Defendants had engaged an Advocate herein called as previous advocate, as their counsel for conducting the matter in the aforesaid proceeding and executed a Vakalatnama in favour of him. The said previous advocate entered appearance before this Hon'ble Court and filed Vakalatnama on 23.04.2013. Thereafter the Applicants/Defendants were under bona fide belief that the matter had been represented with due care.*

*4. It is relevant to mention here that, the Applicant No.2/Defendant No.2 fell ill and was suffering from viral hepatitis from 01.06.2013 to 05.09.2013. so he being residing*

*at hosur at Tamil Nadu was unable to communicate with his previous advocate.*

*5. It is further submitted that, while thing stood thus on 20.12.2015 to the utter shock and dismay the Applicant No. 2/Defendant No.2 came to know about the aforesaid ex-parte Judgment and decree vide post received on 25.11.2015 from J. Sagar Associates, Advocate for the Non-Applicants/Plaintiff by one of his family member as he was spiritual trip. It is further submitted that the Non-Applicants/Plaintiffs also made demand for four lakhs rupees towards costs also in accordance with the said judgment and decree. The true copy of the postal Envelope and demand notice is marked and annexed herewith as Annexure All.*

*6. As soon as the Applicant No.2/Defendant No.2 came to know about the aforesaid ex-parte Judgment and Decree dated 26.08.2015, The Applicant No.2/Defendant No.2 then approached present Advocates at New Delhi and instructed him suitably so as to take all remedial measure to get the ex parte judgment and decree dated 26.08.2015 set aside”.*

On reading of the averments in both the applications, it is noted that there is no explanation by the applicants-defendants for the period between April 23, 2013 till the date the judgment was passed under suit on August 26, 2015. That apart, the only reason worth considering is that between June 1, 2013 to September 5, 2013, the defendant No. 2 was ill as suffering from Viral Hepatitis. That would not explain the position post September 5, 2013 till the judgment was passed by this Court. It is clear that the defendant No. 2 had not followed the case with his counsel between the period 2013 till

2015. He came to know about the judgment and decree only on the receipt of the notice from the counsel of the plaintiffs.

Noting the averments made, which do not show any justifiable grounds, I do not see any reason to condone the delay in filing the application IA 2757/2016. Even otherwise, there is no sufficient cause given by the applicants-defendants for setting aside the judgment and decree dated August 26, 2015. Both the applications are dismissed.

**V. KAMESWAR RAO, J**

**FEBRUARY 29, 2016/akb**