

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

C.M.A.No.230 of 2017 & C.R.P.No.1560 of 2017

COMMON ORDER: (Per Justice Suresh Kumar Kait)

Since both the matters arise out of common order dated 01.03.2017 passed in I.A.Nos.3 and 4 of 2017 in the same suit, i.e. O.S.No.124 of 2015 on the file of the XII Additional Chief Judge, City Civil Court, Secunderabad, they are disposed of by this common order.

2. Vide I.A.No.4 of 2017, petitioners sought condonation of delay of 163 days in filing the application, i.e., I.A.No.3 of 2017, under Order IX Rule 13 CPC, to set aside the ex parte decree in O.S.No.124 of 2015 passed on 21.07.2016.

3. Learned counsel for the petitioners submits that court below ought to have seen that very institution of suit itself is basing on illegal and fraudulent allegations, as the claim of the respondent/plaintiff is that he handed over loan amount to petitioner No.2/defendant No.2 on 30.11.2012, whereas petitioner No.2/defendant No.2 was not at all in India and the mother of the petitioners, namely, late Smt.Shoukat Jahan was bedridden and was not able to move. Learned counsel submits that, on the aforesaid date, petitioners were in Jeddah and came to India only on 18.12.2012.

4. We have heard learned counsel for the parties.

5. Keeping in view the averments made in the petitions and the submission of the learned counsel for the parties, we hereby condone the delay of 163 days in filing the application under Order IX Rule 13 CPC to set aside the ex parte decree in O.S.No.124 of 2015 passed on 21.07.2016,

on payment of costs of Rs.20,000/- (Rupees Twenty Thousand only) out of which an amount of Rs.10,000/- shall be paid in favour of the respondent/plaintiff and the balance amount of Rs.10,000/- shall be paid in favour of the City Civil Court Legal Services Authority, Hyderabad within a period of two weeks from today.

6. Since we have condoned the delay, as above, we deem it appropriate to allow the C.M.A., by setting aside the order dated 01.03.2007 passed in I.A.No.3 of 2017 in O.S.No.124 of 2015 by the XII Additional Chief Judge, City Civil Court, Secunderabad, subject to the condition that the petitioners shall deposit an amount of Rs.15,00,000/- (Rupees Fifteen Lakh only) before the court below within eight (8) weeks from today. On deposit of the amount referred above, the court below shall invest the same in a fixed deposit with renewal mode and the said amount shall be disbursed subject to the outcome of O.S.No.124 of 2015 pending on its file.

7. It is made clear that, before proceeding with the suit, the court below shall take the written statement filed by the petitioners on record.

8. Subject to the above, the C.M.A., and the C.R.P., are allowed.

Miscellaneous petitions if any pending in the petitions stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

April 18, 2017
MRR