

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL MISCELLANEOUS APPEAL No.628 of 2019

JUDGMENT:

This appeal is filed challenging the order dt.09-04-2019 in I.A.No.1681 of 2017 in O.S.No.9 of 2010 of the Principal District Judge, Nizamabad setting aside an *ex parte* decree passed on 09-04-2012 subject to the condition of deposit of half of the decretal amount into the Court.

2. Learned counsel for appellants contended that such a condition is onerous and that the Supreme Court in **V.K. Industries and others Va. M.P. Electricity Board, Rampur, Jabalpur**¹ deprecated the said practice.

3. In the said judgment, the Supreme Court has held that conditions imposed for restoration of suit should be reasonable and not harshly excessive.

4. Similar view was expressed in **Kumud Lata Das Vs. Indu Prasad**² and also in **Tea Auction Ltd Vs. Grace Hill Tea Industry and another**³, wherein the Supreme Court held:

“15. Order 9 Rule 13 CPC did not undergo any amendment in the year 1976. The High Courts, for a long time, had been interpreting the said provision as conferring power upon the courts to issue certain directions which need not be confined to costs or otherwise. A discretionary jurisdiction has been

¹ (2002) 3 SCC 159

² (1996) 11 SCC 195

³ (2006) 12 SCC 104

conferred upon the court passing an order for setting aside an ex parte decree not only on the basis that the defendant had been able to prove sufficient cause for his non-appearance even on the date when the decree was passed, but also on other attending facts and circumstances. It may also consider the question as to whether the defendant should be put on terms. The court, indisputably, however, is not denuded of its power to put the defendants on terms. It is, however, trite that such terms should not be unreasonable or harshly excessive. Once unreasonable or harsh considerations are imposed, the appellate court would have power to interfere therewith.

....

23. While setting aside a decree, conditions can be imposed but such conditions should not be unreasonable or harshly excessive”.

5. Having regard to the said settled legal position, which is not disputed by the learned counsel for respondent, the order dt.09-04-2019 in I.A.No.1681 of 2017 in O.S.No.9 of 2010 of the Principal District Judge, Nizamabad is modified; and the said application is allowed on condition of appellants depositing Rs.3,000/- (Rupees Three Thousand only) as costs, within four (04) weeks from the date of receipt of copy of this order, to the credit of the suit, which shall be withdrawn by the respondent without furnishing any security. Since the suit is an old suit, the Court below shall endeavour to dispose it off as expeditiously as possible, preferably within one year from the date of receipt of copy of this order.

6. The Civil Miscellaneous Appeal is allowed with the above directions. No costs.

7. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-08-2019

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