

10.04.2024

Counsel for both sides present.

Counsel for respondent no.1 has filed objections to I.A.Nos.1 and 2 and also to Miscellaneous Petition.

Hence, matter passed over for hearing on I.A.Nos.1 and 2.

Matter called out again.

Heard both sides on I.A.No.2 which is filed by petitioner for stay of proceedings in Ex.423/2023.

The facts in brief are that this is petition under Order IX Rule 13 of CPC to set aside the decree dated 02.06.2023 passed by this court in Com.O.S.1259/2022.

Under the said decree defendants no.1 to 3 were held joint and severally liable to pay Rs.10,43,719/- to the plaintiff and to execute the said decree Ex.423/2023 is filed and according to the said execution petition the total amount due as on date of filing of execution petition is Rs.12,36,629/-.

Contending that suit summons was not duly served the present Miscellaneous

Petition is filed by defendant no.1 and defendant no.2 of the said suit for setting aside exparte judgment and decree and since, there is delay in filing the present petition, I.A.No.1 is filed for condonation of delay.

Considering that reasons stated in the main petition for setting aside the decree and the reasons stated in I.A.No.1 for condonation are similar, in my view I.A.No.1 may be considered along with main petition after enquiry.

Considering that the present petition is filed for setting aside the exparte decree and in case during the pendency of present petition the said decree is executed which will render present petition infructuous, in my view case is made out for stay of operation of decree in Com.O.S.1259/2022, but considering that as per the order sheet in the said suit the defendants no.2 and 3 which includes petitioner no.2 herein were served on sister and inspite of the same the petitioners did not appear in the suit and did not contest

the suit, in my view stay should be granted subject to petitioners herein depositing 50% total amount due under the execution petition i.e., 50% of Rs.12,36,629/- within 2 weeks from today and accordingly, subject to this condition for deposit I.A.No.2 is allowed and I proceed to pass following:-

ORDER

There shall be stay of operation of decree dated 2.6.2023 in Com.O.S.1259/2022 subject to petitioners depositing 50% of Rs.12,36,629/- within 2 weeks from today.

I.A.No.1 for condonation of delay shall be considered along with main petition.

For enquiry on main petition and I.A.No.1 and for petitioners to report compliance of above order for deposit of amount by 25.04.2024.

**C/C LXXXVIII ACCJ,
B'LURU.
(10.04.2024) (CCH-89)**