

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.101 of 2016**

1. A.K.Sinha S/o Late O.P.Saxena, Aged About 73 Years R/o G-103, Jairam Planet, Beside A I I M S, Tatibandh Raipur, Distt. Raipur, Chhattisgarh
2. G.C.Saxena S/o Suresh Chandra Saxena, Aged About 49 Years R/o Krishna Apartment No.206, Vikas Vihar Colony, Mahadev Ghat Road, Raipur, Distt. Raipur, Chhattisgarh
(Defendants)

---- Appellants**Versus**

- Gautam Ghatak S/o S.N.Ghatak, Aged About 47 Years Manager Fonics Sales And Services, 101 Bajpayee Chamber, Rajendra Nagar Chowk, Bilaspur, Distt. Bilaspur, Chhattisgarh
(Plaintiff)

---- Respondent

For appellants	: None present.
For respondents	: None present.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****28.11.2016.**

In the light of the order dated 07.11.2016 and 18.11.16, perused the matter for consideration of the appeal.

2. The appellants have filed the instant appeal under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908 against the order dated 17.10.2016 passed by First Additional District Judge, Bilaspur in MJC No.344/2016. On perusal of the facts mentioned in the order dated 17.10.2016 it appears that on 25.10.2010, the appellants marked their presence before the trial Court while hearing in Civil Suit No.9B/2013. Thereafter appellant No.2 remained present on 12.01.2012. Thereafter both the appellants remained absent since 11.12.2012. With this, the trial Court proceeded ex-parte and the

said civil suit was disposed of vide judgment dated 21.01.2014 thereafter the present appellant had filed the application under Order 9 Ruler 13 read with Section 151 of the CPC, but not filed any application under Section 5 of the Limitation Act. As they were served the notice of said civil suit, they marked their presence and thereafter they remained absent from hearing of their own. With this the date of knowledge shall be operative because both the appellants marked their presence and thereafter they became ex-parte. It was required for them to file an application under Section 5 of the Limitation Act to demonstrate the reasons for their absence on 11.12.2012 and thereafter in further proceedings. The appellants simply showed the reason for delay due to serious ailment of their mother-in-law and further treatment. There was no application to condone the delay as the MJC No.344/16 has been filed after more than three years.

3. After perusal of the impugned order dated 17.10.2016, I do not see any reason to interfere on the face of the record, hence, the present appeal being sans substance, dismissed at the motion stage itself as not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE