

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 759 of 2017

(Arising out of judgment/order dated 22.07.2004 in Civil Suit No.21-B/1999 of the learned District Judge, Raigarh)

- Shyam Lal Agrawal S/o Late Ramkala Aged About 63 Years Occupation- Businessman, R/o Village Dhurkot, Police Station Kharsiya, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

- Frim Mahavir Trading Company Through Proprietor Smt. Laxmi Devi, W/o Bajrang Lal, Aged About 47 Years, R/o Gandhi Ganj, Raigarh, District Raigarh, Chhattisgarh.

---- Respondent

And

FA No. 456 Of 2017

- Shyam Lal Agrawal S/o Ramkala Agrawal, Aged About 63 Years Occupation Business, R/o Village Dhurkot, P.S. Kharsiya, District Raigarh, Chhattisgarh.

---- Petitioner

Vs

- Firm Mahavir Trading Company Through Proprietor Smt. Laxmi Devi, W/o Bajrang Lal, Aged About 47 Years, R/o Gandhi Ganj, Raigarh, District Raigarh, Chhattisgarh.

---- Respondent

For Applicant	Shri B.M. Roy, Advocate.
For Respondent	None

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board

11/10/2017

I.A.No.1

1. This is an application for condonation of delay in filing the MCC/application under Order 44 Rule 1 of the CPC.
2. The application under Order 44 Rule 1 CPC filed on 04.09.2017 is barred by 4729 days. The appellant has filed first appeal bearing No. 456 of 2017 on 8.8.2017 (Token No.20504/2017).
3. In the application under Section 5 of the Limitation Act for condonation of delay, the reasons offered explaining the condonation is contained in para 2 of the application which is reproduced under verbatim:

“That, subsequently, the MCC/application under Order 44, Rule 1 of CPC was also filed in the first appeal, but in the filing of which, there is delay of 4729 days, as the petitioner is a poor & old-man having age of more than 63 years and not keeping good health and he is also mentally disturb from time to time”.

4. The applicant has suffered a decree passed by District Judge Raigarh, in Civil Suit No. 21-B of 1999 on 22.7.2004. By the said decree, the appellant has been directed to pay sum of Rs.6,47,000/- to the plaintiff.
5. In the application for permission to sue as an indigent person under Order 44 Rule 1 CPC the provisions

contained in Order 33 CPC applies in respect of the inquiry as to whether the applicant is an indigent person. Order 33 Rule 2 provides that every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings. The present application has not been framed in the manner provided under Order 33 Rule 2 CPC inasmuch as neither it is verified as plaint nor the schedule of properties with estimated value thereof have been annexed to the application.

6. Be that as it may, the applicant has averred in the subject application that since he is a poor and old-man having age of more than 63 years and not keeping good health and has also mentally disturbed from time to time, the delay in filing the application deserves to be condoned.
7. We are afraid, the grounds urged in the application do not contain any such bona fide reason supported and substantiated with relevant documents to enable the Court to examine the same. The applicant has not filed his financial status by producing the bank account or any income certificate or income tax returns etc. In respect of his mental illness from time to time, he has not filed any certificate of treating physician or the prescription or the time during which he was mentally ill. In absence of full particulars, the contents are as vague as it could be.
8. In the considered view of this Court, the applicant has failed to demonstrate any sufficient cause seeking condonation of delay in moving the application, therefore,

the application (I.A.No.1) for condonation of delay in filing the MCC/application under Order 44 Rule 1 CPC deserves to be and is hereby dismissed.

9. Consequently, the MCC No.759/2017 as well as the first appeal bearing No. 456/2017 are also dismissed.

Sd/-

Sd/-

Judge

Judge

Prashant Kumar Mishra

Arvind Singh Chandel

Akhilesh