

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 309 of 2017**

(Arising out of judgment/order dated 16.1.2017 in Civil Suit No.11-A/2006 passed by learned First Additional District Judge, Rajnandgaon)

- Sudhakar Rao Badwaik S/o Late Vitthal Rao Badwaik, Aged About 62 Years Occupation Retired Employee, R/o Bhagat Singh Ward No.17, Dongargarh, Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh, Through Power Of Attorney Holder Rishi Kumar Badwaik, R/o Bhagat Singh Ward No.17, Dongargarh, Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh(Plaintiff)

---- Petitioner**Versus**

1. Smt. Shobha Devi Badwaik W/o Madhukar Rao Badwaik, Aged About 65 Years
2. Mukesh Rao Badwaik S/o Madhukar Rao Badwaik, Aged About 44 Years
3. Rajesh Rao Badwaik S/o Madhukar Rao Badwaik, Aged About 41 Years
4. Suresh Rao Badwaik S/o Madhukar Rao Badwaik, Aged About 38 Years
5. Kumari Sandhya Badwaik D/o Madhukar Rao Badwaik, Aged About 35 Years

All R/o In Front Of Bus Stand, Dongargarh, Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh(Defendants)

---- Respondent

For Appellant
For Respondents

Mr. Punit Ruparel, Advocate
Mr. Alok Tiwari, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

5/10/2017

1. Heard on IA No.01, an application for condonation of delay in filing the appeal.
2. The appeal is barred by 26 days
3. In the application seeking condonation of delay, it is mentioned that appellant Sudhakar Rao Badwaik is a poor person, therefore, he had to arrange funds for payment of Court fees and further that he was not keeping well. Hence, the delay occurred.
4. However, the respective affidavits in support of the application seeking condonation of delay as well as application under Order 39 Rule 1 & 2 of CPC, are filed by the Power of Attorney holder. The Power of Attorney holder would state in the affidavits that he is the appellant in the case and is fully aware of the facts and circumstances and that the appeal as well as both the above applications have been drafted on his instructions, which are true to his personal knowledge. Thus, there is no affidavit of the appellant himself in support of his financial position or about his ailment.
5. From the contents of the Power of Attorney, it would appear that appellant Sudhakar Rao Badwaik is a Government servant, whereas, his son, the Power of Attorney holder, is a businessman, therefore, the assertion that they could not arrange Court fee of Rs.14,500/- appears to be *prima facie* unbelievable.

6. The appellant has failed to demonstrate sufficient and reasonable cause seeking condonation of delay in filing the appeal, therefore, IA No.01 deserves to be and is hereby dismissed.

7. Consequently, the appeal also stands dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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