

(1918) 05 CAL CK 0022
In the Calcutta High Court

Guru Charan Ghose and Others

APPELLANT

Vs

Kashi Chandra Ghose and Others

RESPONDENT

Date of Decision : 10-05-1918

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : AIR 1919 Cal 585 : 46 Ind. Cas. 480

Hon'ble Judges : Smither, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This appeal is out of time. It was presented four days after the period of limitation had expired. The order that was made when preferring the appeal was that the appeal was admitted subject to any objection that might be taken at the hearing. The course that has been indicated recently by the higher judicial authority is that the point ought to be really adjudicated on at the time of the presentation of the appeal whether any sufficient ground has been shown for extending the time for appealing under the provisions of Section 5 of the Indian Limitation Act. The ground in this case is that a mistake was made in calculating when the time for filing the appeal expired. It is to be noticed that even accepting the appellant's calculation as correct the appeal was not preferred to this Court until, in his view, the 90th day, which was the last day allowed by the law for preferring an appeal. Of course, if one likes to put off everything to the last moment and only files his suit or appeal on what he believes to be the last day the law permits him to file, he must take the consequences if his suit or appeal is found to be out of time. In the present case, a foolish mistake of arithmetic was made. It is said that four days have been calculated twice over. The point is, whether the question of the right of appeal should be re-opened by which the respondents may be prejudiced, because the agent of the appellant has made a mistake in arithmetic. I do not think there is any ground for showing this indulgence. Every litigant is supposed to know the last date of filing his appeal and he should not wait till the very last moment to find that he is four days out of time. I do not think that in this case we ought to extend the period

for appealing. That being so, the appeal is barred by limitation and, therefore, fails and must be dismissed with costs.

Smither, J.

2. I agree.