

(1932) 11 CAL CK 0016
In the Calcutta High Court

Khajeh Habibullah and Others

APPELLANT

Vs

Abdul Karim Abu Ahmed Khan and Others

RESPONDENT

Date of Decision : 18-11-1932

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1933 Cal 462 : 145 Ind. Cas. 116

Judgement

1. This is a rule calling upon the opposite party to show cause why the time for filing the appeal in this case should not be extended and the appeal registered though filed out of time and why such other and further order should not be made as to this Court may appear fit and proper. The present applicants filed an appeal in this Court against the judgment and decree of the Subordinate Judge of Mymensingh, First Court, on 30th January 1931. The memorandum of appeal was not accepted in the office because the appeal had been filed out of time by two days. The explanation given is as follows: It is said that about the end of November 1930 in accordance with a long-standing practice in the office of the Government Pleaders in this Court the clerk of the said office inquired from somebody in the office of the stamp reporter about the last day for filing the said appeal. It is further said that one Hari Sadhan De, an assistant in the office of the stamp reporter, made certain calculations on a slip of paper in pencil and told the Government Pleader's clerk that the 6th February 1931 was the last date for filing the appeal. It is also said that the clerk believing in good faith that the calculation made by the said Hari Sadhan De was correct filed the appeal on 30th January 1931. The slip of paper on which the calculation was made has been produced and marked Ex. "A" to the application on which the present rule was issued. On these facts we are invited to exercise our powers u/s 5, Limitation Act, and allow extension of time to file the appeal in question.

2. Now it may be stated at once that neither the stamp reporter nor anybody attached to his office is under any obligation to inform litigants or their advisers as to the last dates for filing appeals in this Court. The litigant or his legal advisers (in this case the Senior Government Pleader or the Assistant

Government Pleader) is responsible for making calculations of the nature referred to above and no one can be allowed to fasten responsibility on any of the clerks attached to the office of the stamp reporter in cases of this description. The mistake such as it was not of the legal adviser or his clerk but of somebody else who is in no better position than the man in the street. We have very carefully considered the submissions made by the Senior Government Pleader, but it strikes us that this is not a case for the exercise of our discretion under u/s 5, Lim. Act. As far as one can make out from the papers before us, it appears that the matter of filing the present appeal was left to the very last moment, and that apparently the papers were in the hands of the Senior Government Pleader as far back as November, 1930. It is apparent therefore that sufficient time had been given to the legal advisers of the litigant concerned to do everything necessary for filing the appeal in time, but no body seems to have taken any interest in the matter and a policy of drift was apparently allowed to be followed. In our opinion, it would be an extremely dangerous precedent if we were to allow any extension of time for filing the present appeal. It would not be a sound exercise of discretion on our part and we feel that we have no other alternative but to direct that this rule should be discharged and that the appeal be not registered. The rule is discharged with costs three gold mohurs.