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**(1950) 02 GAU CK 0010**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 50 (F) of 1950**

The State of Assam

APPELLANT

Vs

Haji Habib Haji Peer Mahammad

RESPONDENT

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**Date of Decision :** 20-02-1950

**Acts Referred:**

**Citation :** AIR 1952 Guw 48

**Hon'ble Judges :** T.V. Thadani, C.J; Ram Labhaya, J

**Bench :** Division Bench

**Advocate :** D.N. Medhi, for the Appellant; K.C. Goswami, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ram Labhaya, J.—This is an application for extension of the period allowed by law for an appeal from the judgment and decree of the Subordinate Judge, L. A. D. in a money Suit No. 28 of 1948.

2. The suit was decreed in plaintiff's favour. The decree was for a sum of Rs. 5012-3-8 against the State of Assam, the defendant in the case. The order of the Court bears the date 24-1-1960, The appeal was presented on 15-5-1950. The memo was returned by the office for its presentation before the Court as the appeal was prima facie barred by limitation. The appeal was presented before the Court on 17-5-1960 along with an application for extension of time. A Rule was issued on the application calling upon the opposite-party to show cause why the appeal should not be admitted and heard as prayed for.

3. The question is whether the delay in instituting the appeal can be condoned under S. 5, Limitation Act. The facts bearing on this question are as follows:

4. The money suit, in which the opposite-party was the plaintiff, was pending in the Court of the Subordinate Judge at Gauhati. The suit was heard on 18, 19 and 20-1-1950. Arguments were addressed to the Court on 20-1-1950. Mr. Wazed Ali, now a Member of the Parliament, was the Assistant Government Advocate

and was in charge of the case on behalf of the defendant. He attended the Court on 18, 19 and 20.1.1950. He filed an affidavit according to which the case was argued by him on 20-1-1950 on behalf of the defendant. But at that time the Court did not inform him that judgment would be delivered on any particular date. According to him, no date for delivery of judgment was fixed in his presence. He had to leave Gauhati on 22-1-1950 for New Delhi to attend the Parliament Session. He left the papers of the case with Mr. U.K. Goswami, Government Header. He came back on 26-4-1950 and on his inquiry he learnt on 30-4-1950 that the suit had been decided against the Government. In para. 8 of the affidavit he has stated that neither he nor Mr. Goswami, Government Pleader, knew anything about the judgment and decree against the defendant till 30-4-1950.

5. The order of the learned Subordinate Judge dated 20th January is to the effect that the judgment will be delivered on 24-1-1950, This order does not show that the counsel of the parties were present when it was written. According to the order of 24-1-1950, the judgment was delivered on that date. A notice was put up on the notice board after the delivery of the judgment. It was in Form No. (M)5, and, the decree sheet was signed on 11-2-1950. If we presume that defendant's counsel had knowledge of the decree at least from the date when the decree was signed the appeal would be admittedly within time, but the limitation has to be computed from the date of the judgment unless the allegations made in the affidavit of Mr. Wajid Ali are correct. The question, therefore, is whether the counsel of the defendant had knowledge that judgment would be delivered on 24-1-1960. On this point there is an apparent conflict between the order of the Court and the affidavit put in by Mr. Wazed Ali, a senior Advocate. According to the record of the learned Subordinate Judge, a date was fixed for delivery of judgment. Mr. Wazed Ali, however, has emphatically stated that no date for delivery of judgment was fixed in his presence and that both he and the Government pleader were unaware of it. The counter affidavit from the opposite party is extremely vague. It does state that the Government pleader was aware of the date of judgment and the decree and that the judgment was duly delivered and signed, though the name of the Government Pleader is not mentioned. What is more important is that there is no allegation in this affidavit that a date for delivery of judgment was fixed in the presence of Mr. Wazed Ali. The order of the Court does not show that Mr. Wazed Ali or any other counsel was present at the time the order of 20th January was written. There is thus a possibility of mistake. The learned Subordinate Judge may have fixed the date after Mr. Wazed Ali left the Court, or at a moment when he was attending to something else and later left the Court without knowing that 24-1-1950 was the date fixed for orders. It is difficult to conceive that this order should have been passed in his presence and he should not have informed the Government Advocate that 24-1-1950 was the date fixed for orders. The case does not appear to be one in which it could be said with any degree of certainty that the Assistant Government Advocate was negligent in the performance of his duties.

The delay appears to be due to a bona fide mistake and not through negligence or misconduct. It may, therefore, be condoned *ex debito justitiae*.

6. The learned Government Advocate has contended that the State of Assam is the applicant and as such is entitled to some special consideration. We are not prepared to agree to this proposition. The language of the statute does not justify discrimination between the State and the subject and the case, therefore, has to be decided on general principles which apply to all ordinary litigants who may have to apply for the condonation of delay under S. 6, Limitation Act. But, as we have found on the facts of this case that the delay is, in all probability, due to unintentional mistake, we think it can be justifiably condoned.

7. The application is allowed and the appeal shall be admitted. The rule is made absolute.

Thadani, C.J.

8. I agree.