
(1952) 08 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 59 (5) of 1952 in S.A.T. No. 83 of 1952

Union of India (UOI)

APPELLANT

Vs

Indu Barua and Another

RESPONDENT

Date of Decision : 08-08-1952

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : AIR 1953 Guw 41

Hon'ble Judges : Ram Labhaya, J

Bench : Single Bench

Advocate : D.N. Medhi, for the Appellant; B.C. Barua and J.C. Sen, for the Respondent

Judgement

Ram Labhaya, J.—This Rule was issued on the petition of the Union of India--representing Assam (now North Eastern) Railway. It called on the Opposite Party to show cause why the delay in filing the appeal be not condoned as prayed for by the petitioner.

2. The appeal in this case was put in on 26-4-1952. It ought to have been put in on 10-4-1952 at the latest. This Court was closed for Easter from nth to 25th April (both the days inclusive).

3. The petition for condonation of delay is supported by an affidavit of the clerk of the learned Government Advocate. The explanation for delay given in the petition is that the learned Government Advocate was under the impression that the appeal could have been filed on the 26th April after the Easter Vacation. This mistaken impression was created by date of application for the copy given in the certified copies of the judgment and the decree supplied to him. The date mentioned in the documents, it is alleged, could be read as 27th February and that was how it was read by the learned Government Advocate. He, therefore, filed the appeal on the reopening of the Court on 26th. It is also stated in the petition that the appeal could not have been filed before 10th April on account of dislocation of work in the Railway offices caused by regrouping which was then

taking effect.

4. It is admitted that if the date of application for copies is read as 27th February, the appeal would be within time. The date of application for the copies was not clearly written. This rendered an enquiry necessary. The result of the enquiry was that date of application for copies has been found to be 29th February and not 27th February. The appeal, therefore, is actually time barred and condonation of delay is sought on the ground of a bona fide mistake. The date in both the copy of the decree and the copy of the judgment was so written that the mistake could have easily occurred. Any one in the position of the learned Government Advocate may have read the date as 27th. If this mistake alone had been the cause for the delay in filing the appeal there would admittedly be sufficient justification for condonation of the delay. The learned counsel for the Opposite Party, however, has argued that this is not the real cause. He points out that there was some other cause for not filing the appeal before 10th. He refers to para. 2 of the petition in which it is alleged that due to changes of official business of the Assam Railway consequent on the regrouping, the appeal could not be filed before 10th. The statement is somewhat vague. The difficulties which prevented the filing of the appeal before 10th have not been stated. But whatever these difficulties may have been the statement of facts made in the petition when read as a whole necessarily implies that by reason of the impression that the appeal could have been filed on the 26th April after the Vacation the learned counsel did not make any effort to surmount these difficulties before 10th April. The mistaken belief that there was time for filing the appeal till after the Easter Vacation influenced his conduct. If this impression had not been created by a doubtful entry in the certified copies, efforts could have been made and the difficulties surmounted before the 10th. It was not impossible to file the appeal before the 10th if it had been realised that 10th was the last date for filing of the appeal. Notwithstanding the fact, therefore, that there may have been other difficulties in filing the appeal before or on the 10th, I think the filing of the appeal out of time was mainly due to a bona fide mistake on the part of the learned Government Advocate. The statement in the affidavit in regard to the alleged bona fide mistake has not been repudiated by any counter-affidavit and the learned Government Advocate has stated before me that he was misled by the doubtful entry which could easily be read as 27th February. In the circumstances of the case I do not think it can be said that the learned Government Advocate has been negligent in filing the appeal. The delay is due to a bona fide mistake on his part which constitutes a sufficient cause for the indulgence sought for. In *Sheo Mohan Pande and Others Vs. Kaliprasad Shukul*, a mistake in calculation on the assumption which was not unreasonable was held to be sufficient cause for condonation of delay. I think the principle of this decision does apply to the facts of the case before me. Here also there was a mistake in calculation on the assumption that copies had been applied for on 27th February though they actually had been applied for on 29th. No effort, therefore, was made to file the appeal before 10th April as stated in the petition.

In these circumstances the delay is condoned. The appeal shall be registered.

5. The Rule is made absolute.