

**(1967) 06 CAL CK 0004**

**Calcutta High Court**

**Case No:** Civil Rule No. 613 (M) of 1967 arising out of F.M.A.T. No. 674 of 1967

Prafulla Kumar Mukherjee

APPELLANT

Vs

Probhat Kumar Mukherjee

RESPONDENT

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**Date of Decision:** June 2, 1967

**Acts Referred:**

- Limitation Act, 1963 - Section 5

**Citation:** 71 CWN 648 : (1967) 2 ILR (Cal) 312

**Hon'ble Judges:** P.N. Mookerjee, J; A.K. Dutt, J

**Bench:** Division Bench

**Advocate:** Narottam Chatterjee, for the Appellant; Satya Charan Pain and Rabindra Nath Dutta, for the Respondent

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**Judgement**

P.N. Mookerjee and A.K. Dutt, JJ.

After hearing the learned Advocates for the parties and considering the materials before us, we make this Rule absolute, condone the delay in the filing of the instant appeal and direct that the same be registered, if otherwise in form.

2. As and by way of clarification of our views, we would make a few observations as similar matters are arising in this Court and giving rise to controversies, requiring decisions.

3. The mistake, alleged in this case, which occasioned the delay in the filing of the instant appeal, appears to have been due to the wrong advice given by the learned Advocate. The Appellant Petitioner, relying upon that wrong advice, filed the appeal in the wrong Court and thereafter, on return of the memorandum, after detection of that mistake, the appeal was filed in this Court within a reasonable time. A litigant, for the purpose of filing appeals, is entitled to approach a lawyer, who is competent or held out to be competent under the law to give Turn advice in the matter. A lawyer, enrolled as an Advocate under the relevant rules or under the prevailing law, is a person, who may be presumed or deemed to be qualified to tender such advice.

In approaching such a lawyer, the litigant does nothing which may be seemed imprudent or improper on his part and he cannot be held guilty of any negligence or carelessness or liable for any remiss and he cannot be penalised for relying upon his (Advocate"s) advice. If the law holds out a particular person as competent to give advice in a particular matter and the litigant approaches him for that purpose and acts up to this advice and eventually, finds himself in a difficult situation, which may otherwise cause loss to him, he (the litigant) is entitled to be relieved of the consequences of such mistake or mistaken advice and upon that view, we hold that the instant case comes well within the scope of Section 5 of the Limitation Act to enable the Petitioner to have condonation of delay in the matter of filing of the instant appeal.

4. We have added these observations just to clarify the position that when a litigant approaches a lawyer, held out by law to be competent to act for him in a particular matter, he has done all that is required of him for taking the requisite proceedings and if, by reason of a mistaken advice of such a lawyer, the Petitioner"s appeal is eventually found to be time-barred, he (the litigant) is entitled to be relieved of such consequences in the exercise of the Court"s discretion u/s 5 of the Limitation Act and under the terms of that section, the said statutory provision is enough to protect his rights.

5. In the premises, this Rule is made absolute, as indicated hereinbefore.

6. There will be no order for costs in this Rule.

7. Let the ad interim order, which was part of this Rule, continue for a fortnight more to enable the Petitioner to take steps for extension of the same or for other appropriate orders in that behalf within that time.