

**Gul Mahomed Vs. Abdul Jubbar**

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**Court :** Kolkata

**Decided On :** Feb-08-1912

**Reported in :** 13Ind.Cas.694a

**Judge :** Stephen and ;D. Chatterjee, JJ.

**Appellant :** Gul Mahomed

**Respondent :** Abdul Jubbar

**Judgement :**

1. In this case the appellant tiled an appeal in the Court below on the 2nd of February 1910 and at the same time he deposited the talabana. On the 2nd March 1910, the case came on for hearing and notice was not filed and the appeal was dismissed. This presumably was a notice which the appellant was required to file by the Circular Orders in the Court in order that processes might be issued. The dismissal of the appeal, apparently, was under Order XLI, Rule 18, Civil Procedure Code, which does not apply to the present case as the talabana had been deposited. The result is that the dismissal of the appeal on the 2nd Mar oil was wrong; consequently, when the matter came up on an application for re-admission, on the 18th March, re-admission ought to have been allowed. It was in fact refused on the ground that notice had not been filed, though that was perhaps through the fault of the party. We cannot hold that the Judge in this matter exercised his discretion rightly, but as the order of the 2nd March was wrong, the application for re-admission ought to have been allowed.

2. It is objected that, there is no appeal in this case. Taking the order to have been one under Rule 18, Order XLI, the application for re-admission was one under Order XLI, Rule 19, Civil Procedure Code. Consequently, there is an appeal under Order XLIII, Rule 1, Sub-section (t), Civil Procedure Code, In any case, there is an application for the exercise of our revisional powers.

3. The result is that the orders of the 2nd March and 18th March 1910 are set aside and we direct that the appeal do proceed according to law.

4. We make no order as to costs in this appeal.