

6. Section 95
7. Marlin Burn Limited v. Banarjee AIR 1958 SC
8. Order XXXIX, Rule 3
9. Order XXXIX, Rule 4
10. Section 94(c)
11. Order XXXIX, Rule 8 (1)
12. Order XXXIX, Rule 8 (2)
13. Order XXXIX, Rule 6
14. Order XXXIX, Rule 7 (1) (a)
15. Order XXXIX, Rule 7 (1) (b)
16. Order XXXIX, Rule 7 (1) (c)
17. Order XXXIX, Rule 8 (3)
18. Order XXXIX, Rule 9
19. Order XXXIX, Rule 10
20. By Kerr, in Kerr on Receiver
21. Jagat tarani Dasi v. Naba Gopal Chaki AIR (1907) Cal. 34
22. Hiralal v. Loonkaran Sethiya AIR 1962 SC
23. Section 94 (d) Order XL
24. Order XL Rule 2
25. See also Rule 1(2)
26. Rules 3 and 4
27. Garikapati V Subbiah Choudhry, AIR 1957 SC 540
28. Section 97
29. Harkishan Das V Satya Prasad AIR 1953 All
30. Chhotubhai v. Bai kanshi AIR 1941 Bombay 3.1. Proviso to Section 113
31. Order XLVI
32. Order XLVI, Rule 3
33. Order XLVI, Rule 5
34. Order XLVII, Rule 1(1)
35. Sidebotham, exparte (1880) 14 Ch. D.
36. Order XLVII, Rule 1(2)
37. Order XLVII, Rule 4(1)
38. Order XLVII, Rule 4(2)
39. Proviso to Rule 4 .
40. Order XLVII, Rule 6 (1)
41. Order XLVII, Rule 7 (1)
42. Order XLVII, Rule 9

43. Oxford English Dictionary
44. Pandurang v. Maruti AIR 1966. SC by Gajendragadkar J
45. Gulam rasool v. Mariyam, AIR 1980 Raj.
46. Major Khanna v. Brigadier Dillon AIR 1964 SC
47. Concise Oxford Dictionary
48. Lord Cairns, L.C. in Johnson,s Patent, (1880) 13 Ch D. 398
49. Ram Chandra v. State of U.P. AIR 1966 SC
50. Nirmal Chand v. Girindra narayan, AIR 1978 Cal.

KAMUKUS

UNIT – V

INDIAN LIMITATION ACT, 1963 (W.E.F. 01-01-1964)

Law of Limitations: The Law of Limitations limits or prescribes a time after the lapse of which suit or other proceedings cannot be maintained in a Court of law or the persons liable to sue shall become exempt from answering therein. It does not postpone or suspend the right of claimants, it merely prescribes a period for the institution of suit and forbids them from being brought after periods, each of which starts from some definite event. It only restrains the holder of a right from enforcing his right by recourse to law after prescribed period of limitation.

Nature of Act: "The rule of limitation is a rule of procedure, a branch of adjective law. The intention of the law of limitation is not to create a right where there is none, nor to extinguish a right where there is one, but to interpose a bar after a certain period to enforce an existing right."1 The plea of limitation can be raised only as against the plaintiff and not against the defendant.

Law is "lex ferī": It means whether an obligation is to be enforced or not depends exclusively upon the law of limitations of the country in which the suit is brought (lex ferī)

Act is a Complete Code: The Limitation Act is an exhaustive code governing law of limitation in India in respect of all matters specifically dealt with by it and the Indian Courts are not permitted to travel beyond its provisions to add or to supplement them.

Interpretation Clause2: In this Act, unless the context otherwise requires -

- a) "applicant" includes-
 - i. A petitioner;
 - ii. Any person from or through whom an applicant derives his right to apply;
 - iii. any person whose estate is represented by the applicant as executor, administrator or other representative;
- b) "application" includes a petition;
- c) "bill of exchange" includes a hundi and a cheque;
- d) "defendant" includes-
- e) "bond" includes any instrument whereby a person obliges himself to pay money to another,

on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be;

any person from or through whom a defendant derives his liability to be sued;

any person whose estate is represented by the defendant as executor, administrator or other representative;

- f) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in or attached to, or subsisting upon, the land of another;
- g) "good faith"-nothing shall be deemed to be done in good faith which is not done with due care and attention;
- h) "plaintiff includes-
 - i) any person from or through whom a plaintiff derives his right to sue;
 - ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;
- j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;
- k) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;
- l) "tort" means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;
- m) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgagee has been satisfied Or a person in wrongful possession without title.

LIMITATION OF SUITS, APPEAL AND APPLICATIONS

Period of Limitation: Law of limitation is based on well known maxim "*Interest republica ut sit finis litum*" i.e., It is in the interest of the State that there should be an end to Initiative process. The law of limitation is based on the principle that the law aids the diligent and not the indolent, that a man who has negligently slept over his rights for an undue length of time will not be allowed to litigate in respect of them.

Law of Limitation is an absolute law and the parties cannot evade it by way of private agreement. Thus under Section 28 of the Contract Act, an agreement which limits the time within which any party thereto may enforce his rights by the usual legal proceedings in ordinary tribunals is void. Similarly, an agreement between the parties that defendant will not plead the law of limitation in a suit brought against him by the other is void.

In **Livi v. Rainji 3 Born 207**, it was observed that the object of the Act is not to create or define causes of

action but simply to prescribe the period within which existing rights can be enforced in Court of Law.

Section 3 (1) of the Limitation Act provides as under:

"Subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

So Section 3 of Limitation Act gives the general rule of limitation by providing that a suit or an appeal or an application filed beyond the time prescribed there for shall be dismissed although limitation is not set up as defence by opposite party.

In Ashok K. Khurana v. Mis Steelman Industries and others, AIR 2000 Delhi 336 it was observed:

"Mere reading of Section 3 of the Act shows that it is mandatory and absolute in nature. It enjoins upon the court to dismiss any suit instituted, appeal preferred or application made after the prescribed period of limitation, although limitation has not been set up as a defence. Courts have no discretion or inherent powers to condone the delay if the suit is filed beyond the prescribed, period of limitation, rather a duty is cast on the court to dismiss the suit, appeal or application if the same is barred by limitation unless matter is covered by Sections 4 to 24 of the Act."

So it becomes clear that provisions of Section 3 of the Act are mandatory in nature. Section 3 enjoins a court to dismiss every suit, appeal or application, which is not within the prescribed period. Gateways from the peremptory provisions of Section 3 are provided by Sections 4 to 24. In other words, the court has no power, apart from the provisions of Sections 4 to 24, to relieve a litigant from the bar of limitation even on equitable consideration or on grounds of hardship or in exercise of its inherent powers.

Section 4 of the Act provides that where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Then Section 5 of the Act provides that an appeal or any application other than the application under any of the provisions of order Order 21 of the Code of Civil Procedure may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he has sufficient cause for not preferring an appeal or making the application within such period. Sections 6 to 8 of the Act extend the period of limitation in cases where the limitation expires before the cessation of disability, i.e., minority, insanity or idiocy.

Sections 12 to 15 of the Act provide for excluding certain periods in computing the period of limitation. Then Sections 16 to 24 of the Act provide for the effect of death, fraud, mistake, acknowledgement 'in writing, part payment, addition or substitution of new plaintiffs or defendants, and continuous wrong. In such cases, the Act provides the date from which the fresh period of limitation shall begin to run.

“Limitation bars the remedy but does not destroy the right”

Section 3 of Indian Limitation lays down the general rule of Limitation Act and reads as under:

"Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed; although limitation has not been set up as a defence."

The Limitation Act thus prescribes period within which various suits, appeals or applications for respective claims can be instituted in courts of law. If a party or claimant fails to do so, it cannot claim any further remedy at law.

The rule of limitation is a rule of procedure. It does not either create or extinguish a right. In the words of **Sir Richard Couch in Harrynath v. Mather, 20 LA. 188**: "The intention of the law of limitation is not to give right where there is none nor to extinguish a right where there is one but to interpose a bar after a certain period to a suit to enforce an existing right."

Limitation thus simply bars the judicial remedy, without extinguishing the right. For example, where the recovery of a debt has become time barred by the lapse of prescribed time, the right to the debt is not extinguished and the same applies to the debtor without being aware of the money due to him on the ground that his claim for recovery of the debt had become time barred.

In **Punjab National Bank and others v. Surendera Prasad Sinha, AIR 1992 SC 1815** Section 3 of Limitation Act bars the remedy but does not destroy the right to which the remedy relates. Right to debt continues to exist notwithstanding remedy is barred. Right can be exercised in any other manner than by means of suit. It is settled law that the creditor would be entitled to adjust, from payment of sum by debtor towards time barred debt. It is also equally settled law that creditor when he is in possession of adequate security debt due could be adjusted from security in his possession.

Law of Limitation is an absolute law and the parties cannot evade it by way of private agreement. Thus under Section 28 of the Contract Act, an agreement which limits the time within which any party thereto may enforce his rights by the usual legal proceedings in ordinary tribunals is void. Similarly, an agreement between the parties that defendant will not plead the law of limitation in a suit brought against him by the other is void.

Exception: However, there is one exception to rule that law of limitation bars the remedy but not the right. This has been incorporated in Section 27 of the Act. The Section provides:

"At the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished. "

In **First National Bank Ltd. v. Seth Santlal, AIR 1954 Punjab 328** it was observed: "Section 27 of the Limitation Act is, however, an exception to the general rule that in personal actions, the Limitation Act bars only the remedy and does not extinguish the right. In a suit for possession of any property on the determination of the period of limitation not only the remedy but the right also, is extinguished under Section 27. But a debt does not cease to be due, because it cannot be recovered after the expiration of the period of limitation provided for instituting a suit for its recovery. After a debt becomes barred a person is still deemed to owe."

EFFECT OF SUFFICIENT CAUSE FOR NOT PREFERRING APPEALS OR MAKING APPLICATIONS WITHIN THE PERIOD OF LIMITATION

The provisions of Section 5 of the Act are an exception to the general rule laid down in Section 3 that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed.

Section 5 of Indian Limitation Act provides:

"Any appeal or any application other than an -application under any of the provisions of Order XXI of Code of Civil Procedure 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making tire application within such period."

Explanation says: If the appellant or the applicant was misled by the order, practice or judgment of the High Court in ascertaining or computing the prescribed period, it may be a sufficient cause within the meaning of this Section for extension of period of limitation.

It will be seen from the above that the provisions contained in Section 5 applies only to appeal and certain applications mentioned therein and not to the suits. The reason is that period prescribed for applications and appeals mentioned in this Section does not exceed six months while for suit it extends from 3 to 12 years. Therefore, this conclusion has been given in this Section for applications and appeals in certain circumstances.

'Sufficient Cause': It is necessary to get the benefit of this Section that the court must be satisfied with the 'sufficient cause' for not preferring the appeal or application. The term 'sufficient cause' used here has not been defined in this Act. Its meaning, therefore, can be accepted as a cause, which is beyond the control of the party invoking the aid of this Section. This term 'sufficient cause' must of course, be given a liberal meaning so as to advance substantial justice when any negligence or inaction or want of bona fide is 'not imputable to the appellant. The sufficient cause can be determined from the facts and circumstances of a particular case.

So any appeal or application (other than one made under Order XXI of C,P.C.) may be admitted after prescribed period if appellant or applicant as the case may be shows "sufficient cause" for not preferring appeal or making application within the prescribed period. But mere proof of existence of "Sufficient Cause" for not filing the proceeding within the prescribed period does not, under the section, ipso facto compel the Court to extend the time. The court has a discretion to admit or refuse the proceeding even' if sufficient cause is shown,

In **Sandhya Rani v. Sudha Rani AIR 1978 SC 537** Supreme Court observed:

"It is undoubtedly true that in dealing with the question of condoning the delay under Section 5, the party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time and this has always been understood to mean that the Explanation has to cover the whole period of delay. However it is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under Section 5. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party, i.e., the delay in filing an application should not have been for reasons which indicate the party's negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case.

Discretion is conferred on the Court before which an application for condoning delay is made and if the Court after keeping in view relevant principles exercises its discretion granting relief unless it is shown to be manifestly unjust or perverse, the Supreme Court would be loathe to interfere with it."

Explanation to Section 5 says that "the fact that the appellant or the applicant was misled by any order,

practice or judgment of the High Court in ascertaining or computing the prescribed period may be "sufficient cause" within the meaning of this Section ", The following are some examples of what is and what is not "Sufficient Cause":

1. **Illness:** Illness is considered as 'sufficient cause' to get benefit of Section 5, but mere plea of illness is not sufficient cause for not filing proceeding in time unless it is shown that the appellant or applicant was utterly disabled to attend to any duty.
2. **Imprisonment:** A person can be given the benefit of Section 5 if he is undergoing imprisonment due to some criminal act. The time spent by him in the jail may be deducted from the prescribed period of time.
3. **Mistaken Legal Advice:** A mistaken advice given by a legal practitioner may in circumstances of particular case give rise to 'Sufficient Cause' within the meaning of Section 5. In *State of WB. v. The Administrator, Howrah Municipality, AIR 1972 SC 749*, it was held that if a party had acted in a particular manner on a wrong advice given by his legal advisor, he cannot be held guilty for negligence so as to disentitle the party to plead sufficient cause under Section 5 provided that no negligence, nor inaction nor want of bonafides is imputable to a party.
4. **Illiteracy:** The fact that appellant was illiterate is not sufficient reason to condone the delay.
5. **Delay in obtaining copies:** When a delay is caused:
 - 1) in obtaining a copy of the order or decree of a court and such delay was caused by the officer of the court.
 - 2) by the court itself in issuing orders.
 - 3) due to the method wrongly adopted in procuring the copy of the decree or order of the court.

Such delay shall be deemed as sufficient cause for granting benefit of Section 5 of this Act.

The power given to the courts under Section 5 above is discretionary yet it has to be exercised in a judicial manner keeping in view the special circumstances of each case.

In **Collector, Land Acquisition v. Mst. Katiji, AIR 1987 S. C. 1353**, their Lordships of the Supreme Court laid down the following guiding principles:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational commonsense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence; or on account of mala fides. A litigant does not stand to benefit by resorting to delay.
6. It must be grasped that judiciary is-respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and it is expected to do so.

It was pointed out that the Courts should adopt liberal approach in the matter of condonation of delay keeping in view the above principles.

LEGAL DISABILITY

Generally limitation begins to run from the date of cause of action. But the Indian Limitation Act itself provides certain exceptions to this general principle. Thus, in a case where the aggrieved party is suffering with some legal disability, the period of limitation does not run from the date of the accrual of the cause of action but runs from a subsequent date, on which the disability ceases. In this connection Sections 6, 7 and 8 of Indian Limitation Act are the counterpart of each other and they unitedly form one unit. The general rule regarding disability is provided by Section 6 which reads as under:

1. Where a person entitled to institute a suit or make an application for the execution of decree is at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified there for in the third column of the schedule.
2. Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so specified.
3. Where the disability continues up to the death of that person his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.
4. Where the legal representative referred to in sub- section (3) is at the death of person to whom he represents, affected by any of such disabilities the rules contained in sub-sections (1) and (2) shall apply.
5. Where a person under disability, dies after the disability ceases but within the period allowed to him under this Section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation: for the purposes of this Section 'minor' includes a child in the womb."

So Section 6 does not prevent running of limitation but only extends the period of limitation 'on the ground of disability of person entitled to sue or apply. Section 6 excuses an insane person, minor and an idiot to file a

suit or make an application for the execution of a decree within the time prescribed by law and enables him to file the suit or make an application after the disability has ceased, counting the period of time from the date on which the disability ceased. If one disability supervenes on another disability or one disability is followed by another without leaving a gap the suit or application for execution may be filed after both disabilities have ceased to exist. If the disability or disabilities continue till the person's death then the legal representative of the deceased on whom the title devolves is allowed to file a suit or make an application for execution within the time allowed by law counting it from the death of the person entitled. The mere fact that there is a guardian for the person under disability does not deprive such person of the indulgence granted by Section 6.

In *Akhtar Hussain v. Qudrat Ali* AIR 1923 Oudh. 31 it was observed that Section 6 of Limitation Act has no application in case of appeals. Legal disability is inability to sue owing to minority, lunacy or idiocy. The effect of legal disability is that it extends the period of limitation but it does not prevent the period from running.

Sometimes a situation arises when one of the several persons jointly entitled to institute a suit or to execute a decree is under disability. In this connection Section 7 of Act says that if one of the several persons jointly entitled to institute a suit or make an application for the execution of a decree, is under any such disability and a discharge can be given without the concurrence of such person, the time will run against all of them. However, if such discharge cannot be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the other or until the disability has ceased.

So Section 7 of Limitation Act would apply when the right to sue is joint irrespective of whether the substantive right is joint or not.

Section 8 of Indian Limitation Act makes it clear that Rules contained in Sections 6 and 7 are subject to the following conditions:

1. They cannot be applied to the suits to enforce rights of pre-emption.
2. They cannot be applied to any of the cases in which extension of period of limitation for more than three years from the cessation of disability or the death of a person as the case may be, is sought for.

CONTINUOUS RUNNING OF TIME (SECTION 9)

It is a fundamental principle of law of limitation that "Once the time has commenced to run it will not cease to do so by reason of any subsequent event." In other words, the time runs continuously and without any break or interruption until the entire prescribed period has run out and no disability or inability to sue occurring subsequently can stop it. This rule has been embodied in Section 9 of the Act in the following words:

"Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it."

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of a limitation for a suit to recover the debt shall be suspended while administration continues."

This Section applies not only to suits but to applications as well. This has not been expressly provided in the

Section.

If at the date on which the cause of action arose the plaintiff was under no disability, or inability, then time will naturally begin to run against him because there is no reason why the ordinary law should not have full operation. Section 9 says that once time has begun to run, no subsequent disability or inability to sue can stop its running. This applies to a person himself as well as to his representatives-in-interest after his death.

The Section contemplates a case of subsequent and not of initial disability, that is, it contemplates those cases where the disability occurred after the accrual of the cause of action; whereas cases of initial disability have been provided for by Section 6.

Disability or inability to sue: Disability has been defined as the want of legal qualification to act and inability of the physical person to act. Thus according to Calcutta High Court in Pooran Chandra v. Sasson, AIR 1919 Cal. 1018, disability is the state of being minor, insane or idiot, whereas illness, poverty etc. are instances of inability.

In Union of India v. Tata Engineering and Locomotive Co. Ltd. AIR 1989 Pat. 272 it was observed "true it is that in terms of Section 9 when time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it but Section 9 does not provide for a computation of period of limitation."

Exceptions: The principle of Section 9 is strictly applied and no exceptions other than those which the Act itself prescribes can be recognised. Thus the running of time is suspended in following eight cases-

1. The proviso to Section 9 contains exception to the general rule that once time begins to run, no subsequent disability or inability to sue can stop it. The proviso lays down that when administration of an estate has been given to a debtor of the deceased, no time will run against such a debtor until the administration of estate which has been entrusted to him has been finished. In such cases, the law prevents the duty of properly administering the estate to come into conflict with the right of the person to sue for the debt, the hand to give and the hand to receive is the same.
2. The time spent in obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded while computing the period of limitation prescribed for an appeal or an application for leave to application and an application for review of judgment. In the same way the time spent in obtaining the copy of the award shall be excluded, while computing the period of limitation to file an application to set aside an award (Section 12).
3. The time taken for prosecuting an application for leave is to be excluded if leave is necessary while computing the period of limitation for a suit or appeal (Section 13).
4. When the plaintiff has been prosecuting with due diligence another same proceedings the time spent in it shall be excluded while computing the period of limitation (Section 14).
5. When an injunction order has been obtained to stay the institution of suit, the time spent in obtaining injunction or order shall be excluded while computing the period of limitation (Section 15(1)).
6. When notice is served before the institution of a suit, the limitation shall be suspended during the period of notice (Section 15(1)).

7. The period of limitation shall be suspended during the time for which the proceedings to set aside the sale have been prosecuted in a suit for possession by purchaser at an execution sale (Section 15(4)).
8. If the defendant is absent from India or in the territories beyond India, under the administration of the Central Government, the time up to which he has been absent shall be excluded while computing the period of limitation (Section 15(5)).

COMPUTATION OF PERIOD OF LIMITATION AND EXCLUSION OF TIME IN ROCEEDING

Section 3 of Indian Limitation Act gives the general rule of limitation by providing "Subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

So the rule that suit, appeal or application filed after the period of limitation, shall be dismissed is subject to provisions contained in Sections 4 to 24 of the Act. Sections 12 to 15 of Limitation Act provide for it, excluding certain periods while computing the period of limitation prescribed.

Section 12 of Act says that in computing the period of limitation of any suit, appeal or application-

- a. the day from which period is to be reckoned.
- b. the day on which judgment complained of was pronounced.
- c. time requisite for obtaining a copy of decree, sentence or order appealed from or sought to be revised or reviewed.
- d. time requisite for obtaining the copy of judgment on which decree or order is founded.
- e. time requisite for obtaining a copy of award shall be excluded.

In Parthasarthy v. State of A.P. AIR 1966 SC 38, it was observed that in computing or calculating the period of limitation from a particular point, Section 12 enables the exclusion of a time from that period caused by an event that intervened between the commencement and termination of said period.

Section 13 of the Act lays down that the time during which the applicant has applied for leave to sue as 'pauper' shall be excluded. According to this Section, application must have been made for permission to sue as pauper in a suit and same is rejected. Such time which the applicant has spent in good faith for obtaining permission, shall be excluded in computing prescribed period upon payment of court fees.

Section 14 of the Act then provides: In computing the period of limitation prescribed for suit or application, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, should be excluded. The proceeding in such a case should have been founded upon the same cause of action and is prosecuted in good faith in court which from defect of jurisdiction or other cause of like nature, is to entertain it.

In Madhav Rao Narayan Rao Patwardhan V. R. K. Govind Bhanu AIR 1958 SC 767

It was observed that "the essential requisites for application of Section 14 of the Act are that the party seeking the benefit of Section 14 had to affirmatively show

- i. that he had been prosecuting the previous suit with diligence
- ii. that the matter in issue in the previous suit and new suit are the same
- iii. that the previous suit was prosecuted in good faith, and
- iv. that the court was unable to entertain that suit on account of defect of jurisdiction or other cause of a like nature.

Then Section 15 of the Act provides-

1. In computing the period of limitation for application for the execution of a decree, the execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn is to be excluded.
2. In computing the period of limitation for any suit of which notice has been given or for which the consent or sanction of the government or any other authority is required in accordance with the requirements of any law for the time being in force of such notice or as the case may be, the time for obtaining such consent or sanction is to be excluded.
3. In computing the period of limitation for any suit or application for execution of a decree by any receiver or 'interim receiver' appointed in proceedings for the adjudication of a person as or an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceedings and ending with the date of institution of such proceedings and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, is to be excluded.
4. In computing the period of limitation for a suit for possession by a purchaser 'at a sale in execution of a decree' the time during which a proceeding to set aside the sale has been prosecuted is to be excluded.
5. In computing the period of limitation for any suit the time during which the defendant has absented from India and from the territories outside India under the administration of the Central Government is to be excluded (Section 15).

EFFECT OF "DEATH", "FRAUD", "MISTAKE" OR "ACKNOWLEDGEMENT IN WRITING"

Section 16 of Indian Limitation Act provides regarding the effect of death, in computing the limitation period. Section 16 says:

1. Where a person who would, if he were living, have right to institute a suit or right to make application, dies before such right accrues or where right to institute suit or make application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of deceased capable of instituting such suit or making such application.
2. Where a person against whom, if he were living, a right to institute suit or make application would have accrued, dies before such right accrues or where right to institute a suit or make application against any person accrues only on death of such person, the period of limitation shall be computed from the time when there is legal representative of deceased against whom plaintiff may institute such suit or make such application."

Section 17 of Indian Limitation Act deals with the effect of 'fraud' or 'mistake' on period of limitation prescribed by the Act.

According to **Section 17**: The limitation shall be computed from the time when the fraud became known to the person defrauded. Therefore, if any person by the exercise of fraud has kept away other persons from the knowledge that he has a right to file a suit, limitation will be computed from the time when such fraud became known to the person so defrauded.

Where any document necessary to establish such right has been fraudulently concealed from him or where the suit or application is for the relief from the consequence of a mistake, limitation shall be computed from the time when he first has the means of producing the document or compelling its production and in latter case when the plaintiff or the applicant has discovered the mistake or could have discovered it. It should be from the date of the discovery of the document.

The following are the essential conditions for getting the advantage of the above Section:

- 1) The cause of action of plaintiff has been concealed from him by fraud.
- 2) The fraud has been done by the defendant or a person through him or who claims under him.
- 3) The plaint is in time since the discovery of the fraud.

Exceptions: The following, however, are exceptions to the rule laid down above:

"Nothing in this Section shall enable any suit to be instituted, application to be made to recover or enforce and charge against or set aside any transaction affecting any property, which,

1. In the case of fraud, it has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or
2. in the case of mistake, it has been purchased for valuable consideration subsequently to the transaction in which the mistake was made by a person who did not know, or have reason to believe, that the mistake had been made, or
3. In the case of a concealed document, it has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know or have reason to believe that document has been concealed."

The main object of this Section to keep the right of a person to sue suspended so long as he is not made aware of the fraud to be committed against him. Such a period is excluded from the prescribed period of limitation. It is based on the principle that a person should not be deprived of his legal right to sue simply because the period of limitation expired and he could not have knowledge of fraud done with him or likely to be done with him.

According to Section 17(1) where the execution of a decree or order within the period of limitation has been prevented by fraud or force of the judgment debtor, the court may on the application of judgment creditor made after the expiry of period of limitation, extend the period for the execution of decree or order. But such an application must be made by the judgment creditor within one year from the date of discovery of fraud or the cession of force as the case may be.

Valid Acknowledgement under Section 18: Section 18 of Indian Limitation Act lays down:

1. Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.
2. Where the writing containing the acknowledgement is undated oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received."

Explanation (a) added to Section 18 says "an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled, to the property or right."

So where prescribed period for suit or application in respect of some property or right has begun to run but has not expired, an acknowledgement in writing of such right has been made, a fresh period of limitation should be computed from the time when the acknowledgement was so signed.

In *Hindustan Apparel Industries v. Fair Deal Corp. New Delhi AIR 2000 Guj 261* it was held that "the payment of cheque which is dishonoured would amount to acknowledgement of debt and liability and by necessary consequence there will be saving of limitation as envisaged by Section 18 of Limitation Act. A cheque would prima facie amount to an admission of debt unless contrary intention has been expressed by the person issuing the cheque."

The principle on which Section 18 is based is that the bar of limitation should not be allowed to operate in cases in which the existence of a claim is acknowledged by persons who are under the liability.

In *Tilak Ram v. Nathu AIR 1967 SC 935* it was pointed out that the Section requires (i) an admission or acknowledgement (ii) such acknowledgement must be of a liability in respect of property or right (iii) it must be made before the expiry of period of limitation (iv) it should be in writing and signed by the party against whom such property or right is claimed.

ACQUISITION OF OWNERSHIP BY POSSESSION

The general rule of law of limitation is that, it only bars the remedy- and does not extinguish the right itself. In other words law of limitation lays down the rule that when a suit or appeal or application is filed after the prescribed period of limitation, then such suit or appeal or application shall be dismissed, such dismissal means the court will not grant remedy if asked for after the prescribed of limitation but law does not dispute the right of litigant.

Section 27 of Act is the exception to this general principle so far as suits for possession of property are concerned and lays down that after the expiry of period thus prescribed for instituting a suit for possession of any property, the person who should have instituted such suit but has failed to do so, shall cease to have

any right to the property. After the expiry of its period the law declares simply that not only the remedy is barred but that title is extinct in favour of the possessor.

In **Banarsi Das v. Jivan Ram, AIR 1995 P & H 85** it was observed "A bare perusal of Section 27 of Indian Limitation Act would show that after expiry of the period of limitation prescribed for filing suit for possession under the Limitation Act, even the right to sue for possession is extinguished."

Article 64 of Schedule of Limitation Act says that period of limitation for suit for possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed is "twelve years" and such period begins to run from the date of such dispossession of plaintiff. Article 65 says that period of limitation for filing suit for possession of immovable property or any interest therein based on title is "twelve years" and period of limitation begins to run when the possession of defendant becomes adverse to the plaintiff. So in all suits for possession based on dispossession whether plaintiff had title or not, the burden of proof is on the plaintiff to prove that he was in possession and was dispossessed within 12 years of filing suit and in suit for possession based on title, burden of proof is on defendant to prove that his possession over suit property becomes adverse to plaintiff for beyond 12 years of the suit, upon the proof of defendant being in adverse possession for property for period of beyond 12 years (a period which Article 65 prescribes within which plaintiff can file suit for possession on the basis of title), plaintiff's right to property will extinguish 0 possessor.

The concept of adverse possession contemplates a hostile possession i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be a possession by a person who does not acknowledge the other's rights but denies them.

The full period prescribed for a suit for possession must have expired, otherwise the title of the true owner is not extinguished in favour of wrongdoer. An owner does not lose his right to it merely because it happens not to be in possession of it for twelve years but his right is extinguished only when somebody else is in adverse possession of property of lawful owner and no suit for possession has been filed within prescribed period of limitation. Institution of the suit for possession is sufficient to bar the operation of Section 27 of Limitation Act.

IMPORTANT QUESTIONS

- Q.1. Where once time has begun to run, no subsequent disability or inability to sue stops it". Explain with illustrations and exceptions.
- Q.2. What is the effect of fraud or mistake on the computation of the period of limitation?
- Q.3. Give illustrations to explain what is and what is not "sufficient cause" for the purpose of the extension of the period of limitation.
- Q.4. What is the effect of acknowledgement of liability on the period of limitation? Discuss.
- Q.5. Limitation bars the remedy but does not extinguishes the right. Explain?

SUGGESTED READINGS

1. H.P. Gupta, Limitation Act
2. Arvind Kumar Dubey, limitation Act
3. K.K. Srivastava, Limitation Act
4. D.R.N. Pandey, Limitation Act.

KAMKUS

