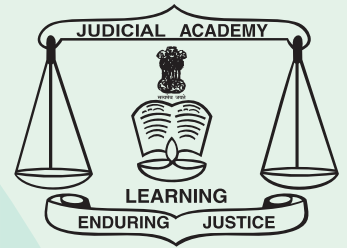


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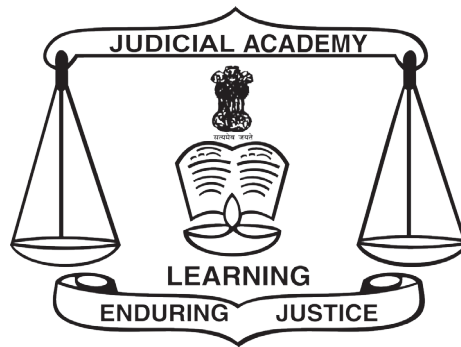


Judicial Academy Jharkhand



READING MATERIAL ON
THE LIMITATION ACT, 1963

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READING MATERIAL

on

THE LIMITATION ACT, 1963

Compiled by :
Judicial Academy Jharkhand

INDEX

1.	Introduction and salient features of the Limitation Act	1
2.	Scheme of the Act	5
3.	Limitation of Suits, Appeals & Applications	6
4.	Disabilities of different kinds under the Act	11
5.	Computation of period of Limitation and related provisions	15
6.	Acquisition of Ownership by Possession	28
7.	Adverse possession; Distinction between Articles 64 & 65.....	32
8.	Landmark Case Laws on Adverse Possession	38

INTRODUCTION & SAILENT FEATURE OF THE LIMITATION ACT

The word limitation in its literal term means a restriction or the rule or circumstances which are limited. The law of limitation has been prescribed as the time limit which is given for different suits & proceedings to the aggrieved person within which they can approach the court for redress or justice. The basic concept of limitation is relating to fixing or prescribing of the time period for barring legal actions. According to Section 2 (j) of the Limitation Act, 1963, '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.

According to Halsbury's Laws of England, the Main Objects of the Law of Limitations are as follows:

- Long dormant claim has more of cruelty than justice in them.
- A defendant might have lost the evidence to dispute the State claim.
- A person with only good cause of actions should pursue them with.
- There are two major considerations on which the Doctrine of Limitation and Prescription are based on – *firstly*, the rights which are not exercised for a long time are said to be as non-existent and *secondly*, the rights which are related to property and rights which are in general should not be in a state of constant uncertainty, doubt and suspense.

The main object to limit any legal action is to give effect to the maxim '*interestreipublicaeut sit finis litium*', which means that in the interest of the State is required that there should be a limit to litigation and also to prevent any kind of disturbance or deprivation of what may have been acquired in equity and justice or by way of long enjoyment or what may have been lost by a party's own inaction, negligence or leaches (acquiescence). The intention in accepting the concept of limitation is that "controversies are restricted to a fixed period of time, lest they should become immortal while men are mortal." This statutory restriction after a certain period of time gives a status to enforce an existing right. Simply, it neither creates any right in favour of any person nor does it define or create any cause of action against the particular person but it prescribes about the remedy. These remedy can be exercised only up to a certain period of time and not subsequently. The main object of the statute of the Limitation Act, 1963 is more over of a preventive kind and not to impose a statutory bar after a certain period of time and it gives a quietus to all the suit matters to enforce an existing right. The major purpose of the statute of the Limitation Act, 1963 is not to destroy or infringe the rights of an aggrieved person but to serve public in a better way and to save time. This statute is basically based on public policy for fixing a life span for the legal remedy which may be taken and to seek remedy in time with the purpose of general welfare. The object of providing a legal remedy is to repair the damage which is caused by reason of legal injury.

In the matter of *B.B. & D. Mfg. Co. v. ESI Corporation*, AIR 1972 SC 1935 it was observed by the Supreme Court that- "*The object of the Statutes of Limitations to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale,*

fake or fraudulent claims. While this is so, there are two aspects of the Statutes of Limitation — the one concerns with the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right if affects substantive right while that which purely pertains to the commencement of action without touching the right is said to be procedural”.

In ***Balakrishnanv. M.A. Krishnamurthy (1998) 7 SCC 123***, it was held by the Supreme Court ***“that the Limitation Act is based upon public policy which is used for fixing a life span of a legal remedy for the purpose of general welfare. It has been pointed out that the Law of Limitation are not only meant to destroy the rights of the parties but are meant to look to the parties who do not resort to the tactics but in general to seek remedy. It fixes the life span for legal injury suffered by the aggrieved person which has been enshrined in the maxim ‘interest reipublicae ut sit finis litium’ which means the Law of Limitation is for general welfare and that the period is to be put into litigation and not meant to destroy the rights of the person or parties who are seeking remedy. The idea with regards to this is that every legal remedy must be alive for a legislatively fixed period of time”.***

The Law of Limitation is an adjective Law. It is *lex fori*. Thus, it can be said that the rules of the Law of Limitation are generally concerned with the rules of procedure and which do not create any rights in favour of any particular person nor do they define or create any cause of action. It has been simply prescribed that the remedy can be exercised only for a limited fixed period of time and not subsequently.

The rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the plaintiff do not take dilatory tactics but seeks remedy within the period stipulated by the legislature. *The rules of limitation thus will only bar the remedy but does not extinguish the right.* The right continues to exist even through remedy is barred by limitation. Therefore, a debtor may pay the time barred debt and cannot claim it back on the plea that it was barred by limitation.

The Limitation Act is applicable to the suits brought by the plaintiff; they do not apply to a right setup by the defendant in defence. A defendant will not be precluded from setting up a right by way in defence, even if he could not have done so as plaintiff by way of substantive claim. But the principle that limitation ordinarily does not bar the defence is not applicable in the case of set off and counter claim. Any claim by way of set off or a counter claim shall be treated as a separate suit and shall be deemed to have been instituted in the case of set off, on the same day that as the suit in which the set off is claimed and in the case of counter-claim on date on which the counter claim is made in court.

The law relating to Law of Limitation in India is the Limitation Act, 1859 and subsequently Limitation Act, 1963 which was enacted on 5th of October, 1963 and which came into force from 1st of January, 1964 for the purpose of consolidating and amending the legal principles relating to limitation of suits and other legal proceedings.

The Salient Features of the Limitation Act:

The Limitation Act contains **32 Sections and 137 Articles**. The articles have been divided into **10 parts**.

The **first part** is relating to accounts, the second part is relating to contracts, the third part is relating to declaration, the fourth part is relating to decrees and instrument, the fifth part is relating to immovable property, the sixth part is relating to movable property, the seventh part is relating to torts, the eighth part is relating to trusts and trust property, the ninth part is relating to miscellaneous matters and the last part is relating to suits for which there is no prescribed period.

There is no uniform pattern of limitation for the suits under which the classifications has been attempted.

The limitation period is reduced from a period of 60 years to 30 years in the case of suit by the mortgagor for the redemption or recovery of possession of the immovable property mortgaged, or in case of a mortgages for the foreclosure or suits by or on the behalf of Central Government or any State Government including the State of Jammu and Kashmir.

Whereas a longer period of **12 years has been prescribed for different kinds of suits relating to immovable property, trusts and endowments, a period of 3 years has been prescribed for the suits relating to accounts, contracts and declarations, suits relating to decrees and instruments and as well as suits relating to movable property.**

A period varying from **1 to 3 years has been prescribed for suits relating to torts** and miscellaneous matters and for suits for which no period of limitation has been provided elsewhere in the Schedule to the Act.

It is to be taken as the minimum period of seven days of the Act for the appeal against the death sentence passed by the High Court or the Court of Session in the exercise of the original jurisdiction which has been raised to **30 days** from the date of sentence given.

One of the main salient feature of the Limitation Act, 1963 is that it has to avoid the illustration on the suggestion given by the Third Report of the Law Commission on the Limitation Act of 1908 as the illustration which are given are most of the time unnecessary and are often misleading.

The Limitation Act, 1963 has a very wide range considerably to include almost all the Court proceedings. The definition of **'application'** has been extended to include any petition, original or otherwise. The change in the language of Section 2 and Section 5 of the Limitation act, 1963 includes all the petition and also application under special laws.

The new Act has been enlarged with the definition of 'application', 'plaintiff' and 'defendant' as to not only include a person from whom the application is received, Plaintiff or defendant as the case may be derives his title but also a person whose estate is represented by an executor, administrator or other representatives.

Sections 86 and Section 87 of the Civil Procedure Code, requires the consent of the Central Government before suing foreign rulers, ambassadors and envoys. The Limitation Act, 1963 provides that when the time obtained for obtaining such consent shall be excluded for computing the period of limitation for filing such suits.

The Limitation Act, 1963 with its new law signifies that it does not make any racial or class distinction since both Hindu and Muslim Law are now available under the law of limitation as per the existing statute book. In the matter of *Syndicate Bank v. Prabha D. Naik*, (AIR 2001 SC 1968) the Supreme Court has observed that the law of limitation under the Limitation Act, 1963 does not make any racial or class distinction while making or indulging any law to any particular person.

SCHEME OF THE ACT

The Limitation Act contains 32 Sections (Section 32 repealed) and 137 Articles. **Scheme of the Articles is as follows:**

Articles 1 to 113 **Suits** Articles 114 to 117 **Appeals**

Articles 118 to 137 **Applications.**

Suits are divided into 10 classes:

1. Suits relating to accounts (Art. 1 to 5)
2. Suits relating to Contracts (Art. 6 to 55)
3. Suits relating to declarations (Art. 56 to 58)
4. Suits relating to decrees and instruments (Art. 59 to 60)
5. Suits relating to immovable property (Art. 61 to 67)
6. Suits relating to movable property (Art. 63 to 71)
7. Suits relating to tort (Art. 72 to 91)
8. Suits relating to trusts and trust property (Art. 92 to 96)
9. Suits relating to miscellaneous matters (Art. 97 to 112)
10. Suits for which there is no prescribed period (Art. 113)

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

(SECTIONS 3 TO 11)

Section 3

(1) 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.

(2) For the purpose of this Act--

a suit is instituted ---

- in an ordinary course, when the plaint is presented to the proper officer;
- in case of a pauper, when the application for leave to sue as a pauper is made; and
- in the case of a claim against a company which is being wound up by the court, when claimant first sends in his claim to the official liquidator;
- any claim by way of set off or counter claim, shall be treated as a separate suit and shall be deemed to have been instituted--
- in the case of set-off, on the same date as the suit in which the set off is pleaded
- in case of counter-claim, on the date on which the counter claim is made in the court.

Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefore by the Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.

Decree not a nullity- Even if it is true that it is the duty of the court to take note of the provisions of S. 3 of the Limitation Act and to dismiss a suit when it is found that it is barred by limitation, if the court without taking note of the said provisions decides a suit on merits, the decree is not a nullity. It is merely an error of law which can be rectified in the manner provided by the code of Civil Procedure. The decree or order cannot be held to be a nullity (*Ittyavira Mathai v. Varkey Varkey*, AIR 1964 SC 907)

Section 3 limits the time after which a suit or other proceeding would be barred. The right to sue and the commencement of the running of time for purpose of the limitation depend on the date when the cause of action arose. Cause of action is a fact or combination of facts that gives a person the right to seek judicial redress or relief against another. Section 3 bars only the institution of suits, application and appeals, and the period within which the same has to be

filed. But so far the defense is concerned there is no such limitation. There can be no period of limitation for acts which the courts are bound to perform.

Section 2 (j) Prescribed Period- “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; (*Assam Urban Water Supply & Sewerage Board v/s Subash Projects & Mktg. Ltd., (2012) 2 SCC 624*)

The limitation Act **does not extinguish a right but it only bars the remedy.** In a case of *Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328*, it was held by the Supreme Court in *Para 21*, “It has been already mentioned that when a debt becomes time-barred, it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge there from. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them”.

The following passages in Anson's Law of Contract, 19th Edn. p. 383, are directly in point: “At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration. But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipublicae ut sit finis litium. The remedies are barred, though the right is not extinguished. And if the law requires that a debtor should get a discharge before he can be compelled to pay, that requirement is not satisfied if he is merely told that in the normal course he is not likely to be exposed to action by the creditor”

It is not open to the parties to waive or contract themselves the period of limitation. It is however open to the defendant to give consent even in respect of a time-barred claim. In considering whether a suit or proceeding is barred by limitation, the court will be entitled to look into admission of the parties.

ShrimantShamraoSuryavanshiv.PralhadBhairobaSuryavanshi, (2002) 3 SCC 676- It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.

Section 4 - Expiry of prescribed period when court is closed -- 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.

Explanation- A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

Section 4 has nothing to do with period of limitation. It does not add to the period of Limitation. It only extends the concession that is notwithstanding that the period of limitation expires on a day when the court is closed suit appeal or application may be filed on the day on which the court reopens.

Section 5- Extension of prescribed period in certain cases-- Any appeal or any application other than an application under any of the provisions of order 21 of the CPC, may be admitted after the prescribed period, if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that 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 a sufficient cause within a meaning of the sub-section.

This Section applies to Criminal Appeal as well. Delay in filing Criminal Appeal should be excused when where it was erroneously filed in another court. Criminal Procedure Code is not a special law within the meaning of Section 29 but it is a general law relating to procedure.

Appeal under Criminal Procedure Code - The delay in filing appeal against acquittal can be condoned under section 5. But sufficient cause must be established to condone the delay by the appellate court. (*Ajay Gupta v. Raju Rajendra Singh Yadav 2016(3) JBCJ 187 (SC)*)

Limitation Act 1963-- Sections 4 and 5-- Limitation-- Extension of period-- Section 5 of Act which deals with extension of prescribed period in certain cases, applies only to appeals or applications and not to suits.--- No court of Tribunal can extend period of limitation for filing a suit--- Even if any cause beyond control of plaintiff is shown also, only extension is permitted under Section 4 of the Act, period coming under court holiday.

Application for setting aside ex-parte decree cannot be allowed without condoning the delay. In this case no application was filed for condonation of delay in filing a petition under Order 9 R 13 of CPC, whereas there was delay of two years in filing the application. (*Rajesh Kumar v. Smt. Indu Devi 2016(4)JBCJ (HC)*)

State of West Bengal v. W.B. Judicial Service Association, 1990 (2) Cal. L.J. 73 - In this division bench judgement the court speaking through A.M. Bhattacharjee, J observed the following:

The doctrine of equality and rigid adherence to the said doctrine notwithstanding, the Government can be classified as a distinct and separate group to warrant different treatment in the section 5 of the Limitation Act.

The court made reference to the decisions in *G. Ramegowda v. Special Land Acquisition Officer* (1988(2)SCC142) and *Collector, Land Acquisition v. Katiji* (AIR 1987 SC 1353) to state the following reasons for adopting a liberal approach towards the Government:

- (1) If appeals or other proceedings initiated by the Government are lost, no person is individually affected; but what in the ultimate analysis suffers is public interest.

- (2) The decisions of the Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.
- (3) Government decisions are proverbially slow, encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. On account of impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with note-making file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand, though more difficult to approve.
- (4) Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. It might therefore be somewhat unrealistic to exclude these factors which are peculiar to and characteristic of the functioning of the Government.
- (5) While a private person can take instant decision, a "bureaucratic organ hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at least it gravitates towards a conclusion—unmindful of time and personality."
- (6) A certain amount of *latitude* is, therefore, *not impermissible* and it is rightly said that those who bear the responsibility of the Government must have "*little play at the joints*". It would perhaps be *unfair* and *unrealistic* to put Government and private parties *on the same footing* in all respects in such matters.

Also, in a concurrent opinion delivered by S.K. Mookerjee, J, it was emphasised that

"It is well settled that the duty of the appellant in case of a time barred appeal to explain the delay sufficiently does not relate to the period prior to the date of limitation." And as held in *Collector, Land Acquisition v. Katiji* (AIR 1987 SC 1353), "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 cause would be decided on merits after hearing the parties"

Condonation of delay in filing appeal can be decided only after hearing both the parties.

Order 22, Rule 9 (3) the consideration of condonation of delay under section 5 of the Limitation Act and for setting aside abetment under order 22 CPC are entirely different and the court always liberally considers the latter though in some cases the court may refuse to condone the delay in filing the appeal.

A competent civil court has power to pass an interim order of injunction pending hearing of application under Section 5 of the Limitation Act.

Examination of witnesses not necessary-The application for condonation of the delay is not required to be considered on the basis of the evidence of witnesses. The application is to be decided on affidavits. Application for condonation of the delay under S.5 ought not to be dismissed by a non-speaking order.

Manindra Land and Building Corporation v. Bhutnath Banerjee, (1964) 3 SCR 495 : AIR

1964 SC 1336) -Section 5 of the Limitation Act empowers the court to admit an application, to which its provisions are made applicable, even when presented after the expiry of the specified period of limitation if it is satisfied that the applicant had sufficient cause for not presenting it within time. The court therefore had jurisdiction to determine whether there was sufficient cause for the appellants not making the application for the setting aside of the abatement of the suit in time and, if so satisfied, to admit it.

National Insurance company v. SmtRuniyaBinha, 2008(3)JCR456(Jhr) - 041 R3A
Requirement of filing condonation application along with the memo of appeal is mandatory.--
Court to grant condonation of delay in filing appeal only in exceptional cases.

Special Tehisldar, Land Acquisition Kerala v. K.V. Aiyusuma, 1996(10) SCC 634

In this case, the Government was seeking condonation of delay. The Supreme Court held that while it is true that section 5 envisages explanation of the delay to the satisfaction of the court and there should not be any distinction made between the State and the citizen. Nevertheless adoption of strict standard of proof would lead to grave miscarriage of public justice. Also, it would result in public mischief by skillful management of delay in the process of filing the appeal. Therefore, the approach of the court should be pragmatic but not pedantic.

PundikJalamPatil v. Executive Engineer Jalgaon medium project, 2009(1) JLJR 76 SC

In this case the High Court had allowed the application filed by the respondent under section 5 of the Limitation Act, 1963 to condone the delay of 1724 days in filing appeals against the award passed by the Civil Judge in a land acquisition case.

The Supreme Court however, held that:

The incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or applicant had sufficient cause for not preferring such appeal or application within the prescribed period.

The court referred to Ramlal and others v. Rewa Coalfields Ltd. [AIR 1962 SC 361] wherein it was said that, “ even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section 5. This aspect of the matter naturally introduces the consideration of all facts and it is at this stage the diligence of the party of its bona fides may fall for consideration.”

As whole order 21 c.p.c. relating to execution has been specifically excluded from the purview of the section 5 of limitation act .

SECTION 6---LEGAL DISABILITY-

- (1) Where a person entitled to institute a suit or make an application for the execution of a 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 therefore in the third column of the Schedule.**
- (2) Where such person is, at the time from which the prescribed period it 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 the 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 date of the death of the person whom he represents. affected by any such disability, 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.

This section will not grant indulgence to a minor entitled to prefer an appeal; it provides only for suits or applications for execution of decree. Section 6 does not cover a case of an application under O 21 R 90 CPC to set aside a sale held in execution of a decree. Nor does it apply to an application for the readmission of an appeal under O 41 R 10 of the CPC. Sections 6,7 and 8 from a group, they supplement each other and are not exclusive.

Section 7-- Disability of one of several persons—

Where one of 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, time will run against them all; but when no such discharge can 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 others or until the disability has ceased.

Explanation I: This Section applies to a discharge from every kind of liability including a liability in respect of any immovable property.

Explanation II: For the purposes of this section the manager of a Hindu undivided

family governed by the Mitakshara law shall be deemed to be capable of giving a discharge, without the concurrence of the other members of the family only if he is in management of the Joint family property.

Narayan v. Babasaheb, 2016(2) JBCJ 415 (SC): (2016) 6 SCC 725

Facts : A Hindu man who was the original owner of the ancestral property died leaving his two sons, one being minor, alongwith four daughters and his widow. A sale deed was executed by the widow (D2) in favor of one D1 on 20.1.1982 and on 28.11.1988 for the same property. In 1989, suit is filed by the sons and daughters for recovery of possession and setting aside the sale deed executed by their mother who has been arrayed D2 and the purchaser made party as D1. The first appellate court concluded that Article 60 of the Limitation Act, is not applicable to the case as the D2 is not the guardian appointed by the Court.

Question whether the suit was barred by limitation, being hit by:

Article 60 which prescribes a limitation of 3 years after the ward attains majority to set aside transfer of property made by Guardian of a ward? **OR**

Article 109 which prescribes a limitation of 12 years when the suit is by a Hindu governed by Mitakshara Law to set aside alienation made by father of his ancestral property.

Held: Article 60 shall apply and not Article 109.

Reason:

After the death of Plaintiff's father, their mother D2 became their natural guardian. Simply because she was not formally declared a Guardian will not alter her legal status. But at the same time, section 8 (2)(a) of the Hindu Succession Act, 1956 requires the seller or the purchaser to obtain the permission of District court for the sale. Therefore, the limitation to file the present suit is governed by Article 60 and the limitation is 3 years from the date of attaining majority.

When there are several plaintiffs, what is the reckoning date of limitation? A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to institute a suit or make an application for the execution of the decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against all of them but where no such discharge can be given, time will not run against all of them until one of them becomes capable of giving discharge.

Further, as per Explanation II appended to section 7, the manager of a Hindu undivided family governed by Mitakshara Law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family property. The three sisters though major on the date of institution of property, were not the manager or karta of the property. Therefore, explanation II will not be applicable.

Section 8-- Special exceptions--Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period

of limitation for any suit or application.

The combined effect of s. 6, and s. 8 read with the third column of the appropriate Article of the Limitation Act would be that a person under disability may sue within the same period as would otherwise be allowed from the time specified therefore in the third column of the schedule but the special limitation as an exception has been provided in s. 8 laying down that the extended period after cessation of disability would not be beyond three years of the cessation of disability or the death of the disabled person.

Kolandavel Goukderv.Chinnapan, AIR 1965 Mad 541

Facts: Some joint family property was sold by the father acting for himself and on behalf of his minor sons in 1940 and the purchaser made further sale in 1942. Possession passed from father to the alienee on 17.8.1942. In this suit filed on 9.1.1958 by the sons (who had been born in 1928, 1931 and on 13.8.1937) it was contended that the period of limitation i.e 12 years (as provided by Article 126) should be counted from the date of the youngest son attaining majority or in the alternative, when the first son becomes the manager of the property after the death of his father in April, 1948 so that he became capable of giving discharge on behalf of his brothers also. In the light of this, the period will start running against them all only from April, 1948.

Held: On a reading of Ss. 6, 7 and 8, it is clear that S. 8 imposes a limitation on the concession provided under Ss. 6 and 7 to a maximum of three years after cessation of the disability. Therefore, the period of three years would start running from the day of the eldest son attaining majority in 1946. Thus the suit is barred by limitation.

Section 8 is ancillary to and restrictive of the concession granted in Ss 6 and 7 and does not confer any substantial privilege. This section is in the nature of proviso to Ss 6 and 7.

Section 9 Continuous running of time - 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 limitation for a suit to recover the debt shall be suspended while the administration continues.

Limitation cannot run unless the cause of action has arisen. A cause of action normally accrues when there is in existence a person who can sue and another can be sued, and when all the facts happened which are material to be proved to entitle the plaintiff to succeed. Where time has begun to run owing to the right to sue having accrued to a person not laboring under any legal disability, the subsequent disability of himself or his son or other representative is not a ground of exemption from the operation of the ordinary rule.

Section 10- Suits against trustees and their representatives- Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested if trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof or for an account of such property or proceeds, shall be barred by any length of time.

Explanation - For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trusted thereof.

Section 11- Suits on contracts entered into outside the territories to which the Act extends-

- (1) Suits instituted in the territories to which this Act extends on contracts entered into the State of Jammu and Kashmir or in a foreign country shall be rules of limitation contained in this Act.**
- (2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defense to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless -**
 - a. the rule has extinguished the contract; and**
 - b. the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.**

COMPUTATION OF PERIOD OF LIMITATION

Section 12 -. Exclusion of time in legal proceedings -

- (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.
- (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) Where a decree or order is appealed from or sought to be revised or reviewed, or when an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.
- (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation - In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for copy thereof is made shall not be excluded.

Example: In a suit for specific performance of agreement the date of performance mentioned in the agreement will be the date for reckoning the period of limitation of three years and that date has to be excluded for computing the period of limitation for three years which is the period of limitation for filing such a suit.

A suit for recovery of loan has to be filed within three years of the date of granting the loan. Hand note receipt was dated 5.9.1991 and the suit filed on 5th September 1994 would be within time because the date of hand note i.e. 5.9.1991 has to be excluded for computing the period of limitation.

The suit for recovery of money based on promissory note was filed on 16.04.2003. The note was executed on 12.04.2000. So, the suit has to be filed on 12.04.2003 as the date of execution of the promissory note has to be excluded in view of s. 12 of the Limitation Act. But from 12.04.2003 to 15.04.2003 there were general holidays. So, the suit filed on 16.04.2003 is not barred by limitation.

Time requisite for obtaining the certified copy of the judgment and decree will be excluded. The delay caused by the carelessness for negligence of the party in applying for a copy are in paying the money required for making the copy cannot be excluded from computation.

Time between judgment and signing of decree - Generally there is an interval of time between the delivery of the judgment and signing of the decree. In computing the time requisite for obtaining a copy of the decree or an order any time taken by the court to prepare the decree

or order before application for copy thereof is made shall not be excluded. The interval between judgment and signing the decree cannot be excluded as the time requisite without regard to the date of application for copies. In other words that it is only the time required if the application is made that can be excluded as the time requisite.

Section 13- Exclusion of time in cases where leave to sue or appeal as a pauper is applied for -

In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court-fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court-fees had been paid in the first instance.

14. Exclusion of time of proceeding bona fide in court without jurisdiction -

- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**
- (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**
- (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature.**

Explanation - For the purpose of this section, -

- a. in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;**
- b. a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;**

c. misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. But, when the party seeking the benefit of this section has failed to get the relief in earlier proceedings not because of any defect in jurisdiction or some other cause of like nature he cannot get the benefit of section 14. When the plaintiff has concurrent remedies and has availed one remedy and has become unsuccessful he cannot get the benefit of section 14 when instituting the second alternative remedy though section 14 does apply to appeal, the principle underlying it can be invoked in aid of sufficient cause contemplated by section 15. The benefit of this provision is not available in criminal proceeding. Execution proceeding is a civil proceeding within the meaning of S.14, the primary requirement for seeking exclusion u/s 14 is that the matter was prosecuted before a court suffering from defect in jurisdiction. Further it is necessary that the same plaintiff should be in both the suits it is not necessary that the plaintiff must have been prosecuting the previous proceeding as a plaintiff, it is sufficient if as a defendant he was urging the same case as he after words prefers as a plaintiff. It is also necessary that the defendant must be the same in both the proceeding. Due diligence in good faith needs to be established. The definition of good faith is given under S. 2 (4) of the Limitation Act, which requires the thing to be done with due care and attention. S.14 will not help a party who is guilty of negligence lapse or in action. This Section also does not apply where the previous suit was abandoned or withdrawn by the plaintiff and then a fresh suit has been filed after the period of limitation.

There is a fundamental distinction between discretion to be used under Section 5 of the Limitation Act and exclusion of time provided under Section 14 of the Limitation Act. Whereas the exclusion under Section 5 is discretionary, under S/14 it is mandatory. If the initial filing is due to carelessness the subsequent prosecution of the suit cannot be said in good faith. The benefit of this section can be availed only when there is initial want of jurisdiction. Where the plaintiff chooses to withdraw his suit under O 23 R 1 CPC he is not entitled to the benefit of Section 14 of the Limitation Act in a subsequent suit on the same cause of action. If a suit is withdrawn by the plaintiff under O 23 R 1 with permission to bring another suit, and a fresh suit is instituted, the plaintiff is bound by the limitation in the same manner as if the first suit had not been instituted. This is so even if the court expresses its opinion that Section 14 shall apply.

The policy of the Section is to afford protection against the bar of limitation to a man pursuing his claim in a wrong forum. The following condition must be satisfied for the application of this Section--

- Both the prior and subsequent proceeding are civil proceeding prosecuted by the same party
- The prior proceeding had been prosecuted with due diligence
- The failure of the prior proceeding was on account of jurisdiction or subjects of like nature
- The prior proceeding and the later proceeding should be of the like nature.

- It applies only to proceedings before Court

J. Kumardasan Nair v. IRIC Sohan AIR 2009 SC 1333

Fact:

First Respondent obtained a decree in a suit and the said decree was put in execution vide Execution Petition No. 705 of 1977. Respondent no 2 to 6 are the heirs and legal representative of Respondent no.1. The said execution petition was dismissed by an order dated 8.7.1996.

The Judgment Debtor suffered another decree passed in original suit no. 274/82 regarding which Execution Petition No. 271 of 1986 was filed. A sale Certificate was issued in respect of suit property.

Respondent No 1 to 5 filed a second execution petition. Appellants were impleaded as Respondent 16-17. They raised objection inter alia on ground of Limitation. The said objection petition was rejected.

An appeal was preferred which was held to be not maintainable by the 1st Appellate Court by an order dated 5.10.2015. However, the merit of the case was also considered.

Aggrieved by the order Execution 2nd Appeal was preferred before the Hon'ble High Court. It was held that the impugned order was not correct in entering into merit of the case despite holding that the appeal was not maintainable.

A revision petition was filed along with a petition under Section 5 of the Limitation Act for condonation of delay. However application under Section 5 was withdrawn and an application under Section 14 was filed. High Court held that the said application was not maintainable in the facts and circumstance of the case and the expression 'cause of like nature' has to be read as ***ejusdem generis*** with expression 'defect of jurisdiction' and that so construed the expression 'other cause of like nature' must be interpreted so as to convey something analogous to the preceding words 'from defect of jurisdiction'

Apex Court allowed the appeal negating the reasoning given by the High Court that Section 14 can be allowed in cases of Jurisdictional error and not otherwise.

Consolidated Engg. Enterprises v. Irrigation Department (2008)7 SCC 169

Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court

The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Arbitration and Conciliation Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded

There must be no pretended mistake intentionally made with a view to delaying the proceeding or harassing the opposite party. In the light of these proceedings the question will have to be considered whether appellant prosecuted the matter in the court with due diligence and good faith. The definition of “good faith” as found in S.2(4) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and caution.

Benefit under Section 14 is not available in a Criminal Proceeding.

The second suit is not a continuation of the first suit and the limitation is to be computed afresh with respect to the second suit. It is only the period in which the plaintiff prosecuted the suit bona-fide in another court is relevant and which can be excluded.

Section 14 provides for exclusion of period, whereas Section 5 provides for con-donation of delay.

Commissioner, M.P. Housing Board and Ors v. M/S Mohan Lal and Company, 2016 SCC Online SC 738 --- It has been held in this case that filing of an application under Section 11 of the Arbitration and conciliation Act 1996, for an appointment of arbitrator is totally different than an objection to award under Section 34 of the 1996 Act as one is at the stage of initiation and another is at the stage of culmination. Thus, proceedings do not relate to “same matter in issue” and therefore Section 14 shall not apply.

Section 15- Exclusion of time in certain other cases

- (1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.
- (2) In computing the period of limitation for any suit of which notice has been given, or for which the previous 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, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation - In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

- (3) In computing the period of limitation for any suit or application for execution of decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as 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 proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall 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 shall be excluded.
- (5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

In computing the period of limitation, **where a suit has been filed** or an application for stay has been made, the time during which there was a stay order of the against the **filing of suit or execution application** shall be excluded.

Where a plaintiff is required to give notice to the Government u/s 80 Civil Procedure Code he is entitle to exclude the period of notice in computing the period of limitation prescribed for the suit

A receiver including an interim receiver or a liquidator including a provisional liquidator appointed in a proceeding for adjudication of a person as an insolvent or in proceeding for the winding up of a company as the case may be, is entitled, in view of sub-sec. (3), the exclusion of the period between the date of application and the date of appointment and also additional period of three months thereafter in computing the period of limitation for filing suit or execution as such receiver or liquidator. As such receiver or liquidator needs sufficient time

to acquaint himself with the affairs of the estate or of the company, as the case may be, and its assets and liabilities before he can take steps for filing a suit or for giving him a period of three months after his appointment to file a suit or a petition for execution.

Two conditions have to be fulfilled in order to obtain the benefit of S. 15 (4) namely :

The suit should be one for possession by the purchaser at a sale in execution of the decree, and

It should be a suit and not an application if these two conditions are fulfilled then the time during which a proceeding for setting aside the sale deed been prosecuted shall be excluded

Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd., AIR 1972 SC 1311

Facts: The plaintiff company filed a suit on 15th November 1965 for recovery of a sum of money from the defendant company on account of the tax liability of the latter discharged by the plaintiff before 15th November 1962. The defendant, a foreign company, was attending the general meetings of the plaintiff company through its representatives.

Held: Section 15(5) of the Limitation Act, 1963 can be viewed in one of the two ways i.e. that that provision does not apply to incorporated companies at all or alternatively that the incorporated companies must be held to reside in places where they carry on their activities and thus being present in all those places. Hungerford is an investment company. It had invested large sums of monies in Turner Morrison. Its Board of Directors used to meet in India now and then. It was (through its representatives) attending the general meeting of the shareholders of Turner Morrison. Under those circumstances, it must be held to have been residing in this country and consequently was not absent from this country. Hence Section 15(5) cannot afford any assistance to Turner Morrison to save the bar of limitation.

SECTION 16- EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF RIGHT TO SUE

- (1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an 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 the deceased capable of instituting such suit or making such application.***
- (2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.***
- (3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of preemption or to suit for the possession of immovable property or of a hereditary office.***

“Before the right accrues” – The death must occur before the right to sue or make an application accrues. If the right accrues in the life-time of the deceased, limitation begins to run from the date of accrual, and it matters not whether by a will proved or by any other means a legal representative comes into existence or not. The intention of Section 16 is to limit the time during which an action may be brought and not to take away the rights of a person who is a possible defendant to an action and it is not intended to accurate any right of action against such a person. The expression ‘capable of suing’ is the equivalent of ‘not being under legal disability to sue’. It does not refer to an incapacity arising from want of means or absence or other physical cause.

Section 16 confines to rights of action accruing after death. It makes it applicable to rights of action accruing either simultaneous on death or thereafter of the person suing or sued. In order to attract the applicability of Section 16, it is necessary that the death must occur before the right to institute a suit or make an application accrues. If the right to institute a suit or make an application accrues in the life time of the deceased the limitation shall begin to run from the date of the accrual of cause of action and the provisions of Section 16 would not apply.

SECTION 17-- EFFECT OF FRAUD OR MISTAKE

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,--

- (a) the suit of application is based upon the fraud of the defendant or respondent or his agent; or***
- (b) the knowledge of the right or title on which the suit or application is founded is concealed by the fraud of any such person as aforesaid; or***
- (c) the suit or application is for relief from the consequences of a mistake; or***
- (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;***

the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or with reasonable diligence could have discovered the it; or in the case of a concealed document, applicant first had the means of producing the concealed document or compelling its production ;

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against or set aside any transaction affecting, any property which-

- i. in the case of fraud, 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***

- ii. *in the case of mistake, 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*
- iii. *in the case of a concealed document, 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 the document had been concealed.*

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

This section does not apply to criminal cases. According to the Hon'ble Supreme Court in, ***Pallav Sheth v. Custodian*** (2001) 7 SCC 549, the provision of this section embodies fundamental principles of justice and equity, vis., that a party should not be penalized for failing to adopt legal proceedings when the facts or material necessary for him to do so have been willfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favor by virtue of such fraud.

If the plaintiff claims exemption on the ground of fraud on the part of the defendant he must prove the fraud. In such a case it is for the plaintiff to give in the first instance clear proof of the fraud alleged by him. The court will not presume it from the mere existence of suspicious circumstances.

Recently in 2018, the Hon'ble Supreme Court in ***P. Radha Bai v. P. Ashok Kumar***, examined the applicability of Section 17 of the Limitation Act, 1963 for condonation of a delay caused on the account of alleged fraud played on the objector (party challenging the award) beyond the period prescribed under Section 34 (3) of the Arbitration and Conciliation Act of 1996. According to the Hon'ble Court, Section 17 does not encompass all kinds of frauds and mistakes. Section 17(1)(b) and (d) only encompasses only those fraudulent conduct or act of concealment of documents which have the effect of suppressing the knowledge entitling a party to pursue its legal remedy. Once a party becomes aware of the antecedent facts necessary to pursue a legal proceeding, the limitation period commences.

SECTION 18- EFFECT OF ACKNOWLEDGEMENT IN WRITING

(1) Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment 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 derived his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment 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 (1 of 1872), oral evidence of its contents shall not be received.

Explanation - For the purposes of this section, -

- a. an acknowledgment 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 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;**
- b. the word "signed" means signed either personally or by an agent duly Authorized in this behalf; and**
- c. an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.**

It is not necessary that an acknowledgment within Section 18 must contain a promise pay or should amount to a promise to pay. *[Subbarsadya v. Narashimha, AIR 1936 Mad. 939]*

The acknowledgement must be unqualified so as to create fresh cause of action. The acknowledgement must be of existing liability. It must be an acknowledgement of debt as such and must involve an admission of a subsisting relationship of debtor and creditor; and an intention to continue it until it is lawfully determined must also be evident. The acknowledgement must be made before the expiry of the period of limitation. An acknowledgement of barred liability is not material. Thus where the debt has already become time-barred, acknowledgement cannot create fresh period of limitation. An acknowledgement without signature is no acknowledgement. It will be sufficient if the acknowledgement is signed by the agent and not by the debtor. Acknowledgement should be by a person who has personal liability to pay. Acknowledgement does not create a new debt it only extends the period of limitation. Acknowledgement must relate to a definite liability in respect of the right claimed. Explanation (b) to S.18 has explained that the writing containing the acknowledgement need not be signed by the debtor himself; it would be sufficient if the signature is that of the agent. Agent's authority may be by way of a power of attorney or it may be gathered from the surrounding circumstance of the case.

An unregistered document, registration of which is compulsory, can be used for the collateral purpose of proving acknowledgement of liability for the purpose of extending time under S.18 of the Limitation Act.

Application to Execution Proceedings – Section 18 does not apply to execution of decree. So, even in case of consent decree for specific performance of contract, the execution has to be filed within 12 years of the date on which the decree becomes executable.

SECTION 19- EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his

agent duly Authorized in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment.

Explanation - For the purposes of this section, -

- a. where mortgaged land is in the possession of the mortgagee, the receipt of the rent of produce of such land be deemed to be a payment;*
- b. "debt" does not include money payable under a decree or order of a court.*

A payment saves limitation under this section if it is made by a person liable to pay it a purchaser of equity of redemption is a person liable to pay the mortgage the debt therefore, if under a mortgage decree of sale of the mortgaged property to which he is a party through exempted from person liability he pays interest as such, such payment gives a fresh period of limitation for execution of the decree.

A payment by one of the two joint debtors would save limitation against the other debtor also. In order to attract Section 19, payment has to be made within the period of limitation and not that the acknowledgement of such payment has to be made within the period of limitation. It will suffice if it is signed before the suit is commenced.

Under Section 19 it is the payment which extends the limitation and such payment has to be proved in a particular way, namely, a written or signed acknowledgement. That is the only mode of proof of such payment.

SECTION 20 - EFFECT OF ACKNOWLEDGMENT OR PAYMENT BY ANOTHER PERSON

- (1) The expression "agent duly Authorized in this behalf" in sections 18 and 19 shall in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly Authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.*
- (2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.*
- (3) For the purposes of the said sections, -*
 - a. an acknowledgment signed or a payment made in respect of any liability by, or by the duly Authorized agent of, any limited owner of property who is governed by Hindu Law, shall be a valid acknowledgment or payment, as the case may be, against a reversionary succeeding to such liability; and*
 - (b) where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly Authorized*

agent or, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

The word 'chargeable' in Section 20 means every kind of chargeability and includes liability as to property it is not limited to personal liability only. Section 20 of the Limitation Act is explanatory of Sections 18 and 19 of the Act and does not constitute an exception in the case of either of these sections.

Section 20 of the Limitation Act shows that for the purpose of Section 20, the payment made by a guardian must be held to be a payment by an agent duly authorized on his behalf.

SECTION 21-- EFFECT OF SUBSTITUTING OR ADDING NEW PLAINTIFF OR DEFENDANT

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the tendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

If some of them institute a suit within time and the other plaintiffs are added after the period of limitation, the claim of the original plaintiffs, would be barred. Order I Rule 10(2) CPC provides for the addition of (1) necessary parties(2) proper parties. In adding necessary parties Section 21 of the Limitation Act has to be taken into account, but in adding proper party Section 21 has no application.

The proviso to sub-section (1) of Section 21 clothes the court with the direction to condone the delay in filing the application for addition of parties after the period of limitation provided the same is made bona-fide and good cause is shown therefore.

SECTION 22--- CONTINUING BREACHES AND TORTS

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during the breach or the tort, as the case may be, continues.

According to Section 22 of the Limitation Act, 1963 in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. This section speaks about continuing breach of contract and not of successive breach of contract.

The expression 'Continuing breach of contract or continuing tort' means that, if an act or omission on the part of an accused continued the breach of contract or wrongs, and if that act

or omission continues from day to day, then a fresh cause of action de die in diem (from day to day) causes for a fresh offence every day on which the act or omission continues.

Section 22 of the Limitation Act relates to continuing breach of contract and also to continuing tort which this section provides for a suit for compensation for acts not actionable without special damage. The law of Limitation recognized that liabilities for payments of damages and/or compensation may continue to accrue day to day newly in respect of continuing breach of contracts and torts.

The continuing tort means continuing 'wrong'. Section 22 refers to a continuing wrong or tort. A continuing wrong creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. An infringement of a trade mark is a continuing wrong. In *Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co.*, AIR 1997 SC 1398, it has been held that after filing the first suit based on the infringement of trade mark and passing off action till the date of suit, a second suit is filed for continuous acts of infringement of trade mark subsequent to the filing of the earlier suit is not barred.

SECTION 23 – SUITS FOR COMPENSATION FOR ACTS NOT ACTIONABLE WITHOUT SPECIAL DAMAGE

In the case of suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results there from, the period of limitation shall be computed from the time when the injury results.

The provisions of Section 23 are applicable even in cases of special or local laws, unless expressly barred or excluded in accordance with Section 29 of the Limitation Act.

The Section 23 of the Limitation Act is applicable to suits based on both torts and contracts. It deals with a suit for compensation for an act which does not give rise to a cause of action. The expression 'cause of action' is not defined by the Limitation Act. However, it means every fact which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the court.

To avail the benefit of Section 23 of the Limitation Act, it must be proved that some specific injury has occurred to the plaintiff. The word 'specific' means that can be specified and the word 'injury' includes a legal injuries.

SECTION 24 – COMPUTATION OF TIME MENTIONED IN INSTRUMENT

All instruments shall for purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

PART- IV
ACQUISITION OF OWNERSHIP BY POSSESSION

SECTION 25 - ACQUISITION OF EASEMENT BY PRESCRIPTION

- (1) *Where the access and use of light or air to and for any building have been peaceably enjoyed there with as an easement, and as of right, without interruption and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of other easement shall be absolute and indefeasible.***
- (2) *Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein claim to which such period relates is contested.***
- (3) *Where property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words "twenty years" the words "thirty years" were substituted.***

Explanation - Nothing is an interruption within the meaning of the section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

SECTION 26- EXCLUSION IN FAVOR OF REVERSIONARY OF SERVANT TENEMENT –

Where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled on such determination to the said land or water.

SECTION 27- EXTINGUISHMENT OF RIGHT TO PROPERTY

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.

It is an exception to the general principle that the laws of limitation only bar remedy and does not extinguish title. This is not only a law of limitation but is also a law of prescription. It only extinguishes the title of a rightful owner but it does not specifically states as to where such right vests. But the title of the property cannot be left in the air. So on the extinguishment of the title of the rightful owner, such title to the property shall follow possession and person in possession as trespasser is to be treated to have acquired title by adverse possession. The right

extinguished by Section 27 of the Limitation Act is the right which the lawful owner has and against whom a claim of adverse possession is made.

MadinaBegam v.. Shiv Murthy Prasad Pandey, 2016 (4) JBCJ 63 SC – The decision of the 3 Judges Bench of the Hon'ble Supreme Court in **Ahmadsahab Abdul Mulla (Dead) v. Bibijan and Others** was followed in this case and the question “*whether the use of the expression “date” used in Article 54 of the Schedule to the Limitation Act is suggestive of a specific date in the Calendar?*” was addressed. The Apex Court held that the expression “date fixed for performance” is a crystallized notion. When a date is fixed it means that there is a definite date fixed for doing a particular act and, therefore, the expression “date” is definitely suggestive of a specified date in the Calendar.

Therefore, for a suit for specific performance of an agreement, if a date is fixed then non-compliance with agreement on the date would give a cause of action to file a suit for specific performance within three years from the date so fixed. But where no such date is fixed limitation of three years would begin when plaintiff has notice the defendant has refused performance of agreement.

PART V MISCELLANEOUS

SECTION 29 – SAVINGS

1. ***Nothing in this Act shall affect Section 25 of the Indian Contract Act 1872.***
2. ***Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision contained in Sections 4 to 24 apply only insofar as , and to, the extent which, they are not expressly excluded by such special or local law.***
3. ***Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.***
4. ***Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act,1882 may for the time being extend***

In case of Special Laws the limitation as provided under the special law shall have application and not the limitation as provided under the Limitation Act. Another important point that has been made is that the provisions of the limitation Act Sections 4 to 24 shall stand excluded only when the Special Act excludes its operation.

Suryachakra Power Corporation v. Electricity Department[2016(7)Supreme 111]

1. An appeal under Section 125 Electricity Act 2003 filed after 120 days cannot be entertained by the Supreme Court. The Appellant is not even entitled to the benefit of the principle under Section 4 of the Limitation Act for exclusion of the period when the Court is closed.
2. Section 5 of the Limitation Act cannot be invoked for entertaining an appeal filed against the decision of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso.
3. Section 14 of the Limitation Act can be applied even when Section 5 of the Act is not applicable. For availing benefit of Section 14 the party should be prosecuting another civil proceeding with due diligence, and the prosecution should be in good faith. Both due diligence and good faith must be established.

Sunil Krishna Ghosh v. Calcutta Improvement Trust [AIR 2001 Cal 199]

It was contended in the case that Article 55 of the Limitation Act will be applicable in the case since there was no fixed time to execute the conveyance sought to be performed in the agreement and when there is no fixed time, the suit has to be brought within three years from the date of the refusal to perform the agreement.

The Court held in this case that in this case the plaintiff had performed his part of the contract but the defendant had not and there was no stipulated date for the performance of the contract. The defendant had not in writing refused either to execute their conveyance or to perform their part. Thus there was a continuous breach on the part of the defendant to perform by not handing over the physical possession of the property. It is therefore a case where not only Art 55 of the Limitation Act but also Section 22 of the Limitation Act was applicable as this was a continuing cause of action because in each and every day, the breach was being committed by the defendant. Consequently, the suit was not held to be barred.

ARTICLE 136 OF THE SCHEDULE OF THE LIMITATION ACT

Article 136 of the Limitation Act 1963 provides for a 12 year for any limitation for the execution of any decree or order of court. The period of limitation to commence from the time when the decree or order becomes enforceable or decree or order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making payment or delivery in respect of which execution is sought takes place: provided an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. The test to be applied for determining whether the decree was capable of immediate execution is whether the performance of condition was entirely dependent on the will of the decree holder. If the execution was not within the power of the decree-holder but dependent on some extraneous circumstance then the period of limitation shall not commence till the presence that external circumstance.

Chandi Prasad v. Jagdish Prasad [2004(8) SCC 724] -

Issue involved in the Case - “What would be the date from which a decree becomes enforceable for execution thereof within the meaning of Article 136 of the Limitation Act, 1963?”

According to the doctrine of merger, when an appeal is prescribed under the statute and an appeal is preferred before a higher forum and a passes a decree, the decree of the trial court merges with the decree of the appellate court and even if subject to the modification that may be made in appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words merger of the decree takes place irrespective of the fact whether appellate court affirms, modifies, or reverses the decree of the trial court.

It was held that once a decree is sought to be enforced for the purpose of execution thereof irrespective of being original or appellate, the date of the decree or any subsequent order would be considered to be the starting period for limitation. In this case, the final decree was prepared in a partition suit by the trial court on 07.05 1968. After appeal, the High Court decided the second appeal on 18.04.85 and drew up a formal decree pursuant thereto on 30.10.86. Thus the decree of the High Court merged with that of the trial court. In view thereof the execution application filed on 26.03.97 was held not to be time barred because when an appellate forum is invoked and entertained, for all intent and purpose the suit continues.

Mangra Dhobi v. KheduaBaraik [2005(2) JCR 491 (Jhr)]

The sale deed which had been sought to be cancelled was dated 10.11.1979 and on the basis of the said sale deed, the purchaser defendant had filed Mutation Case and in that Mutation Proceeding, the Plaintiffs had appeared and filed objection and that objection was rejected and the Mutation Proceeding was allowed in favour of the Defendant No. 2 by order dated 11.2.1980. The plaintiffs had thus knowledge of the said deed at least on the date of the objection made by them on 11.2.1980. The suit was filed on 14.5.1986, admittedly, much beyond the prescribed period of limitation seeking the relief of cancellation of the sale deed. It was held that unless the 1st claim for cancellation of the sale deed is decreed in favour of the plaintiff, their right, title cannot be declared in respect of the suit land and second relief prayed for by them cannot be granted. In that view, the Hon'ble High Court held that the suit was barred by law of limitation. Regard being had to the nature of the suit, the provision of Article 59 of the Limitation Act has been correctly referred to and applied by the learned lower appellate Court in deciding the question of limitation.

ADVERSE POSSESSION

Under the old Act, all suits for possession, whether based on proprietary title or on the ground of previous possession, were governed by Art.142 where the plaintiff while in possession was dispossessed or discontinued in possession. Where the case was not one of dispossession of the plaintiff or discontinuance of possession by him, the said Article did not apply.

Suits based on title alone and not on dispossession or discontinuance of possession was governed by Art. 144, unless they were specifically covered by some other Article, namely, 47, 136, 137, 138, 140 and 141.

In all suits for possession based on dispossession, whether the plaintiff had title or not, the burden of proof under the old Act was on the plaintiff to prove that he was in possession within 12 years of the suit. Under the present Act, a suit based on title, even if dispossession also is alleged, the defendant can succeed only if he proves that his possession had become adverse to the plaintiff beyond 12 years of the suit. Under the present Act, the plaintiff need prove only his title and he need not Show that he was in possession within 12 years of the suit.

SCOPE OF ARTICLES 142 AND 144

➤ ***GURBINDER SINGH AND ANOTHER V. LAL SINGH AND ANOTHER AIR 1965 SC. 1553***

Facts:

One Mst. Raj Kaur was holding certain lands on different tenures under the Raja of Faridkot. She had two daughters. She adopted the son of one of them and put him in possession of all the lands. He transferred a part of the lands to the second respondent who was son of the other daughter of Raj Kaur. After Raj Kaur's death the Raja filed suits for possession of the land, and in execution of the decree he obtained in those suits, took possession of the entire land, in October, 1938. He then transferred the land, but the transferee was dispossessed by the appellants in June 1950, in execution of a decree they obtained, in a suit for preemption filed by them against the transferee. The second respondent's mother had died in 1938 and her sons the first and second respondents, filed a suit for possession of the entire land in February 1950, as heirs of Raj Kaur, but it was decreed only to the extent of their half share, and the decree was affirmed by the High Court. In the appeal to the Hon'ble Supreme Court it was contended that the suit was governed either by Article 142 or Article 144 of the Indian Limitation Act, 1908, and on either basis, was barred by time.

Decision: -

Article 142 - In order that the article may be attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or someone through whom the defendant claims or alternatively, the plaintiff should have discontinued possession. It was no one's case that the first respondent was ever in possession of the property. As regards the second respondent's possession at one time of a part of the property, it was by reason of a transfer by the adopted son. The claim in the instant case, however, was by succession, under a different title altogether, and so it must be held that the plaintiffs-respondents, as heirs of Raj Kaur, were never in possession of the land.

Article 144 - Article 144 was applicable to the suit, but the suit was not barred by time. In a suit to which Art 144 is attracted, the burden is on the defendant to establish that he was in adverse possession for 12 years before the date of suit, and for computation of that period, he can avail himself of the adverse possession of any person or persons through whom he claims but not the adverse possession of independent trespassers. The starting point of limitation in Article 144 is the date when the possession of the defendant becomes adverse to the plaintiff. The gist of the definition of the word "defendant" in Section 2(4) of the Act is the existence of a jural relationship between the different persons referred to in the definition, and there can be no jural relationship between two independent trespassers.

SUITS ON THE BASIS OF POSSESSION AND SUITS BASED ON PROPRIETARY TITLE.

Under the present Act, all suits for possession of immovable property have been brought under two categories:-

1. Suits based only on the right of previous possession and not on proprietary title.
2. Suits based on proprietary title. .

In the first case, Art.64 applies and in the other case, Art.65 applies. In the former, time begins to run from the date of dispossession of the plaintiff or the discontinuance of possession. In the case of the latter, time begins to run when the possession of the defendant becomes adverse to the plaintiff. In the case of *Neelakanta Pillai vs. Bharathi Amma* 1971 KLT SN. 54, it was held that Article 142 applies to a suit for recovery of possession by a person who has been dispossessed, even on the strength of his prior possession.

ARTICLES 64 AND 65: REASON FOR THE CHANGE IN LAW.

As observed by the Hon'ble Supreme Court in *RajRani & Another v. Kailashchand & Another* [AIR. 1977 SC 1123] that the difficulty in deciding the question whether Art. 142 or Art 144 Limitation Act applies to a case which really depends upon an interpretation of the pleadings was sought to be removed in the Limitation Act of 1963 by a more clarified position in Articles 64 and 65 of the Limitation Act of 1963. The reasons given for this changes were:

"Articles 142 and 144 of the existing Act have given rise to a good deal of confusion with respect to suits for possession by owners of property. Art.64 as proposed replaces Art. 142 but is restricted to suits based on possessory title so that an owner of property does not lose his right to the property unless the defendant in possession is able to prove adverse possession." In other words, in cases governed by the former Limitation Act, at any rate, a plaintiff admitting dispossession, in suits based on title, had to prove that he was in actual or constructive possession within 12 years. Hence the change in law.

ARTICLES 64 AND 65: DISTINCTION- I

In both cases, suit must be for possession. The same was the position under Articles 142 and 144 of the old Act. A suit for mere declaration of right to property is not a suit for possession, within the meaning of Art 64 or 65.

Where possession is claimed in a suit as a consequence of the declaration, the suit would be covered by Art 65 and not by Art 58 of the present Act. Suits for possession mean suits in which possession is asked for as the primary relief. Where the primary relief is something other than possession, and possession is asked for as a consequence of the primary relief being granted, the article which applies is the appropriate article for the primary relief. e.g. Suits for pre-emption, Suit for redemption of usufructuary mortgage. It is not always the form of the relief claimed that will determine the real character of the suit. The question is what in substance does the plaintiff claim. A suit for possession does not invariably mean a suit for actual physical possession. It means a suit for such possession as the property is capable of the previous possession contemplated under Art. 64 is effective possession. By effecting possession is meant either actual possession or constructive possession. e.g. Possession through a tenant.

ARTICLES 64 AND 65: DISTINCTION- II

Suit for possession based on prior possession and dispossession are generally referred to as suits based on possessory title as distinguished from suits based on proprietary title. Suits under Art. 64 are suits based on possessory title, while suits under Art. 65 are suits based on proprietary title. In a suit for possession based on possessory title, under Art.64, the plaintiff will be entitled to succeed as against all persons except the true owner. Whereas under Section 6 of the Specific Relief Act, if the plaintiff proves prior possession and dispossession within six months of the suit, and such dispossession is otherwise than in due course of law, he will be entitled to recover possession notwithstanding that the defendant may be the true owner. The onus of proof is on the defendant to prove that he has got better title to the property than the plaintiff, in suits under Art. 64 as observed in *Nair Service Society v. K.C. Alexander (AIR 1968 SC 1165)*.

Effective possession is necessary. By effective possession it is meant either actual possession or possession through a tenant, who must have paid rent voluntarily or under a decree to the person claiming possessory title. Mere paper adornment is not enough. Plaintiff failing to prove his proprietary title but proving his prior possession is entitled to recovery of possession if the defendant is found to be a trespasser. Person having possessory title can protect such title from invasion by trespassers. Such possessory title can be invoked against all persons except true owner. *Philip and Others v. Sharia and Others, 1987 (1) KLT 213*

Possessory title is inheritable, devisable and transferable. Earlier possessory title is better than possessory title obtained later. Held: "It will not be necessary for the plaintiff to establish his possession for the statutory period. The position is that as between two persons who are unable to make out a valid title the person who was having possession prior to the dispossession is really entitled to have the property restored to him from the trespasser. A trespasser does not have any right whatever to dispossess a person in possession. A trespasser cannot take the stand that the person whom he had thrown out from the property had no proprietary title and consequently the least concerned with any other interest in the property."

ARTICLES 64 AND 65 DISTINCTION- III

There was a difference of opinion as to whether Art. 142 (Art : 64) was confined to suits

for possession on the ground of possessory title, or whether it was applicable to all cases of dispossession, whether the plaintiff was suing merely on his possessory title or on his proprietary title also. The general trend of opinion was that the article would apply to all cases of dispossession, when the plaintiff sued on possessory or proprietary title. The contrary view was that Article 64 applies only to suits on possessory title and could not apply to suits on proprietary title even though it was a case of dispossession. Art. 64 of the new Act specifically say: 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. Art.65 applies to suits for possession based on title even though the plaintiff was dispossessed. Therefore the cardinal difference between Art.64 and 65 is that the former relates to suits based on possessory title and dispossession by the defendant while the latter is a suit based on title and it does not matter in such cases whether the plaintiff was dispossessed or not.

MurtiDussadhin and Others v. Surajdeo Singh and Othres, AIR 1965 SC 875

A suit for possession based on title without any allegations of dispossession was governed by Art. 144 (Art. 65). In that case, the suit was for declaration of title and the plaintiff asserted that he was in possession. But an alternative relief was claimed that he should be put in possession if it is found that he should be deemed to have been dispossessed by reason of earlier proceedings under Cr.P.C.

Defendant did not deny it but claimed he had acquired occupancy rights. Neither party alleged dispossession or discontinuance of possession of the plaintiff. Held that Art.144 (Art.65) applied and that the case must proceed on the defendants' plea. (Under the present Act, all suits for possession based on title will be governed by Art.65)

Kesar Singh v. Balwant Singh, [AIR 1967 SC 487]

A suit was filed by the Plaintiffs for the ejectment of the defendants who were the servants of the plaintiffs as they did not want their services any more. In such a case, the Hon'ble Supreme Court held that the bar of limitation under Article 142 cannot apply since originally the possession of the appellant and the other defendant was clearly permissive, there can be no question of the application of Art. 142 in the present case and the appellant could only succeed if he could prove adverse possession under Art. 144 for over 12 years.

ARTICLES 64 AND 65 DISTINCTION- IV

Suits under Art.64 should be filed within 12 years of the date of dispossession. Suits based on proprietary title come under Art.65 even though the plaintiff was dispossessed. In such cases, the mere lapse of a period of 12 years from the date of dispossession will not make the suit time barred unless the defendant can prove that he has been in adverse possession continuously for "a period of 12 years before the suit. In suits under Art.64, the period of limitation start from the date of dispossession, While in suits under Art. 65 limitation period commences when the possession of the defendant becomes adverse to the plaintiff.

ARTICLES 64 AND 65 DISTINCTION- (V)

Under the present Act, in cases under Art.64, the onus is on the plaintiff to prove that

his dispossession took place within the period of limitation. Similarly in cases coming under Art.65, the onus will be on the defendant to prove that he was in adverse possession against the plaintiff for more than the statutory period.

Under the old Act, Art. 142 applied to all cases of dispossession and discontinuance of possession, even in cases where the suit was filed by the true owner. Therefore even in such cases, the plaintiff was bound to prove dispossession within 12 years. Under the 1963 Act, suits for possession based on title come under Act.65 under which limitation runs from the time when the defendant's possession. Becomes adverse to the plaintiff and not from the time when the plaintiff was dispossessed as under Art.64. Therefore under the present Act, in a suit for possession based on title, the onus is no longer on the plaintiff to prove that his dispossession took place within the period of limitation.

Under the new Act, in a suit for possession based on title, the onus of proof is on the defendant to prove at what point of time his possession became adverse to the plaintiff prior to the statutory period.

ARTICLES 64 AND 65 DISTINCTION- (VI)

Article 64: Applies in the case of immovable property alone.

Article 65: Applies in the ease of immovable property or any interest therein. The interest in immovable property referred to in Art.65 must be such as is capable of being enjoyed by acts of ownership because unless it is so, there cannot be any adverse possession of such interest. Under the old Act also, the position was the same. Article 142 is limited to suits for possession of immovable property and Article 144 includes, in addition to suits for possession of immovable property, suits for possession of interest in immovable property.

Interest in Immovable Property: Interest in immovable property does not relate only to a personal liability. The following are some examples of interest in immovable property:

1. Right to collect assessment of lands endowed in favour of a shrine.
 2. Right of occupancy tenant in the land.
 3. Right to a watercourse.
 4. Right to collect rent of the property.
 5. Right to graze cattle on the land of another.
- Bihar Regulation (1 of 1969) w.e.f. 8.2.1969 Period of Limitation 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in part III to the schedule of constitution (Schedule Tribes) Order 1950.
 - "Adverse possession" means Hostile possession which is expressly are impliedly in denial of the title of the true owner. Such possession must be actual and exclusive under a claim or right adequate in continuity in publicity and in extent so as to show that it is adverse to the true owner. The plea must be taken in the pleading and a specific averment as to

the point of time from which possession become adverse is necessary. Plea of adverse possession cannot be sustained in the absence of *animus possidendi*. Mere possession for the statutory period is not sufficient unless there is an assertion of hostile title possession be it of whatever length does not ripen of title.

- Permissive Possession is not adverse and can be terminated at any time by the rightful owner. In the absence of evidence to support the plea of openness hostility are notoriety such possession will not establish adverse possession permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted hostile title therein for a period of 12 years or more.

SECTION 6 OF THE SPECIFIC RELIEF ACT AND ARTICLES 64 AND 65 OF THE LIMITATION ACT.

If the owner of the property is dispossessed by force by a trespasser, the owner can institute a suit for possession under Section 6 of the Specific Relief Act without proving title. Period of limitation: 6 months. (Sec.6 (2) (a)). Even after the period of 6 months, he can bring a suit on title period of limitation is 12 years under Art. 65.

Even if a person is unlawful possession, he can bring a suit against a trespasser including the owner under section 6 of the Specific Relief Act. (On the ground of his dispossession otherwise than in due course of law). He can bring such a suit against the true owner only under Section 6. He cannot do so under Article 64 or 65 of the Limitation Act. What is saved under Section 6 (4) of the Specific Relief Act is only a suit based on title.

A person in unlawful possession can bring a suit against a trespasser who has no title to the property (i.e. not the owner) both under section 6 and under Article 64. That is a suit under Article 64 and it is saved by section 6 (4) of the Specific Relief Act. Such suit is only one based on previous possession and dispossession and not on "title" within the meaning of Article 64 although it is a suit based on title within the meaning of Section 6 (4) of the Specific Relief Act. The word "Title" is used in Art. 64 and 65 in a restrictive sense as including only proprietary title as distinguished from possessory title, although the word title is wide enough to include both proprietary and possessory titles. A person who has not availed the remedy under Section 6 can bring a suit on title after the expiry of six months. There is no bar. Such a suit can be filed by the true owner against a trespasser or by a previous trespasser against a subsequent trespasser but a suit is not maintainable against the true owner.

Where a trespasser is forcibly evicted by the true owner and the trespasser obtains a decree against the true owner under Section 6, the true owner can institute a suit on title and the Article which applies is Art. 65. Suppose a true owner is ejected by a trespasser. True owner obtains a decree under Section 6 and gets possession in execution of the decree. Thereafter the trespasser cannot institute a suit against the true owner for possession since the trespasser has no title as against the true owner.

Jaldhari Mahto and Others v. Rajendra Singh and Others, AIR 1958 Pat 386

In cases falling under Art. 142 of the Limitation Act 1908 in regard to suits where the plaintiff comes forward with the allegation that while in possession, he was dispossessed or had discontinued possession, and the action is for possession, the onus in such cases would be for the plaintiff to show that he had a title to possession, whether a possessory or proprietary one, which is superior to that of the defendant, and that his dispossession or discontinuance of possession was within 12 years of the suit or in other words that he was in possession within 12 years of the suit. The position will be different where the plaintiff does not admit the defendant to be a tenant of his and sues as a proprietor to recover the land and the defendant sets up a tenancy right under the plaintiff. In such a case the plaintiff has not to prove anything because the admitted paramount title carries with it a presumption that the plaintiff is entitled to hold and possess the land and therefore the person seeking to defeat that right and claiming to hold

under him must establish a right so asserted by him. Therefore, when the owner of the land seeks recovery of possession, and the defendant puts forward a plea that he is in possession as a lessee under the plaintiff or his predecessor in interest, there is no necessity for the plaintiff to prove possession within 12 years. This principle is applicable in all cases where in defense to a suit for recovery of possession on the strength of the plaintiff's title it is contended by the defendant that he is holding the property as a lessee under the plaintiff irrespective of whether the lease set up by the defendant originated within or beyond the period of 12 years from the date of the suit.

Kalliyani v. Kalliani, 1969 KLT 362

It was held by the Hon'ble Court that it is well settled that a plaintiff, who is suing for possession of property in the occupation of another, cannot rest his case on title alone. He must show that he has exercised rights of ownership by being in possession within 12 years of suit. The Court further went on to examine the question whether this principle would apply in a case where in answer to the claim for possession, the defendant sets up a tenancy, which is disputed by the plaintiff?

It was held by the Court that the question is which is the admission relied onto relieve the plaintiff from the burden of proving subsisting title. If the admission relied on by the parties is the admission in the written statement that the defendant was a lessee on the date of the suit, and has therefore admitted that the plaintiff was in constructive possession on the date of the institution of the suit, then perhaps there might be no logic in saying that lease must have originated within 12 years of the suit. Even if the lease set up was one granted before 12 years of the date of suit, if the allegation in the written statement is that the defendant continued in possession under the lease when the suit was filed, it might be difficult to say that there was no admission on the part of the defendant that the plaintiff was in possession within 12 years of the date of the suit.

Where the plaintiff alleges tenancy and the defendant admits the same or where the plaintiff or defendant allege tenancy and such tenancy is proved, the suit may, in essence, be one between landlord and tenant, and in such a case the plaintiff is not called on to prove possession within 12 years of suit—he would nevertheless have to prove that the tenancy has been duly determined so as to entitle him to present possession, and, in view of Article 139 that this determination was within 12 years before the suit. But where one of the parties alleges a tenancy but it is not substantiated in evidence, the principle to be applied is not the one applicable to a suit between landlord and tenant in the matter of limitation. No doubt, the admission by the defendant in such a suit that he is a tenant may amount to an admission that when the tenancy was created the landlord was in possession, so that he could put the tenant in possession. If the tenancy alleged happens to be one which commenced within 12 years of the suit, plaintiff may succeed on the strength of title, taking the admission of the defendant as proving the possession of the plaintiff within 12 years. The Court, however, observed that the principle cannot be extended to cases where the admission implied in a plea of tenancy relates to a period more than 12 years prior to the date of suit.

Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan, 2009(1)JLJ 82 (SC)

The Supreme Court observed that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who clandestinely takes possession of the property of the true owner in contravention of law. The Supreme Court recommended the Union Government to seriously consider the urgent need of fresh look regarding the law on adverse possession and make suitable changes in the laws related thereto.

Dharampal (dead) through LRs v. Punjab Waqf Board, 2017(7) Supreme 156

The Supreme Court followed its Judgement given in *Gurdwara Sahib v. Gram Panchayat Village Sirthala and Others* and held that a plea of adverse possession cannot be set up by the plaintiff to claim ownership over the suit property but such plea can be raised by the defendant by way of defence in his written statement in answer to the plaintiff's claim. In the light of law laid down in the case of *Gurdwara Sahib* (supra), , the plea raised by the original appellant (Defendant No.1) in his counter-claim filed against the plaintiff wherein he sought a declaration of his ownership over the suit land only on the plea of "adverse possession" was held to be not permissible, in the present case. It was held so because a counter-claim is treated as a plaint under Order 8 Rule 6A(4) of the CPC.

The Court also addressed the question of what "adverse possession" is and on whom the burden of proof lies and lastly, what should be the approach of the Courts while dealing with such plea. The Court observed that in view of the several authorities of this Court, what can safely be said is that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter.

Dulal Chandra Pramanik and Another v. State of Bihar (now Jharkhand, 2013(1) JCR 82 (Jhr)

Where eviction proceeding have been initiated against the petitioner by the state well before the expiry of the limitation period of 30 years , the petitioner or their predecessors could not have claim title by adverse possession. Once a proceeding for eviction was initiated then in such a situation, if time is consumed in getting the possession, the party in possession cannot claim benefit because of his possession during eviction proceedings nor he can be said to be in "peaceful possession" for acquiring hostile title. The Hon'ble High Court reiterated the

observations made by the Hon'ble Supreme Court in *R.Hanumaiah and Another v. Secretary to Government of Karnataka, Revenue Department and Others, 2010(5) SCC 203*, wherein the Apex Court had made clear distinction between the claim of adverse possession over a private property and Government property and had observed that Any loss of Government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

According to the Court many civil courts deal with suits for declaration of title and injunction against the Government in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before suit for declaration of title against a Government is decreed, the Plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority) or by establishing adverse possession for a period of more than thirty years.

D.N.Venkatarayappa and Another v. State of Karnataka and Others, AIR 1997 SC 2930

Apart from actual and continuous possession which is among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse possession." Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. It was held that in the absence of crucial pleadings regarding adverse possession and evidence to show that the petitioners have in uninterrupted and continuous possession of the land in question claiming the right title and interest of the original grantee, the petitioners cannot claim title by adverse possession. Adverse possession implies that it commenced in wrong and maintained against right.

S.M. Karim v. Mst. Bibi Sakina, AIR 1964 SC 1254

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when the possession becomes adverse so that starting point of the limitation against a party can be found. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.

P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314

It is well settled that the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario* (without force, without secrecy, without permission). In order to establish adverse possession of non-co-heir as against another it is not enough to show that one out of the is in sole possession and enjoyment of the profits of the properties.

Ouster of Non-possessing co-heirs by the co-heir in possession who claims possession should be made out. The possession of one Co-heir in law is considered possession of all the co-heirs. When co-heir is found to be in possession of the properties it is found to be the basis of a joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his part in derogation of other co-heir's title. It is settled law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by any one of them to the knowledge of the others to constitute ouster.

Karnatka Board of Wakf v. Govt of India and Others, 2004 (10) SCC 779

In the eye of law an owner would be deemed to be in possession so long there is no intrusion. Non-use of property even for a long time would not affect his title. But the position will be altered when another person's takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the true owner. It is a well settled principle of law that a party claiming adverse possession must prove that his possession is *nec vi, "nec clam nec, nec precario"*, that is peaceful, open and continuous. The possession must be adequate in continuity, extent and in publicity to show that their possession is adverse to the true owner. It must start with a wrongful disposition of a rightful owner and be actual, visible, exclusive, hostile and continuous over a statutory period. Adverse possession is not a pure question of law but is a blended question of law and fact. The person who claims adverse possession must show:

- On what date he came into possession.
- What was the nature of possession.
- Whether the factum of possession was known to the other party.
- How long his possession has continued.
- His possession was open and undisturbed.

A person pleading adverse possession has no equities in his favor. Since he is trying to destroy the right of true owner, it is for him to plead and establish all facts necessary to establish his adverse possession.

Dipnarayan Rai and Others v. Pundeo Rai and Others, AIR 1947 Pat 99

As regards co-owners, the law is that there can be no adverse possession by one co-owner unless there has been a denial of title and also to the knowledge of the others, and the same principal applies to the case of the transferee from a co-owner who professedly takes a transfer of the whole property from him. There can be no difference in principle whether the person is the original co-owner or has become a co-owner by virtue of transfer

Mohd. Zainulabudeen v. Sayed Ahmed Mohideen and Others, AIR 1990 SC 507

It is well established that adverse possession of one co-heir against another is not enough to show that one out of them is in sole possession and enjoyment of the profits of

properties, and that ouster of the none possession co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. In such case one co-heir found to be in possession of the properties is presumed to be on the basis of joint title. The Supreme Court further reiterated the decision in *P. LaxmiReddy (supra)* that the co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secrete hostile animus on his own part in the derogation of the co-heirs title. As held in ***Shah Ahmad MohiuddinKmisulQudari, AIR 1971 SC 2184***, the Supreme Court also held that the possession of one co-owner is presumed to be the possession of the all co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them.

Phul Kumari Devi v. Sambhu Prasad Singh and Others, AIR 1965 Pat 87

The test to be applied in cases of claim of adverse possession by a co-sharer is what was the animus of the parties, that is to say whether the co-sharer in possession intended to hold the property in his own exclusive right on behalf of all the co-sharers, and conversely, whether the co-sharer who were out of possession intended that the co-sharer in possession should represent them also in relation to the properties. The intention of the parties is to be determined with reference to their act or omissions and conduct in relation to the property. Where, therefore it is found that the co-sharer in possession has been treating the entire property as his won and nor recognizing the rights therein in of the co-sharers who are out of possession, and the co-sharer who are out of possession are aware of the hostile attitude taken up by the co-sharer in possession and yet they allowed the co-sharer in possession to continue in exclusive possession of the property without taking any effective step towards challenging the exclusive right in the property, insisted upon the co-sharers in possession, for more than statutory period of 12 years; the co-sharer who are out of possession cannot prevent the actual of exclusive title in the co-sharer in possession merely by paying occasional visits to the properties without any intention to exercise their rights of ownership therein.

It is true that a right to partition can be resisted from the ground of adverse possession provided there has been ouster in respect of the properties for a requisite period of 12 years, but that comment by act of ouster to his knowledge.

Iftikar Ahmed Khan v. Md. Sahabuddin, AIR 2010 Jhar 26

The Jharkhand followed the decision of the Hon'ble Supreme Court in ***Deva (dead) through LRs v. Sajjan Kumar (dead) through LRs, AIR 2003 SC 3907***, that mere long possession for a period of more than twelve years without intention to possess the suit property adversely to the title of the plaintiff and to his knowledge cannot result in acquisition of title by the defendant to the property in dispute. In order to establish adverse possession it is not enough to show that one is in sole possession and enjoying the property. Ouster of the non-possessing party by the party in possession, who claims his possession to be adverse, should be made out. It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession. It is also well settled that limitation cannot begin to run against a person unless at the time when person is legally in a position to vindicate his title by action. Commencement of adverse possession implies that

person in actual possession, at the time, with a notorious hostile claim of exclusive title so that true owner would then be in a possession to maintain an action.

COMPUTATION OF PERIOD OF LIMITATION

Part III Section 12-24 of Limitation Act, 1963 provides for computation of the period of limitation. They either exclude time of reckoning the period of limitation or postpone starting point of limitation. **Sections 12-15** of the Limitation Act provide for the exclusion of time in computing the period of limitation prescribed by law.

Those provisions, *inter alia*, exclude the following periods:

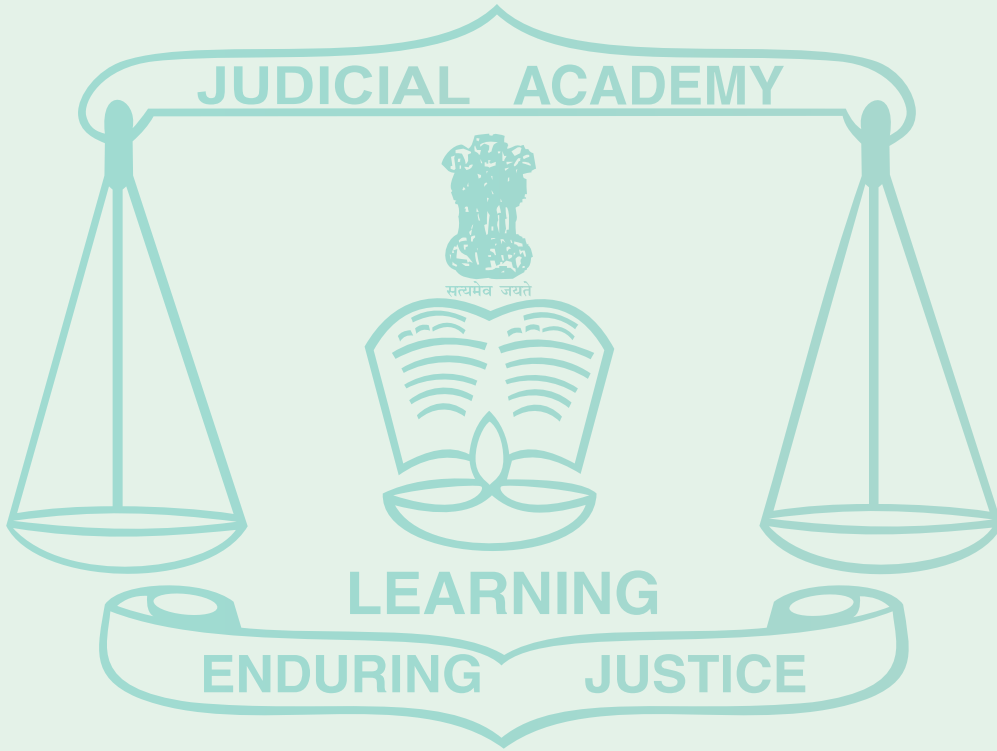
1. The day on which the period of limitation is to be reckoned.
2. The day on which the judgment/order/award is pronounced.
3. The time spent in obtaining the copy of decree/order/award/sentence.
4. The time spent in prosecuting an application to sue as an indigent person.
5. The time spent in proceedings taken bona fide (in good faith) in court having no jurisdiction.
6. The time during which stay or injunction operated.
7. The time spent in giving notice or for obtaining consent or sanction required by law.
8. The time during which there was receiver or liquidator.
9. The time during which proceedings to set aside sale were pending (in a suit for possession).
10. The time during which the defendant had been out of India.

Sections 16-23 of the Limitation Act, 1963 provide for postponement of limitation. For the application of the law of limitation, there must be a completed cause of action. In other words, there must be a person who can sue, a person who can be sued, and a cause of action on which a suit, appeal or application can be filed. Moreover, such person should be in a position to institute such proceeding without any hindrance, obstruction or impediment.

1. The period of limitation will not start running till there is a person who can sue or who can be sued. In the following cases, there is a postponement of limitation, i.e. the period of limitation will not start running.
2. In case of fraud or mistake, the period of limitation will not start running till such fraud or mistake is discovered.
3. In case of right or liability, a fresh period of limitation will start running from the date of acknowledgement in writing of such right or liability by the party.
4. In case of debt, payment will provide a fresh period of limitation from the time of such payment.

5. Where after the institution of a suit, a new plaintiff or defendant is added or substituted, the suit shall be deemed to be instituted against him when he was made a party. But if the court is satisfied that such omission was due to bonafide mistake, the suit shall be deemed to have been instituted on an earlier date.
6. In case of continuing breach of contract or tort a fresh period of limitation begins to run every moment till breach or tort continues.
7. In a suit for compensation for an act not actionable without special damage, the period of limitation will be computed from the time the injury result.





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