

Chapter - 17

Law of Limitation Act, 1963

The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petition or application.

"Act applies to all civil proceeding and some criminal proceedings."

The Act extends to whole of India

IMP Bar of Limitation (Section-3)

Section 3 provides that any suit, appeal or application if made beyond the prescribed time / period of limitation, it is the duty of court not to proceed with such suit irrespective of fact whether the plea of limitation has been set up in defence or not.

The Act, ^(Section-3) is mandatory. The court can suo moto take note of question of limitation.

The question whether a suit is barred by limitation should be decided on the date of presentation of the plaint.

It is a vital section upon which whole limitation Act depends.

Decision of a court allowing a suit which had been instituted after the period of prescribed is not vitiated (will valid) for want of jurisdiction. decree passed in a time barred suit is not a nullity.

(It will remain valid)

"Limitations Bars Remedy But does not Extinguish Right" [Section - 3]

When the period of limitation has expired but it does not extinguish the right that it cannot be enforced by judicial process.

"Bombay Dying & Mfg. Co. Ltd v. State of Bombay"

Thus if claim is satisfied outside the court of law after the expiry of period of limitation is not illegal.

Extension of Time in Certain cases -

Doctrine of Sufficient Cause for Extension of Time or Condonation of Delay. (Section 5)

Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay.

This is known as doctrine of "sufficient cause" for condonation of delay.

The extension under this section applies only to appeals and applications. It does't apply to suit.

Court may admit an application or appeal even after the expiry of specified period of limitation if its satisfied that there was a sufficient cause for filing on time

In *Ramlal v. Rewa Coal Fields Ltd*, the supreme court held that once the limitation period expires then the appellant has to explain the delay made for every day & if he is unable to explain the delay even for a single day it would be deemed that the party didn't have sufficient cause for delay.

What is sufficient cause and what is not may be explained by the following judicial observations -

Wrong practice of High court which misled the appellant or his counsel not filing the appeal should be regarded as sufficient cause.

Mistake of counsel may be taken into consideration in condonation of delay.

Wrong advice given by advocate is a sufficient cause.

Mistake of law may be considered as sufficient cause but ignorance of law is not an excuse nor the negligence of party or the legal adviser constitute sufficient cause.

Imprisonment of party or serious illness of the party is sufficient cause.

Time taken for obtaining certified copies is

of the decree necessary to accompany the appeal or application.

Non-availability of the file of the case to the state counsel or panel lawyers is no ground for condonation of inordinate delay.

Sickness of father during which period the defendant was looking after him is a sufficient and genuine cause.

- * Test of sufficient cause is purely an individualistic test, it is not a objective test. Therefore 2 cases cannot be treated alike.
- * Court has been empowered with discretion to decide individual cases whether circumstances exist establish a sufficient cause
- * There is no category of sufficient cause
- * Each case is different.

↑ As per "RV Ram Likan V. RV Bhubneshwar"

Person under legal disability -

The objective of these section is to extend the period of limitation for person suffering from legal disability.

Section-6

When the person who can institute suit and make application is a minor, insane or idiot

then his limitation period will begin from the date of cessation of legal disability (i.e. when the minor becomes major and the insane or idiot becomes normal).

If a person is suffering one legal disability and after before recovering from it he suffers from another disability, then he may file the case after end of all disabilities.

Section: 7

Applicable when several persons are jointly entitled to institute or make an application and out of the several persons, some are affected by legal disability.

Then,

→ If consent of that person are not necessary
↓

The period of limitation will continue as original.

If consent of that persons are necessary
↓

→ The period of limitation will extend for all joints persons.

Section: 8

The period of limitation cannot extend beyond three years from the date of cessation of legal disability.

If the ordinary period of limitation expires

after the end of three years of legal limitation then such original period shall be considered.

Section-9 Continuous Running of Time -

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

"Time when once it has commenced to run in any case will not cease to be so by reason of any subsequent reason."

When time begun to run, no subsequent disability or inability will stop running.

This Act applies to only ~~to~~ suits and application. & does not apply to appeals.

- ★ ~~Set~~ For applicability of section-9.
- It is essential that cause of action or right to move application must continue to exist and subsisting on the date on which particular application is made.
- So, time starts ~~when~~ running for limitation period when cause of action occurs.
- Accrual of cause of action is the point of which plaintiff could have successfully maintained action.

Section: 12

while calculating period of limitation every day has to be counted except, the specific days are to be excluded-

In case of suit: The day on which period begins to run.

In case of Appeal: The day on which period begins to run.

- The day of pronouncement of judgement
- Time required for obtaining a copy of decree order, sentence or judgement.

In case of Application for revision or review:

Same as appeal.

Application^{to} set aside an award-

The day on which period begins to run.

Time required for obtaining copy of award.

In case of any other Application-

The day on which period begins to run.

Exclusion of time during which leave to sue or appeal as a pauper is applied for-

Section- 13

If someone can't afford to pay for a law suit or appeal they can ask the court for permission to proceed without paying fees (as a pauper). If request is denied time spent asking for this help won't be counted against the deadline for filing the case. If person pays later court will consider the case as if the fees was paid on time.

Exclusion of time in certain other cases

Section 16(1) and (2)

In case of death of a person before the right to institute a suit accrues, the period of limitation shall be computed from the time when legal representative of deceased is capable of instituting suit or making application.

Section - 17

where the suit or application is based upon the fraud or mistake of defendant, the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake subject to certain exceptions.

Effect of Acknowledgement on the period of limitation -

IMP Section - 18

Act deals with the effect of acknowledgment of liability in respect of property or right on the period of limitation.

The following requirements should be present for a valid acknowledgment.

- i. There must be an admission or acknowledgement.
- ii. Such acknowledgement must be in respect of any property or right.
- iii. It must be made before the expiry of period of limitation.
- iv. It must be in writing and signed by party (debtor) against whom such right is claimed.

If above requirements are satisfied a fresh period of limitation shall be computed from the time when acknowledgement was signed.

IMP Effect of Payment on Account of Debt or of Interest on legacy-

Section - 19

Where payment on account of a debt or interest is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when payment was made. An acknowledgement of payment must appear in writing and signed by person making payment.

where mortgaged land is in the possession of the mortgagee, the receipt of rent shall be deemed to be a payment.

Thus, a fresh period of limitation becomes available to creditor when part payment of interest payment is made.

Acquisition of ownership by Possession -

Section - 25 It provides that the right to access and use of light or air, water, watercourse, use of water or any other easement which have been peaceably enjoyed without interruption for 20 years (in case of gov. 30 years) shall be absolute and indefeasible.

The period of 20 years is a period ending within 2 years before institution of suit.

Classification of period of limitation -

Depending upon the duration, the period of limitation shall be different -

Period of 30 years -

The maximum period of limitation prescribed by the limitation act is 30 years and provided for the following kinds of suit.

Suits of mortgage for redemption or recovery of possession of immovable property mortgaged.

Suits by mortgagee for foreclosure.
 Suits by or on behalf of the Co or SOI.

Period of 12 years -

For various kinds of suits relating to immovable property, trust and endowments.

Period of 3 years -

For suits relating to account, contract, declaratory suits, suits relating to decree and suits related to immovable property.

Period of 1 to 3 years -

Suits relating to tort and other miscellaneous matters and suits for which no period of limitation is specified. (tort)

Period in days Between 10 to 90 days -

Application for leave to appear and defend a suit under summary procedure.

Section-18 Case Law -

In case of Lakshmi Path Swarna V. Union of India Supreme court rejected the argument that application was barred by limitation. Court affirmed the view taken by NCLT & NCIAT

that fresh period of limitation shall be computed from the date of acknowledgement of debt by principle debtor borrower.

Court emphasized that fresh period of limitation is required to be calculated from the date of acknowledgement of debt by principle borrower.

Acknowledgement in this case was given at date 8/12/2018. Therefore application filed on 13/2/2019 was considered within the limitation.

In *Assets Reconstruction Co (India) Ltd v. Bishal Jaiswal* Supreme Court held that entries made in books of account including in ~~the~~ Balance sheet may constitute an acknowledgement of liability under section 18 of limitation Act.

Section - 15

15(1) when suit or application for execution of decree has been stayed by an injunction or order — Time of continuance of injunction or order and day when it was issued & withdraw shall be excluded.

(2) Time needed for obtaining the government approval is excluded.

(3) The period from start of proceeding by receiver, liquidator until 3 months after their appointment is excluded.

(5) The time when defendant is absent from India shall also be excluded.

{ section - 3, 5, 6, 7, 8, 18, 19 } most Asked questions