

PAPER PRESENTATION
SUBMITTED BY

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Session No. IV

Declaration and Injunction Suits:

- (h) Parties eligible to seek Declaratory & Injunctive relief.
- (i) Limitation governing the Declaratory & Injunctive reliefs.

SESSION No.-IV**Declaration and Injunction Suits**

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(h) Parties eligible to seek Declaratory & Injunctive Relief**Declaration**

It is in the interest of the individuals and also for the development of economy that there should be smooth transactions with regard to property. However, there is always a possibility of casting a cloud upon the legal character or right to property of the citizens. It is manifestly for the interest of community that conflicting claims to the property should be settled. In such cases the Section 34 of the Specific Relief Act, 1963 enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from his legal character or right. It has been held that it was merely to perpetuate and strengthen testimony regarding the title of the plaintiff so that adverse attacks might not weaken it. But this does not mean that the section sanctions every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right as to Sections 34 and 35 of the Specific Relief Act, 1963.

Section 34 of Specific Relief Act reads as under:

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation: A trustee of property is a "person interested to deny "a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

Section 34 provides for "a suit against any person denying or interested to deny the plaintiffs' title to the legal character or right to any property". So it is clear that the plaintiff's task is not over once he proves that he is entitled to the legal character or right to property, it is for him to convince the court that the defendant has denied or interested to deny that legal character or right of the plaintiff. Then only he can succeed in obtaining the declaration sought. The provision is a verbatim reproduction of Section 42 of the Specific Relief Act, 1877. It ensures a remedy to the aggrieved person not only against all persons who actually claim an adverse interest to his own, but also against those who may do so.

Requisites: Section 34 of the Specific Relief Act, 1963 contemplates certain conditions which are to be fulfilled by a plaintiff. In *State of M.P. vs. Khan Bahadur Bhiwandiwalla*, AIR 1971 MP 65, the Hon'ble High Court of Madhya Pradesh held that in order to obtain the relief of declaration, the plaintiff must establish that (1) the plaintiff was at the time of the suit entitled to any legal character or any right to any property (ii) the defendant had denied or was interested in denying the character or the title of the plaintiff, (iii) the declaration asked for was a declaration that the plaintiff was entitled to a legal character or to a right to property (iv) the plaintiff was not in a position to claim a further relief than any property. Provision regarding declaratory decree has been provided in bare declaration of his title. It is to be submitted that the fourth requisite is not correct as the section only says that if any further relief could be claimed it should have been prayed for. Since declaration is an equitable remedy, the court still has discretion to grant or refuse the relief depending on the circumstances of each case.

Thus, a person claiming declaratory relief must show that he is entitled

1. to a legal character, or
2. to a right as to property, and that
3. the defendant has denied or is interested to deny his title to such character or right
4. he has sought all reliefs in the suit.

The object of section 34 is to provide a perpetual bulwark against adverse attacks on the title of the plaintiff, where a cloud is cast upon it, and to prevent further litigation by removing existing cause of controversy. The threat to his legal character has to be real and not imaginary. The Section does not lay down any rule, that one who claims any interest in the property, present or future, may ask the Court to give an opinion on his title. It does not warrant any kind of declaration that the plaintiff is entitled to a legal character or to any right as to any property, and it warrants this kind of remedy only in special circumstances. The plaintiff has to prove that the defendant has denied or is interested in denying to the character or title of the plaintiff. There must be some present danger or determent to his interest, so that a declaration is necessary to safeguard his right and clear the mist. The denial must be communicated to the plaintiff in order to give him cause of action.

Legal Character:

A man's status or legal status or 'legal character' is constituted by attributes, which the law attaches to him in his individual or personal capacity, the distinctive mark or dress as it were, with which the law clothes him. Legal character means a position recognized by law. According to Holland the chief variety of status among natural persons may be referred to the following causes: sex, minority, mental defect, rank, caste, official position, civil death, illegitimacy, profession, etc. The expressions 'legal character'

and 'right to property' are used disjunctively so that either of them, exclusively, may be the basis for filing a suit under section 34.

Persons Entitled to a Right to any Property:

The second requirement is that the person who seeks the remedy must have a right to any property. A right in Holland's proposition is a man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society. The courts have made a distinction between "right to property" and "a right in property" and it has been held that in order to claim a declaration the Plaintiff need not show a right in property. An agreement to sell certain property in favour of a person certainly gave him a right to property but not a right in the property. In *Mohammed Akabar Khan vs. Parsan Ali*, AIR 1930 Lah 793, a suit for a mere declaration that one person is related to another was held as not a suit to establish a legal right or any right as to any property and such suit would be incompetent.

To entitle a plaintiff to a declaratory decree, he must show that the defendant has actually denied or has some interest to deny his title or to any legal character or a right with any aspect of his property. In a suit for declaration, there must be a person who is denying the character or right of the plaintiff.

The Court has absolute discretion to refuse relief if it considers the claim to be too remote or the declaration, if given, would be ineffective. It was observed that the term 'right as to property' showed that the plaintiff should have an existing right in any particular property. The only limitation is that nobody can approach the Court for a declaration on a chance or a mere hope entertained.

Cloud upon title: A dispute between the parties may relate either to a person's legal character or rights or interest in the property. A cloud upon the title is something which is apparently valid, but which is in fact invalid. It is the semblance of the title, either legal or equitable, or a claim of an interest in property, appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce.

Consequential Relief: There may be real dispute as to the plaintiff's legal character or right to property, and the parties to be arrayed, yet the court will refuse to make any declaration in favour of the plaintiff, where able to seek further relief than a mere declaration, he omits to do so. The object of the proviso is to avoid multiplicity of suits. What the legislature aims at is that, if the plaintiff on the date of the suit is entitled to claim, as against the defendant to the cause some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice; he is bound to have the matter settled once for all in one suit.

Further relief must be a relief appropriate to and consequent on the right or title asserted and not merely ancillary.

It is a discretionary relief

Even if the essential elements are established, it is the discretion of the court to grant the relief. The relief of declaration cannot be claimed as a matter of right. In cases where the necessary parties are not joined the court can reject the suit for declaration. Under section 34, the discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. The court has to consider the nature of obligation in respect of which performance is sought. No hard and fast rule can be laid down for determining whether this discretionary relief should be granted or refused. The exercise of the discretion depends upon the chances of each case. A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.

Negative Declarations

A suit for a negative declaration may be maintained in a proper case, e.g., where it relates to a relationship. Thus, a suit for a declaration that a person was not, or is not, the plaintiff's wife, and the defendant not her son through him, may be maintainable. Similarly, a suit lies for obtaining a negative declaration that there is no relationship of landlord

and tenant between the plaintiff and defendant. But where the rights of the plaintiff are not affected or likely to be affected, suit simpliciter for a negative declaration is not maintainable. Such a suit would be regarding the status of the defendant which, in no way, affects the civil rights of the plaintiff.

Effect of Declaration

Section 35 makes it clear that a declaration made under this section does not operate a judgment in rem. Section 35 states that:

“A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees”

Thus, a declaratory decree binds:

- (a) the parties to the suit;
- (b) persons claiming through the parties;
- (c) where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

It is only the parties to the suit and the representatives in interest, but not the strangers who are bound by the decree.

By virtue of this section, a judgment only binds parties to the suit, and is not a judgment in rem.

Whether a suit for declaration is maintainable without seeking any consequential relief?

The Hon'ble Supreme Court of India in *Venkata Raja and Others Vs. Vidyane Doureradja Perumal*, 2013 Law Suit SC 313, and in *Deo Kuer & another. v. Sheo Prasad Singh & Ors.*, AIR 1966 SC 359, was pleased to consider the provisions of Section 42 of the Specific Relief Act 1877, (analogous to Section 34 of the Act 1963), and held, that where the defendant was not in physical possession, and not in a position to deliver possession to the plaintiff, it was not necessary for the plaintiff in a suit for declaration of title to property, to claim the possession. While laying down such a proposition, this Court placed reliance upon the judgments of Privy Council in *Sunder Singh Mallah Singh Sanatan Dharam High School Trust v. Managing Committee, Sunder Singh Mullah Singh Rajput High School*, AIR 1938 PC 73 and *Humayun Begam v. Shah Mohammad Khan*, AIR 1943 PC 94.

Section 34 of the Specific Relief Act, 1963 is wide enough in its scope as contemplates to settle not only conflicting claims to property, but also of disputes as to legal status. However, it must always be remembered that this provision is not a panacea of all types of legal disputes. The Courts must exercise their discretion while granting a declaratory decree and only in proper and fit cases this legal

remedy should be granted so as to avoid multiplicity of suits and to remove clouds over legal rights of a rightful person.

INJUNCTIVE RELIEF

Injunction is a relief of equity. Every person has a right to approach a court of law if he has a grievance for which law provides a remedy. An injunction means that one of the parties to a certain action must either do something or refrain from doing something. The law of injunctions is mainly governed by Order XXXIX CPC and section 36 to 42 of the Specific Relief Act 1963. Section 94(c) of the Civil Procedure Code also gives supplemental provision for grant of temporary injunction. The cardinal principles for granting injunction are : (1) prima facie Case; (2) balance of convenience; (3) irreparable Injury. It is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must adjudge the existence or otherwise of a prima facie case. In *Martin Burn Vs R.N. Banerjee*, AIR 1958 SC 79, it was held that the word prima facie means:

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the

conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence

The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the plaintiffs, if the injunction is refused, and compare it with that which is likely to be caused to the other side, if the injunction is granted.

Injunctions are of three kinds: - (I) temporary, (ii) permanent and (iii) mandatory. A permanent injunction restrains a party forever from doing the specified act and can be granted only on merits at the conclusion of the trial after hearing the both party to the suit. It is governed by sections 36 to 42 of the Specific Relief Act, 1963. A temporary or interim injunction on the other hand restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further order of the Court. It is regulated by the provision of the Order XXXIX of the Code of Civil Procedure, 1908 and may be granted at any stage of the suit. Mandatory injunction is an injunction which orders a party or requires them to do an affirmative act or mandates a specified course of conduct it is an extraordinary remedial process which is granted not as a matter of right, but in the excess of sound judicial discretion.

The Hon'ble Supreme Court has in the matter of *Anathula Sudhakar vs. P Buchi Reddy & others*, AIR 2008 SC

2033, clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief, which is reproduced as under:

Para 11.1- When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

Para 11.2- Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.

Para 11.3- Where the plaintiff is in possession but his title to the property is dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the plaintiff will have to sue for

declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

Parties to suit: In a suit for injunction, plaintiff has the prerogative to choose his opponents. Nobody can claim right to get himself impleaded unless allegations of collusion or fraud are made as held by the Hon'ble High Court of Andhra Pradesh in *Y. Venkata Reddy and others v. A.P. State Wakf Board. rep. by its Chief Executive Officer, Hyderabad and others.*, 2010 (6) ALT 812.

Suit for injunction by a person in possession without title: A person in possession can be evicted only by due process of law and hence even a rightful owner cannot eject him by force. If the rightful owner threatens his peaceful possession, he can approach courts of law and pray for the equitable relief of injunction to protect his possession.

Injunction against a lessee: An injunction can be granted to the plaintiff- Land lord to prevent the breach of an obligation existing in his favour under the tenancy when the defendant-tenant invades or threatens to invade the plaintiff's right by using the demised premises in a way not consistent with covenants of the lease or when he alters the structure

of the building by making excavation of unauthorized construction etc., on the leased premises.

Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is judicial and that possession is protected by statute. Under section 6 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under section 6 and claim possession against the true owner.

Injunction in case of nuisance:- A relief of injunction can be claimed to stop nuisance if in a noisy locality there is substantial addition to such noise by the introduction of some machine or instrument or some performance at the premises of the defendant which affects the physical comforts of the members or occupants of the plaintiff's house.

Injunction in case of Easementary rights:- Where an invasion of a right to light acquired as easement is complained of, sections 28,33 and 35 of the Indian Easements Act, 1882 have to be kept in view before granting an injunction

Injunction against a trustee: - A trustee making unauthorised changes in the case of a trust property affecting

the very character of the institution will be restrained by means of an injunction.

Unauthorized/illegal constructions by builders in violation of Municipal Laws: The burden lies heavily on the person seeking an order of ad-interim injunction to prima facie establish his legal right for such an order and to have complied with all the statutory provisions applicable for construction/ reconstruction of buildings. As no injunction can be passed by a court permitting a person to violate the law, or to restrain municipal authorities from discharging their statutory duties/ functions, the court should appraise itself of the relevant statutory provisions and not be swayed entirely by the self-serving pleas and evidence adduced by the person seeking its intervention. *Municipal Corporation of Hyderabad rep. by its Commissioner, Hyderabad v. M/s. Philomena Education Foundation of India rep. by its Sole Trustee, Hyderabad 2008 (1) ALT 670 (DB).*

When both parties are claiming same property: When both parties are claiming same property in a suit for permanent injunction, party in possession on the date of suit may be continued in possession as a custodia legis subject to terms, to say, to execute a bond for a certain sum to compensate in the event of his non-success in the suit, for any compensation that may fall for consideration under Section 95, CPC. *Lachalla Kistaiah Vs. Rekha Ramesh and another, 2015 (4) ALT 538.*

Intellectual Property Rights: When an ex parte ad interim injunction is asked in a suit for injunction or infringement or passing off, the Court has to keep in mind Sections 29, 103 to 109 and 135 of the Trade Marks Act, 1999. Any infringement or any criminal culpability resulting from such infringement or passing off certainly causes legal injury to the proprietor/owner of the registered/unregistered trade mark and as an interlocutory measure, the wrongdoer can be enjoined. While considering interlocutory applications for grant of temporary injunctions under Section 135(2) of the Act read with Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (CPC), the Court must keep in mind Sections 29 and 101 to 109 of the Act as well as other aspects regarding registration, the extent of infringement and the extent of damage that would likely be caused to plaintiff. *Variety Dry Fruit Stores, Secunderabad v. Variety Agencies, Secunderabad, 2010 (3) ALT 151 (DB).*

Defendant can seek Injunction: Defendant can convince the court and seek injunction against plaintiffs or others to protect his rights. *China Vempalli Gopal Reddy and others v. Smt. S. Ramanamma and others, 2011 (4) ALT 454.*

The object behind sub-clause (a) of Rule 1 of Order 39 is to preserve the property intact and not allow it to be damaged, or wasted or alienated or sold by any party, be he the plaintiff or the defendant, pending suit. For that purpose, an injunction could even be granted in favour of defendant and against the plaintiff. In fact, if such a relief is granted

under clause (a) it would equally sub-serve the ultimate relief that may be granted in the suit in favour even of the plaintiff or even in case the suit is dismissed so that the defendant is, left where he is so far as the property is concerned.

Whereas in cases of defendant claims to grant a positive relief in the manner mentioned in clauses (b) and (c) of Rule 1 of Order 39, C. P. C. is permissible Unless it is a case of a counter claim or set-off, the defendant is not entitled to any relief against the plaintiff in the main suit or original proceedings. In other words, while it is plaintiff who gets a positive relief in the main suit and for that purpose pays court-fee, the defendant does not get any positive relief in the suit in cases where no set-off or counter claim is made. The only benefit the defendant, gets in the event of his success, is that the plaintiff is refused relief.

Shareholders right: If temporary injunction as sought for by respondent Nos.1 and 2 is not granted, there is every possibility of further alienation of the suit schedule property which would create multiple litigation and it would become necessary to include all the remaining purchasers as parties to the suit The respondent No.3 cannot sell the entire joint property of himself and respondents 1 and 2 unless there is specific authority conferred on him by them to make such a sale Sale Deed executed by respondent No.3 in favour of respondent No.4, the title to the undivided shares of the respondent Nos. 1 and 2 did not pass to respondent No.4/appellants There is no merit in the Civil Miscellaneous

appeal, and is accordingly dismissed. (Paras 1, 30, 43 and 46), Eslavath Chandu Vs. Smt. N. Sangeetha, 2021 (4) ALT 458 (DB)

Mareva Injunctions against Foreign Defendants:

Mareva injunctions are restraint orders “freezing” the assets of the defendant, and can be issued even if the property or the person concerned is outside the jurisdiction of the court. It prevents a foreign defendant from removing his assets from the jurisdictions of the Court. Mareva Injunction and attachment before judgment are similar to each other. These Injunctions are popularly known as Mareva injunction from the popular case of *Mareva Compania Naviera SA v International Bulkcarriers SA* ([1975] 2 Lloyd’s Rep 509: [1980] 1 All E.R. 213). Mareva Injunction conserves the assets of the Infringer so that they are useful in case of paying damages to the IP Owner post judgment. It is granted in exceptional cases and there must be evidence or material to show that the debtor is acting in a manner, or is likely to act in a manner, that frustrates enforcement of any subsequent order/decreed of the court or tribunal.

Whether person in settled possession can claim

Injunction: In *Puran Singh v. State of Punjab* (1975) Suppl. SCR 299, the Hon’ble Supreme Court of India was pleased to hold that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. It was held that that the possession of a trespasser must be effective, undisturbed and

to the knowledge of the owner or without any attempt at concealment and that there is no special charm or magic in the words "settled possession" nor is it a ritualistic formula which can be confined in a straight jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. It was reiterated that the possession must be within the knowledge either express or implied, of the owner or without any attempt at concealment and which contains an element of animus possedendi. In that case possession for 14 days was held to be settled possession since they raised the crops in the land. This view was reiterated again in *Ram Ratan v. State of U.P. (1977)2 SCR 2323*, laying therein that the true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.

Injunction in case of co-owners: Where a co-owner intends to carry on with a material change in the user of joint property without the consent of the other co-owner, he may restrain the other from carrying on with such operations. A Co-owner can maintain an action for injunction for removal

of obstruction put up by the other co-owner on the joint property

Injunction in case of champertous agreements: An agreement to supply funds for litigation is not per se illegal and the Court while exercising discretion can grant injunction to enforce the obligation arising from such a contract. In *Nuthaki Venkataswami Vs. Katta Nagi Reddy AIR 1962 AP 457*, the Hon'ble High Court of Andhra Pradesh held that

“The important question for consideration, however, is with regard to the validity of the agreement. Initially it may be observed that the English Law in regard to champerty and maintenance does not apply to India for it has been laid down that the mere fact of an agreement being champertous is not of itself sufficient to render it void but it must be shown in addition that it is contrary to public policy. There is a long line of authority which establishes that a fair agreement to supply funds to carry on a suit in consideration of having a share in the property, if recovered, is not per se opposed to public policy and is not illegal”.

Injunction against trade unions: An injunction can be granted restraining the office bearers of a trade union from raising slogans and inciting acts of violence etc., but if such relief is otherwise barred like under sections 24 and 26 of the Industrial Disputes Act, 1947 or the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the suit for an injunction cannot lie.

(i) Limitation governing the Declaratory & Injunctive reliefs

LIMITATION GOVERNING TO SEEK DECLARATORY RELIEF

LIMITATION:

Suit for declaration	Three (3) years (from the date when right to sue accrues)	Article 58 of Limitation Act, 1963
Suit for declaration and possession	Twelve (12) years from the date from which the possession of the defendant becomes adverse to the plaintiff.	Article 65 of the Limitation Act, 1963.

In a suit for declaration of title to property, the period of limitation is 3 years under Article 58 of the Limitation Act. It commences from the date of denial (oral or written, express or implied) of his title and not from the date of commencement of the defendant's name in revenue records. The cause of action arises only when the denial occurs, or

when the plaintiff apprehends that the defendant may actually deny. In that case, the cause of action arises only when the denial occurs by a formal act, or an oral denial made to a third person or a denial made in writing. If, however, such denial is not communicated to the plaintiff, when cause of action will arise in that case. Normally, the right to sue accrues when the right in respect of which the declaration is sought is denied or challenged and the person who seeks the declaration has knowledge there about.

Article 65 applies to suits for possession on the basis of the title. It contemplates a suit for possession of the property when the defendant might be in adverse possession of it against the plaintiff. It applies to suits brought by the plaintiff claiming to the owner of the property against one who is in possession having no adverse in it. If the declaratory relief is sought together with the relief of possession, then Article 65 would be applicable in which event the limitation period will be 12 years.

In *Ravinder Kaur Grewal vs. Manjit Kaur*, (2019) 6 SCC 729, the Hon'ble Supreme Court of India was pleased to hold that an individual who has the property cannot be expelled by any other individual except as under Article 65 and further held that under Article 65 and other provisions of the Act, there is no obstruction for a plaintiff who has perfected their title through adverse possession to initiate legal action, either for eviction or safeguarding their possession.

When the main relief in a suit is for recovery of possession based on title with some ancillary relief for which lesser period of limitation has been prescribed, the limitation prescribed for the main relief i.e., Article 65 is attracted and the limitation prescribed for the ancillary relief is to be ignored.

Limitation governing injunctive relief:

The Limitation Act does not prescribe the period of limitation for a suit for injunction. A suit for injunction is governed by Article 113 of the Limitation Act. Article 113 of the Limitation Act states that the period of limitation is three years for any suit for which no period of limitation is provided elsewhere in the schedule and it begins to run when the right to sue accrues as held by the Hon'ble High Court of Madras in *Hemanakumar vs. D. Melvinkumar*, AIR Online 2018 Mad 2002.