WORK SHOP -I

IN

VIZIANAGARAM

UNIT

ON 21.06.2025

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Hon'ble Sri Justice

Ravi Cheemalapati

Administrative Judge

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LAW ON LIMITATION

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WORK SHOP-I

PAPER PRESENTATION

LIMITATION SUITS, APPEAL SUITS AND APPLICATIONS,

COMMUNICATION OF PERIOD OF LIMITATION

HELD ON 21-06-2025

MATERIAL SUBMITTED BY

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PRINCIPAL CIVIL JUDGE(JUNIOR DIVISION)
VIZIANAGARAM

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Workshop Material Submitted by M Srinivasarao, Principal Civil Judge(Junior Division), Vizianagaam

on Paper Presentation Given Topic Limitation Suits, Appeal Suits, and Appliations. Communication of period of Limitation

In general sense: A limitation period is a "stated period of time, the expiry of which extinguishes a parties legal remedies and also, in some cases, a parties legal rights". Albeit an innocuous and not a well known concept of law, limitations are set in statute as there is no drop-dead limitation period known to the historic common law; hence the alternate name, statute of limitations. However, the common law did develop a mirror concept of laches. Statute of limitations precludes creditors from collecting on breached contracts should the relevant limitation period have expired before they file their claim in court. It is an absolute defense beneficial to the debtor but the burden of proof of the statute of limitations is with the debtor. In many jurisdictions, the limitation period is shorter for an oral contrac t then it might be for a written contract. Jurisdictions also tend to protect certain agencies like newspapers, hospitals and local governments from protracted exposure to liability by extending to them the benefit of shorter limitation periods. In criminal law, such as in Canada, the common law has recently stepped in and forced upon prosecutors be reasonable period of time in which trial must occur from the date of the alleged offense. Jurisdictions typically establish set period of time in which a legal action must be commenced, running from the time the cause of action arises, failing which the cause of action is lost. Because the law is so different on point to detail from jurisdiction to jurisdiction or state to state, the all-important question of "when does the limitations clock start and how to stop it" are complex questions best left to a solicitor or a attorney. The limitation periods for breach of contract, personal injury or tort, defamation, assault, etc., differ in each jurisdiction. By way of an example, in the Canadian province of British Columbia, the revised statutes include a "Limitation Act" at Chapter 266,
s. 3(2), which sets out the following limitation periods, as of 2007:

That same piece of legislation sets a limitation period of 10 years for actions for breach of trust or for the return of personal property. Other jurisdictions propose a basic limitation (such as two years) and work from there.

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Law of limitation:- The Code of Civil Procedure confers a right to appeal, but does not prescribe a period of limitation for filing an appeal. The Limitation Act, 1963, however, provides the period of filing up appeals. It states that the appeals against a decree or order can be filed in a High Court within ninety days and in any other court in thirty days from the date of the decree or order appealed against. It is for general welfare that a period be put on litigation. Further, it is a general principle of law that law is made to p rotect only diligent and vigilant people. Equity aids the vigilant and not the indolent. Law will not protect people who are careless about their rights. (Vigilantibus non domientibus jur A subventiunt). Moreover, there should be certainty in law and matters cannot be ke pt in suspense indefinably. It is, therefore, provided that Courts of Law cannot be approached beyond fixed period. In civil matters, the limit is provided in Limitation Act, 1963.

The 'Law of Limitation' prescribes the time-limit for different suits within, which an aggrieved person can approach the court for redress or justice. The suit, if filed after the exploration of time-limit, is struck by the law of limitation.

It's basically meant to protect the long and established user and to indirectly punish persons who go into a long slumber over their rights.

The statutory law was established in stages. The very first Limitation Act was enacted for all courts in India in 1859. And finally took the form of Limitation Act in 1963.

A citizen is not expected to master the various provisions which provide for limitation in different matters but certain basic knowledge in this regard is necessary. For instance, Section 12 of the Limitation Act lays down certain guidelines regarding computation of limitation period. It says that 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. Further, 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 shall be excluded.

However, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded. Section 14 of the act, similarly, says that in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting in civil proceedings, whether in a court of first instance or of appeal or revision against the defendant shall be excluded where the proceedings relate to the same matter in a court

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which is unable to entertain it on account of defect of jurisdiction or other cause of a like nature. What does limitation period mean? The law prescribes different periods within which a person who has a grievance should go to court. For example, if somebody has borrowed your money and not returned it, you should approach the court within three years from the date you lent the money. If you don't go to the court within that time, the courts will not be of help to recover your money. This is called the limitation period. After the limitation period, you cannot enforce your rights in a court. The Limitation Act 1963prescribes different limitation periods for different kinds of claims. Some other Acts such as the Consumer Protection Act also prescribe limitation periods.

In the bare act:- Bar of limitation (1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal prefe rred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defense;

(1) For the purposes of this Act, (a) A suit is instituted,

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue is a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set-off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set-off, on the dame date as the suit in which the set off is pleaded;

(ii) in the case a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

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Short title, extent and commencement - (1) This Act may be called the Limitation Act,1963. 2. It extends to the whole of India. 3. It shall come into force on such date as the Central Government may be notification in the Official Gazette, appoint.

BAR OF LIMITATION– Subject to provisions of sections 4 to 24 of the Act (i.e. Limitation Act),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. [section 3(1)]. - - 'Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the schedule to the Act and 'prescribed period' means the period of limitation computed as per provisions of the Act. [section 2(j)]. PERIOD AS PRESCRIBED IN SCHEDULE TO THE ACT – The period has
been prescribed in Schedule to the Act. Generally, it is as follows – (a) 3 years for a suit relating to accounts, contracts, declarations, decrees, suits relating to movable property, recovery of law suit under a contract etc. (b) 12 years for suits relating to possession of immovable property and 30 years for mortgaged property (c) One year for suit relating to torts (3 years for compensation in certain cases (d) 30 to 90 days in case of appeals under Civil Procedure Code and Criminal Procedure Code. - - Period of filing appeal and application can be extended if proper cause is shown (but not the suit) [section 5].

IF COURT IS CLOSED ON LAST DAY – If court is closed on last day of limitation, suit, appeal or application can be filed on next day when Court reopens. [section 4].

CONTINUOUS RUNNING OF TIME – When once period of limitation starts running, it continues even if there is any subsequent disability or inability to institute a suit or make an application. [section 9]. - - However, if at the time when person is entitled to file a suit or make application, if a person was disabled (as he was minor or insane), the period of limitation will start after the disability is removed. [section 6(1)].

A misjoinder of parties or of cause of action shall be deemed to be a cause of a like nature mentioned above. Under Section 15 of the act, the time during which an injunction or restraint order issued by a court remains in force, is to be excluded while computing t he period of limitation for any suit or application for the execution of a degree.

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In cases, where the previous consent or sanction of the government or any other authority is required under the law, the time required for obtaining such consent or sanction shall b e excluded. Where a defendant has been absent from India, the time during which he has been absent can be excluded from the period of limitation. In case, the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appea l or application may be instituted on the day when the court reopens, as provided under Section 4 of the ac t. This is based on the principle "actus curial neminem gravabit", which means that an act of court shall not prejudice any one. The court can condone the dela y, if satisfied that it causes were beyond the control of the plaintiff too.

Condonation of delay Rule 3-A:-

Condonance may be made when an accuser has previously forgiven or condoned (in some way or at some level) the act about which they are complaining. In some legal jurisdictions, and for certain behaviours, it may prevent the accuser from prevailing. Rule 3-A has been inserted by the Amendment Act of 1976. It provides that where an appeal has been presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application that the applicant has sufficient cause for not preferring the appeal within the time.

Prior to the insertion of rule 3-A, the practice was to admit such an appeal subject to the opinion regarding limitation. This practice was disapproved by privy – council, and it stressed the expediency of adopting a procedure for securing the final determination of the question as to limitation before admission of appeal. This rule is added to give effect to give effect to the recommendation of the privy council.

As observed by the Supreme Court in the **State of M.P v. Prandeep Kumar**, the object of the provision is two-fold; firstly to inform the appellant that the delayed appeal will not be entertained unless it is accompanied by an application accompanying the delay; and secondly, to communicate to the respondent that it may not be necessary for him to get ready on merits as the court has to first deal with an application for condonation of delay as a condition precedent. The provision is, however, directory not mandatory. If the memorandum of appeal is filed without an accompanying application for condonation of delay the consequence is not necessarily fatal. The defect is curable.

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Judicial Actions:

Raj Bahadur Singh & Another v. D.J. & Others(Civil Misc.Writ Petition No.12718 of 2002) : According to the learned Judge the application 4-Ga had been rejected on two grounds firstly being barred by limitation and secondly being without any valid ground. Thus, the appeal filed by the respondents was fully maintainable. He further submitted that t he learned District Judge vide order dated11.2.2002 had admitted the appeal while over ruling the preliminary objections and the writ petition filed by the petitioners is not maintainable. In the present case the question is as to whether an appeal lies against an order passed by the trial Court wherein it had by a common order rejected both the applications under section 5 of the Limitation Act and Order9 Rule 13

C.P.C. on the ground that the application is barred by Limitation and no ground for condonation of delay has been made out, or a revision lies. If it is held that no appeal lies then the order admitting the appeal is wholly without jurisdiction and in such a circumstance a writ petition is maintainable.

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

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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.VarkeyVarkey, 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

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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 duratio n. But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipublicaeut 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 theparties. **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 performa nce 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.

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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 mislead 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 separat e 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:

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(1) If appeals or other proceedings initiated by the Government are lost, no person is individually affected; but what in th e 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-onthe-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. While a private person can take instant decision, a "bureaucratic organ hesitates and debates, consults and considers, s peaks through paper, moves horizontally and vertically till at least it gravitates towards a conclusion—unmindful of time and personality."

(5) 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 pa rties 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 o n merits after hearing

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the parties" Condonation of delay in filing appeal can be decided only after hearing both the parties. Order 22, Rule 9 (3) the considerat ion 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)** - O41 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 man agement 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 t he 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

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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 wh ich the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application with in the same period after the disability has ceases, as would otherwise have been allowed from the time specified therefore in the third c olumn 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 wit hin 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 t he application within the same period after the death, as would otherwise have been allowed from the time so specified.

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(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 le gal 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 fo r 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 an d 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 unt il 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, along with four daughters and his widow. A sale de ed 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

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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: Artic le 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 purchas er 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 instit ute 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 pe rson, 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 g overned 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 t he 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-emotion, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the perso n 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 A rticle 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 Goukder v.Chinnapan, AIR 1965**

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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 in1942. 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 fathe r 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 th e 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 subse quent disability of himself or his son or other representative is not a ground of exemption from the operation of the ordinary rule.

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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 th e 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 in to 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 in stituted 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

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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

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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.

Section 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. 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 count 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.

(2) 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.

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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

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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 it 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 interalia 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

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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.

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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 of interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointment in proceedings for the

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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 condition 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 this 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

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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.

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"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

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charge against or set aside any transaction affecting, any property whichi. 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 proof 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***

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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 or 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 thee 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

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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. Agents 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 **READING MATERIAL ON** ***agent duly Authorized in this behalf, a fresh period of***

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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

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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 were 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.

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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

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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.**

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.

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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 afresh 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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CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES AND DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION.

Presented by :

KUM PONNURU BUJJI
JUDICIAL MAGISTRATE OF I CLASS (SPECIAL MOBILE) -CUM- II ADDITIONAL JUNIOR CIVIL JUDGE,VIZIANAGARAM.

DEFINITION OF LIMITATION PERIOD:

Indian Law defines a period of limitation as a period prescribed in the Limitation Act for institution of any suit, appeal, or application. The prescribe period is the period of limitation computed in accordance with the provisions of the limitation Act (section 2, limitation Act 1963).

iv. **PURPOSE OF LIMITATION:**

The act aims to prevent cases from dragging on indefinitely and promotes speedy disposal of cases by setting deadlines for legal action.

(3) **VARYING TIME FRAMES**:

The period of limitation can range from a few months to several years, depending on the specific relief sought.

EXAMPLES OF RELIEFS AND LIMITATION PERIODS:

(4) **Suits for Declaration:** Three years from when the right to sue first accrues.

(5) **Suits for Specific performance:** Three years from the date fixed for performance or, if no date is fixed, when the plaintiff has notice that the performance is refused.

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(6) **Suit for recovery of possession:** 12 years from the date of possession of the defendant becomes adverse.

(6) **Suit for Tort:** One, Tow, or three years, depending on the nature of the tort.

- **Exclusion of Time:**

Certain circumstances, such as legal disability or fraud, can lead to the exclusion of time from the calculation of the limitation period.

(3) **Acknowledgment of Debt:**

An acknowledgment of debt or liability can extend the limitation period if made before the expiration of the period.

Subject-Specific Legislation Governing Limitation in India:

Subject-specific legislation prescribe specific limitation periods for legal actions brought pursuant to the specific legislation, for instance:

1) Consumer Protection Act: A complaint filed under the Consumer Protection Act, 2019 (Consumer Protection Act) before a District Forum, the State Consumer Commission, or the National Consumer Commission will not be admitted unless it is filed **within two years from the date on which the cause of action arose (section 69 (1), Consumer Protection Act)**. A complaint filed outside of the two-year limitation period may be entertained upon a **showing of sufficient cause for not filing within the limitation period,** provided the court records its reasons for condoning the delay (section 69(2), Consumer Protection Act). Specific timelines are prescribed for filing of appeals from the District Forum to the State Consumer Commission and from the State Consumer Commission to the National Consumer Commission.

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2) **<u>Commercial Courts Act:</u>** This statute provides for constitution of commercial courts in India for adjudicating commercial disputes of specified value. It provides for mandatory pre-institution mediation before institution of a suit not praying for urgent interim relief. (Section 12A (1), Commercial Courts Act, 2015 (Commercial Courts Act).) The period during which parties were engaged in pre-institution mediation is specifically excluded while calculating limitation under the Limitation Act (section 12A (3), Commercial Courts Act).

3) **<u>Insolvency and Bankruptcy Code:</u>** The Insolvency and Bankruptcy Code consolidates the laws relating to reorganization and corporate insolvency resolution of corporate persons, partnership firms, and individuals in a time bound manner. **To compute the period of limitation specified for a suit or application, the period of moratorium (at the time of which all proceedings against the corporate debtor remains suspended) is specifically excluded. (Section 14, Insolvency and Bankruptcy Court.)** There are additional strict timelines for filing appeals from an order of the Adjudicating Authority to the National Company Law Appellate Tribunal.

4) **<u>Limitation and Arbitration</u>**

Section 43 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) stipulates that the Limitation Act is applicable to arbitration proceedings in the same manner as it applies to court proceedings. **The date from which the right to sue accrues may vary from case to case and typically depends upon the agreement between the parties containing the arbitration clause**. Unless otherwise agreed between the parties, the date on which the arbitration is deemed to have

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commenced is the date on which a request for the dispute to be referred to arbitration is received by the opposing party. (Sections 21 and 43(2), Arbitration Act.) If a court **sets aside an arbitral award**, the period between the commencement of the arbitration and the d**ate of the court's order is not be included** in the computation of the time prescribed by the Limitation Act for filing fresh arbitral proceedings (Section 43(4), Arbitration Act).

5) Legislative Intent:

The law of limitation was enacted with the legislative intent to prevent stale disputes or grievances from coming to court where resolution or redressal is not sought within the prescribed time. The law of limitation bars the remedy of the plaintiff but does not extinguish their right. The law is intended to ensure that parties do not engage in dilatory tactics and instead seek their remedy expeditiously. (Balakrishnan v. M.A. Krishnamurthy, 7 SCC 123 (1987).)

6) Distinction Between Prescription and Limitation:

Prescription and limitation are distinct concepts under Indian law.

The law of limitation prescribes time limits for a party to bring a claim or application before a court, and relates to the extinguishment of a remedy, if those time limits expire (Prem **Singh and Ors. v. Birbal and Ors., AIR 2006 SC 3608; L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and Ors., AIR 2005 SC 1209; Punjab National Bank and Ors. v. Surendra Prasad Sinha, AIR 1992 SC 1815)**. The Supreme Court of India has held that the law of limitation is not meant to destroy the rights of the parties but is meant to regulate the availability of

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such remedy, for a legislatively fixed period **(N. Balakrishnan v. M. Krishnamurthy, AIR 1998 SC 3222).**

8. **On the other hand, the law of prescription** leads to the creation or extinguishment of the substantive rights of the parties (MP Daga v. Pradeshiya Industrial Investment Corporation, 2016 (8) ADJ 386).

9. In addition to prescribing time limits, the Limitation Act also prescribes certain rules that extinguish the rights of a person due to the passage of time.

7) <u>Expiry of the Limitation Period:</u>

The Limitation Act bars parties from exercising a legal remedy if a claim or action is brought outside the prescribed period. The expiration of the limitation period gives the defendant a defence of limitation in legal proceedings.

<u>See Limitation as a Defence:</u> Failure to file a claim or application within the prescribed period of limitation extinguishes the remedy to file a claim, however the substantive right that the plaintiff seeks to enforce survives and continues to be available if there are other ways of enforcing it (Bharat Barrel & Drum Mfg. Co. Ltd. v. ESI Corporation, 2 SCC 860 (1971)).

8) <u>Counterclaims :</u>

The law of limitation applies to counterclaims in the same manner as it applies to a claim or a suit. **Counterclaims are treated as a plaint** (civil suit) (Order VIII Rule 6(A)(4), Code of Civil Procedure, 1908 (CPC)). Counterclaims fall within the category of suits and are deemed to have been instituted on the date on which they are made in the court (section 3(2)(b)(ii), Limitation Act).

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The limitation period provided under the Limitation Act for a suit or claim also applies to a counterclaim (Thomas Mathew v. Construction Engineer K.L.D.C. Limited, 12 SCC 560 (2018)).

9) **<u>Commencement of Time</u>:** When Does Limitation Period Start Running Under section 9 of the Limitation Act, once time has begun to run, no subsequent disability or inability to sue stops it.

However, the Limitation Act itself prescribes exceptions to the above rule, including:

11. Where before the expiration of the limitation period for institution of a suit or application in respect of any property or a right, an acknowledgment of liability of the property or right has been made in writing signed by the party against whom the claim is made, a fresh period of limitation is to be computed from the time the acknowledgment is signed (section 18, Limitation Act).

12. Where payment on account of a debt is made before the expiration of prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation is computed from the time when the payment is made (section 19, Limitation Act).

13. Where there is a continuing breach of contract or a continuous tort, a fresh period of limitation begins to run at every moment during which the breach continues (section 22, Limitation Act).

<u>Commencement of Suit Stops Limitation:</u>

The running of the period of limitation ultimately stops with the commencement of a suit before a competent court or quasi- judicial authority or forum. The time taken to institute and continue legal proceedings before a forum not competent to entertain the dispute may

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be excluded from calculation of the period of limitation, provided that such proceeding was instituted in good faith and with due diligence. (Section 14, Limitation Act.)

Exclusion of Time Under the Limitation Act:

Under certain circumstances the Limitation Act allows for exclusion of time in the computation of the limitation period. These circumstances include:

(3) Where a decree or order is appealed from or where a revision is sought, the time required to obtain a copy of the judgment on which a decree or order is founded is excluded (section 112(3), Limitation Act).

(4) In an application to set aside an award, the time required to obtain a copy of an arbitral award is excluded (section 12(4), Limitation Act).

(5) The time during which the plaintiff has been prosecuting with diligence and good faith another civil proceeding in relation to the same matter in issue or for the same relief, before a court that is unable to entertain such a proceeding due to lack of jurisdiction, is excluded (sections 13 and 14, Limitation Act). These provisions confer a certain discretion on the court to decide matters relating to defect in jurisdiction of the forum where the suit or proceeding is instituted. It allows for a wider, more liberal application on behalf of the court to not only consider cases involving a lack of jurisdiction, but any other circumstances, legal or factual, which prevent courts from considering the dispute on the merits. **(Roshanlal Kuthalia and Ors. v. R.B. Mohan Singh Oberai, 2 SCR 491 (1975); Union of India and Ors. v. West Coast Paper Mills Ltd. and Ors., 3 SCC 458 (2004)**.)

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(6) While computing the limitation period of a suit or an application for execution of a decree, the institution of which has been stayed, the time of continuance of an order or injunction that stays institution of a suit or execution of a decree, the day on which it was issued or made, and the day on which it was withdrawn, are excluded (section 15(1), Limitation Act).

(7) The time spent in giving notice or the time required for obtaining the consent or sanction of the government or other authorities, in computing the period of limitation in any suit where such previous consent of the government authority is required, is excluded (section 15(2), Limitation Act).

(8) In a suit for possession of property by the purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale of property is prosecuted is excluded (section 15(4), Limitation Act).

(9) The time during which the defendant has been absent from the territory of India is excluded (section 15(5), Limitation Act).

(10) The time between the death of a person, who if alive would have had an accrued right to sue or make an application and dies before the accrual of such right, to the time there is a legal representative of the deceased capable of instituting such a suit or application, is excluded (section 16, Limitation Act).

(11) In cases where the suit is based on the fraud of the defendant or for relief from the consequences of a mistake, the period of limitation does not begin to run with regards to institution of the suit or application until the fraud or mistake has been discovered by the plaintiff, or until it could have been discovered with reasonable diligence (section 17, Limitation Act).

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Electronic Filing of a Suit:

The Supreme Court has created draft Model Rules for e-filing which discuss the scope of limitation period for electronic filing. These have been adopted by some High Courts such as the Delhi High Court and the Kerala High Court, albeit with certain modifications. **They state that the date of e-filing is the date when the action is electronically received in the registry within the prescribed time on any working day.** For computing the time at which e-filing is made, Indian Standard Time (IST) applies. The provisions for limitation governing electronic filing are the same as those applicable to physical filing.

Practical Issues:

Closure of Courts and Judicial Forums on the Last Day of Filing

If 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 (section 4, Limitation Act). In cases of certain appeals and applications, an extension of the prescribed period is allowed if the appellant or the applicant satisfies the court that they had sufficient cause for not preferring the appeal or making the application within such period (section 5, Limitation Act).

Delay in Completing Court Formalities:

In India, when a pleading is filed before a court or judicial forum, the registry reviews the pleading and points out the defects which need to be cured for the suit to be placed before the court or judicial forum for adjudication. These defects then must be cured within a prescribed timeline and refiled with 10the registry. The procedural rules pertaining to

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removal of objections and refiling of pleadings before a court differ from court to court.

Court Discretion Time-Barred Claims:

The Limitation Act prescribes a bar on the initiation of all suits, appeals, and applications beyond the time prescribed under the Act (section 3, Limitation Act). Once institution of a suit, appeal, or application is barred by the law on limitation, the remedy stands barred. While courts do not have discretion to allow time-barred suits, they do have the discretion to admit limitation-barred appeals or applications provided sufficient cause is shown to the satisfaction of the court. Sufficient cause must be a cause that was beyond the control of the party invoking the aid of this provision and it must be a bona fide cause. (Section 5, Limitation Act.) Courts have liberally construed sufficient cause under section 5 and follow a broad approach while applying this provision. Claims Involving Fraud, Concealment of Facts, or Mistake In cases of fraud or mistake, the period of limitation does not begin to run until the plaintiff or applicant has discovered the fraud or mistake, or could have, with reasonable diligence, discovered it.

Absence of Defendant from Country:

Section 15(5) of the Limitation Act provides for exclusion of the time during which the defendant has been absent from India in computing the period of limitation for a suit.

Differing Limitation Periods:

Multiple Causes of Action Where the facts and circumstance of a claim result in more than one cause of action, it is possible for different limitation periods to apply depending on the cause of action pleaded. For

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instance, in a matter relating to damage or loss of goods, a breach of obligations claim under the contract and a concurrent breach of duty owed to the plaintiff under law of tort may lead to liability under both. The Limitation Act prescribes separate periods for the preference of suit in tort, and for breach of obligations under contract. However, the limitation period available for both actions cannot run sequentially. The limitation periods instead run concurrently, from the very first occasion of legal injury to the plaintiff.

Effect of Type or Class of Claimant on Limitation:

The Limitation Act does not differentiate between the type or class of claimant bringing the suit. However, for institution of a suit or application by a person who is a minor, insane, or incapacitated, the limitation period commences after the disability has ceased. (section 6, Limitation Act.)

In cases where limitation is a mixed question of law and fact, the courts deal with it immediately after the conclusion of evidence.

Claims Governed by Foreign Law:

(4) The law on limitation in India has conventionally been procedural in nature as it generally bars the remedy and not the right. Thus, limitation in India is generally considered to be a procedural law rather than a substantive one, except in situations where the law on limitation has an effect of extinguishing the substantive right of a party.

(5) It is a general principle of common law that all matters concerning procedure are to be governed by the law of the forum, while everything that goes to the substance of a party's right is governed by the law of the land where the cause of action arose or the contract was made.

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Tips for Claimants and Defendants:

A claimant should bear the following considerations in mind when instituting a suit or proceeding in India:

c. The date on which the cause of action first arose as the limitation period generally starts running from that date.

d. The jurisdiction of the court before which the case is being prosecuted must be closely examined. If the case is prosecuted in a court without jurisdiction and the claimant is unable to establish good faith or due diligence, section 14 of the Limitation Act (related to exclusion of time during which the plaintiff has been prosecuting another civil proceeding) will not apply. Even though proceedings may have been initiated in time, the limitation period will not stop running.

e. In case of fraud or mistake, the limitation does not commence until the claimant has or could have with reasonable diligence discovered the fraud, concealment, or mistake.

f. With respect to a suit related to a property or a right, if the opposite party acknowledges liability in writing, a new period of limitation is computed from the date when the acknowledgment is signed.

g. If a new party is added or substituted in the complaint, the suit is deemed to be instituted when the party is added or substituted. Therefore, the limitation period with respect to a subsequently added party will continue to run until that party has been added as a party to the proceedings.

h. In cases of continuing breach or continuous tort, the claimant gets a new cause of action for every breach (section 22, Limitation Act). A fresh period of limitation will only arise where the 14source of legal injury is continued. The Supreme Court has distinguished between a "continuing

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wrong" and a "continuing injury," clarifying that in the case of a continuing injury, the damage resulting from a wrongful act may continue, but the same does not avail the plaintiff the right to seek recourse under the section. (M. Siddiq v. Suresh Das (2020) 1 SCC 1.)

II) In cases where multiple reliefs are sought in a legal proceeding, the limitation period applicable to each relief can differ based on the nature of the claims and the relevant provisions of the Limitation Act, 1963.

General Rule of Limitation:

Each application or suit must adhere to the limitation period prescribed for the specific relief sought. This is applicable unless otherwise stated in the law **Balkrishna Garodia VS Nikunj Kumar Lohia - Calcutta (2015)**.

Different Limitation Periods for Different Reliefs:

It is not uncommon for one relief in a suit to be within the limitation period while another may be barred. For instance, a suit for possession may be governed by a different article of the Limitation Act than a suit for declaration Kovouri Basivireddi VS Nidumoori Ramayya, - Madras (1916).

Application of Limitation Articles:

The applicable article of the Limitation Act will depend on the nature of the relief:

d. **Article-58**: For obtaining any declaration, the limitation period is three years from when the right to sue first accrues.

(3) **Article - 65**: For possession of immovable property based on title, the limitation period is twelve years from when the defendant''s possession becomes adverse Sivarajan, S/o Divakaran VS Jagadamma, D/o Rugmini - Kerala (2023).

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Continuous or Recurring Wrong:

If the applicant is facing a continuous or recurring wrong, the court may allow relief despite the delay in seeking it, provided no third-party rights are adversely affected R. K. Kapoor VS Union Of India - Delhi (2012)R.K. Kapoor vs Union of India - Delhi (2012).

Equitable Considerations:

Courts may exercise discretion in granting relief even if the application is filed beyond the limitation period, especially in cases where equitable considerations justify such relief Co-operative Sugars Ltd. , Doulatapuram, rep. by its Administrative Officer VS Union of India, rep. by its Secretary. Ministry of Finance Dept. of Revenue & Insurance, New Delhi - Andhra Pradesh (1988).

Independent Reliefs:

The Supreme Court has established that if two reliefs are independent and based on different causes of action, the dismissal of one relief due to limitation does not bar the other relief. This principle was articulated in the case of Gunwant Bhai Mulchand Shah & others v. Anton Elis Farel & others, where it was held that claims for different reliefs with distinct limitation periods cannot be dismissed solely because one is time-barred Kerala State VS A. S. Thilakan - Current Civil Cases (2014)Kerala State, represented by Chief Secretary VS A. S. Thilakan - Kerala (2014).

Consequential Relief:

In cases where a primary relief is barred by limitation, any consequential relief that is dependent on the primary relief may also be barred. For instance, if a suit for declaratory relief is dismissed due to

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limitation, a prayer for permanent injunction, which is consequential to the declaratory relief, may also be considered barred Padhiyar Prahladji Chenaji (Deceased) Through L. R. S VS Maniben Jagmalbhai (Deceased) Through L. R. S - Supreme Court (2022).

Nature of Claims:

The nature of the claims is crucial. If the reliefs sought are fundamentally different, the court may grant one while denying the other based on limitation. For example, a suit for possession may be independent of a suit for damages, allowing the court to grant one relief while denying the other YAR MUHAMMAD VS LAKSHMI DAS - Allahabad (1957).

Relevant Case Law:

1) **Gangubai, W/o. Maruti Ghadi v. Rama Sateri Ghadi**: The Karnataka High Court emphasized that reliefs must not be inconsistent with the plaintiff''s claim and should be based on the same cause of action. The court must ensure that granting one relief does not prejudice the other party Namboori Janaki died per L. Rs VS Gurram Hanumantha Rao - Telangana (2021).

2) **K.I. Shephard v. Union of India**: The Supreme Court reiterated that the authority must extend benefits to all similarly situated individuals without requiring each to approach the court, reinforcing the principle of equitable relief YOGESH KUMAR SHARMA VS STATE OF U. P. - Allahabad (2017).

Exceptions and Considerations

a) **Impact on Third Parties**:

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If granting relief would affect the rights of third parties (e.g., disturbing settled seniority or promotions), the court is likely to deny relief based on the limitation period R. K. Kapoor VS Union Of India - Delhi (2012)R.K. Kapoor vs Union of India - Delhi (2012).

b) Pending Applications:

Applications that do not seek new relief but merely request the court to complete pending matters may not be subject to limitation Pratap Kumar Sadhu VS Manowara Begum - Calcutta (2013).

Conclusion

When multiple reliefs are sought in a legal proceeding, it is crucial to analyze the specific limitation periods applicable to each relief based on the nature of the claims. Courts may allow for exceptions in cases of continuous wrongs or equitable considerations, but the potential impact on third-party rights remains a significant factor in determining whether relief will be granted despite limitations.

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PAPER PRESENTATION ON THE TOPIC OF AMENDMENT OF PLEADINGS – THE ASPECT OF LIMITATION

Presented by

Ms. B. Kanaka Lakshmi,

Civil Judge (Junior Division),

Srungavarapukota

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Definition of pleadings :

Order VI rule 1 states that, pleadings shall mean plaint or written statement.

What is pleadings :

Pleading under the code of Civil Procedure, 1908 refers to the formal written statement submitted by the parties involved in a civil suit. These documents lay out the respective claims and defences of the plaintiff and the defendant setting a ground work for the legal proceedings. The primary objective of the pleadings is to clearly outline the issues in dispute, enabling the court to understand the case and facilitating a fair and efficient trial.

Amendment of pleadings:

Order VI Rule 17 deals with Amendment of Pleadings - The amendment of pleadings means the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The proviso added in this provision provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

1. Amendment of pleadings can be allowed at any stage.

2. Amendment must be necessary for determining the "real question of controversy" between the parties if such amendment is sought to be brought after commencement of trial the Court must, in allowing the same come to a conclusion that in spite of best efforts on the part of the party to the suit, the same could not have been brought before the point of time, when it was actually brought.

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Importance of Amendment of Pleadings:

Ensuring Justice: Amendment of pleadings helps ensure that justice is served. It allows parties to correct errors or omissions in their defence, making their case presentation more effective. It also helps address new issues that may arise during the trial, ensuring that the real matters in dispute are properly addressed.

Resolving Disputes: Amendments to pleadings help parties identify and resolve key issues in a dispute more effectively. This leads to more accurate and fair dispute resolution, saving time, reducing the need for additional evidence or hearings and promoting settlements between parties.

Avoiding Delays: Allowing parties to amend their pleadings before the trial begins helps prevent delays. By addressing problems or omissions early on, the risk of delays due to introducing new evidence or arguments is reduced. This speeds up case resolution, lightens the burden on the justice system and improves efficiency.

Promoting Fairness: Amending pleadings promotes fairness in the justice system. It prevents one party from gaining an unfair advantage over the other by allowing both sides an equal opportunity to present their case.

Guiding principles for deciding an application for amendment of pleading under Order VI Rule 17:

In catena of judicial precedents, the Hon'ble Supreme Court laid down certain guiding principles:

The prayer for amendment is to be allowed: (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings,

provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

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(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iii) A prayer for amendment is generally required to be allowed unless:

a. by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

b. the amendment changes the nature of the suit,

c. the prayer for amendment is mala-fide, or

d. by the amendment, the other side loses a valid defence.

e. In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

f. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

g. Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

h. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

i. Delay in applying for amendment alone is not a ground to disallow the prayer, Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

j. Where the amendment changes the nature of the suit or the cause of action, the amendment is liable to be allowed even after expiry of limitation.

h. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

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i. Delay in applying for amendment alone is not a ground to disallow the prayer, Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

j. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

k. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowe

Important case laws :

1. In the case of **Salem Advocate Bar Association, Tamil Nadu v. Union of India & Ors. (2005),** the Court held that **the object of adding the proviso is to prevent frivolous applications** which are filed to delay the trial. It is a settled rule that the Courts should adopt a liberal approach in granting the leave to amend the pleadings. However, the same cannot be in contravention of the statutory boundaries placed on the power. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

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2. M/S. Revajeetu Builders & Developers vs M/S. Narayanaswamy & Sons & Ors on 9 October, 2009 AIR 2009 SC (SUPP) 2897

The Supreme Court in the case of M/S. Revajeetu Builders & Developers vs M/S. Narayanaswamy & Sons & Ors on 9 October, 2009 AIR 2009 SC (SUPP) 2897 has laid down basic principles allowing or rejecting application under Order 6 Rule 17 of CPC. The following are the key aspects according to the court which has to be taken into consideration while allowing or rejecting such application:

i. Whether the amendment sought is imperative for proper and effective adjudication of the case?

ii. Whether the application for amendment is bona fide or malafide?

iii. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.

iv. Refusing amendment would in fact lead to injustice or lead to multiple litigation.

v. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?

As a general rule,the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

3. Ragu Thilak D. John vs S.Rayappan & Others on 23 January, 2001 (citations: AIR 2001 SUPREME COURT 699) The Hon'ble Supreme Court in the case of Ragu Thilak D. John vs S.Rayappan & Others on 23 January, 2001 (citations: AIR 2001 SUPREME COURT 699) has held that the purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such

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prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law

should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

4. North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (2008) 8 SCC 511, wherein, the SC has held that, while considering matters relating to amendment of pleadings, the Courts should take a liberal approach, however, the same has to be in the four corners of the statutory provisions.

5. Basavaraj v. Indira and Others(2024) 3 SCC 705 - Amendment to Pleadings in CPC The two-judge bench of the Hon'ble Supreme Court of India, comprising of Justice C.T. Ravikumar and Justice Rajesh Bindal, deciding the case of Basavaraj v. Indira and Others(2024) 3 SCC 705 inter alia held that an amendment to a plaint cannot be pleaded at the fag end of the proceedings. Originally, a compromise decree was issued in relation to two parties (who were related to parties in the present appeal) by Lok Adalat, District Legal Services Authority, Gulbarg in the year 2004. But the respondents in the present appeal filed a suit for partition of ancestral property before trial court in Gulbarg in 2005. When the said suit was reaching its fag end in the year 2010, the respondents filed an application for amendment to the suit of 2005, seeking the declaration of the compromise decree of 2004 as null and void. The reasoning given for such a late application was oversight and mistake only. When the trial court dismissed the application for amendment, appeal was filed against the trial court's decision before the Karnataka High Court. The Hon'ble High Court ruled in favour of the respondents, allowing the amendment application, and the present appeal was filed in Supreme Court of India against the same decision.

6. The Supreme Court in **M.Revanna v. Anjanamma(Dead) by legal representatives and others** (decided on February 14, 2019) **AIR 2019 SUPREME COURT 940**, clarified the rule around amendment of pleadings by

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stating that "Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit.

The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

7. The Supreme Court in **M/S. Estralla Rubber v. Dass Estate (Private) Ltd. (decided on September 12, 2001)** **AIR 2001 SUPREME COURT 3295** explained that "In certain situations a time barred claim cannot be allowed to be raised by proposing an amendment to take away valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cost serious prejudice to the opposite side."

8. M/S. South Konkan Distilleries & Anr vs Prabhakar Gajanan Naik & Ors on 9 September, 2008 (citation: AIR 2009 SUPREME COURT 1177) - Amendment of Written Statement and Counterclaim Prabhakar Gajanan Naik filed a suit for dissolution of a partnership firm, naming the appellants as defendants—appellant No.1 being the firm and appellant No.2, a partner. The appellants denied the partnership's existence, claiming it was a family arrangement for running South Konkan

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Distilleries. Theyfiled a written statement and a counterclaim of Rs.52 lakhs on 17 June 1987, based on a notice from October 1986.In 2000, after 13.5 years, they sought to amend the written statement and counterclaim, alleging daily losses of Rs.20,000 since

June 1987, and sought to enhance the damages to Rs.8.53 crores for losses incurred from June 1986 to November 2000. The plaintiff opposed the amendment as time-barred. The trial court rejected the application on 5 February 2001, holding it was barred by limitation. A writ petition challenging this was dismissed by the High Court, and the appellants then filed a special leave petition.

The Court in this case held that, since even on the date of filing of the application for amendment of the written statement and the counter claim, the claim was barred and no fresh suit could be filed on such amended claim and, therefore, the two courts below had acted within their jurisdiction in rejecting the prayer for amendment of the written statement and the counter claim. It is well settled that the Court should be extremely liberal in granting amendment, provided the same was within the period of limitation or there would be an arguable issue with regard to the point of limitation, thereby raised an issue on the question whether the amended claim of the appellants was barred by the law of limitation.

9. Vishwambhar & Ors vs Laxminarayan (Dead) Through on 20 July, 2001 (Equivalent citations: AIR 2001 SUPREME COURT 2607) Dattatraya Agnihotri died in 1961, leaving behind his widow Laxmibai, sons Vishwambhar and Digamber (then minors), and four daughters. The suit land was ancestral property. As guardian, Laxmibai sold parts of the land in 1967 and 1974 without court permission or legal necessity, violating Section 8 of the Hindu Minority and Guardianship Act, 1956.After attaining majority (Digamber in 1975 and Vishwambhar in 1978), the sons filed a suit in 1980 seeking possession and later amended the plaint in 1985 to include a prayer for setting aside the sale deeds. The trial and appellate courts held the alienation's were not legally justified and voidable at the instance of the minors.

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However, under Article 60 of the Limitation Act, a suit to set aside such transfers must be filed within three years of attaining majority. Digamber's claim was time-barred. Vishwambhar filed the suit within time, but the crucial prayer for setting aside the sale deeds was added only in 1985,

beyond the limitation period. As the original plaint treated the sales as void (not voidable), the amended claim introduced a new basis, rendering the suit time-barred and thus not maintainable.

The court observed that Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial Court rightly dismissed the suit filed by Digamber.

Therefore the court finally held that Vishwambhar filed the suit within the limitation period but without seeking to set aside the sale deeds, making the initial suit for possession untenable. When the necessary prayer was added through amendment in December 1985, the limitation period had already expired. Since the original plaint lacked essential averments and treated the sales as void rather than voidable, the amendment introduced a new cause of action. Therefore, the suit was deemed to have been filed only on the amendment date, rendering it time-barred and not maintainable.

10. In [Chandu Sherpa v. Raju Rai, 2024 SCC OnLine Sikk 78, decided on 16-08-2024] The Court explained that the language of Order VI Rule 17 does not circumscribe or limit an application for amendment at any stage of the proceedings, if it is necessary for determining the real questions in controversy. Therefore, the Court found that the allowing of defendant's application for amendment by the Trial Court even after closing of the plaintiffs' evidence was permissible since it was "necessary for the purpose of determining the real questions in controversy between

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the parties." The Court further noted that the typographical errors due to which the amendment was sought by the defendant had been made inadvertently at the instance of their counsel and were not a fraudulent act of the defendant. Furthermore, the amendments were imperative for the proper and effective adjudication of the dispute; refusal to allow the amendment application would have caused injustice or resulted in multiple litigation; and the amendments did not constitutionally or fundamentally change the nature of the case.

11. The Supreme Court in **LIC v. Sanjeev Builders (P) Ltd., 2022 SCC OnLine SC 1128,** the Court stated that it was very apparent that the amendment was sought after the petitioner's evidenc started, but since it was the petitioner's case, if any delay was caused, the petitioner would suffer. It could not be said that allowing the amendment at this stage would not cause prejudice to the other side. However, if the other side could be compensated in terms of cost, the amendment could be allowed. The Court stated that if the amendment was necessary for deciding the real controversy between the parties and for reaching a just conclusion, such amendment could be allowed even at a later stage.

12. In **Kamal Kishore Prasad v. Lal Kumar Rai, 2024 SCC OnLine Pat 1727, decided on12-06-2024]** The Hon'ble Court stated that if the amendment was not allowed it would lead to unnecessary multiplicity of litigation, as the amendments appeared to be necessary to determine the real controversy between the parties. The Court also opined that respondents should be amply compensated for the undue harassment faced by them. Thus, the Court stated that the Trial Court committed an error of jurisdiction when it refused to allow the amendment petition and accordingly set aside the impugned order. The Court directed the petitioner to pay Rs. 50,000 to the respondent on the first date before the Trial court after passing of the present judgment and stated that the respondents would be given ample opportunities to rebut/convert the petitioner's claim.

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13. In **Ram Niranjan Kajaria v. Sheo Prakash Kajaria, (2015) 10 SCC 203,** which firmly established that categorical admissions in pleadings cannot be withdrawnthroughamendments.

14. In **Varun Pahwa v. Renu Chaudhary, 2019 SCC OnLine SC 300** where Supreme Court held that the plaint had not been properly drafted, the plaintiff had been described as Varun Pahwa through Director of Siddharth

Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa. Thus, it was a mistake of counsel, may be on account of lack of understanding as to how a private limited company is to sue in a suit for recovery of the amount advanced. The memo of the parties was thus clearly an inadvertent mistake on the part of the counsel who drafted the plaint. It was settled that amendment in the pleadings could not be rejected on the ground of some mistake, negligence, inadvertence or even infraction of the rules of procedure.

15. In **Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559** in the matter of amendments in civil cases in which the Apex Court had opined that an amendment, based on subsequent event is permissible and such an amendment may be necessary to avoid multiplicity of proceedings.

16. In [Suman Kumar v. Chhathi Lal Rai,2018 SCC OnLine Pat 1834, decided on 04-10-2018]... the High Court noted that the respondent/plaintiff had sought a declaration of title and confirmation of possession over suit land but after the conclusion of evidence, he found that consequential relief should have also been inserted in the plaint, and realized that the plaint also required correction in the area of the suit land. It was observed that the amendment sought for did not change the nature of suit and was merely consequential. As such, the consequential relief could be added at any time before the delivery of judgment in order to pass effective order/judgment for resolving the dispute between parties. On that observation, the present civil miscellaneous petition was dismissed holding that there was no infirmity in trial court's order.

17. In **Jai Jai Ram Manohar Lal (1969) 1 SCC 869)** this Court was concerned with a matter wherein amendment in the plaint was refused on

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the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held: (SCC p.871, para 5)"

5. .... Rules of procedure are intended tobe a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of

procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

This Court further stated (Jai Jai Ram Manohar Lal case, SCC p.873, para 7):

"7. ...The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

18. In **Charan Das v. Amir Khan (1919-20) 47 IA 255,** the Privy Council exposited the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

Failure to Amend within Prescribed Time:

According to Order VI, Rule 18 of the Civil Procedure Code:

If a party obtains an order for leave to amend but fails to amend within the time specified in the order, or if no specific time is provided, within fourteen days from the date of the order, they will not be allowed to amend after this prescribed time unless the court extends the time.

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In other words, if a party does not act promptly to make the amendments within the specified or default time frame, they may lose the opportunity to amend their pleadings unless the court decides to grant an extension. This rule helps ensure the orderly progression of legal proceedings.

Effects of Amendment of Pleadings:

When an amendment is permitted in a legal case, that amendment is

generally considered to relate back to the date when the suit was originally filed. In the case of **Brij Kishore v. Smt. Mushtari Khatoon**, it was established that the court should primarily consider the pleadings as they exist after the amendment has been made and disregard the unamended portions. In other words, the court should focus on the pleadings as they stand after the amendment and not take into account the unamended parts when making determinations in the case

Amending Pleadings and Limitation

Amendment of pleadings when a suit is debarred by the Limitation Act is subject to certain considerations and principles as established by various court cases:

1. L.J. Leach & Co. Ltd. v. Jardine Skinner & Co, *AIR1957SC357*: The Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary power to allow the amendment if it deems it necessary to secure the ends of justice.

2. South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors: It is a settled principle that the court can disallow an application for amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

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3. Pankaja & Anr v. Yellappa (D) by LRs & Ors: There is no fixed principle that dictates whether the court can reject an application for amendment when it is barred by limitation. The court's decision depends on the specific factual background of the case. If the facts and circumstances demonstrate that the amendment is necessary to determine the cause of action and avoid further litigation, the court should allow the application.

4. Ragu Thilak D. John v. S. Rayappan: The issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

5. Vishwambhar v. Laxminarayan: The application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit.

MULTIPLE CAUSES OF ACTION:

Where the facts and circumstance of a claim result in more than one cause of action, it is possible for different limitation periods to apply depending on the cause of action pleaded. For instance, in a matter relating to damage or loss of goods, a breach of obligations claim under the contract and a concurrent breach of duty owed to the plaintiff under law of tort may lead to liability under both. The Limitation Act prescribes separate periods for the preference of suit in tort, and for breach of obligations under contract. However, the limitation period available for both actions cannot run sequentially. The limitation periods instead run concurrently, from the very first occasion of legal injury to the plaintiff. In most matters involving concurrent liability, the plaintiff prefers the longer period of limitation available to them.(P.K. Kalasami Nadar v. Alwar Chettiar and Ors., AIR 1962 Mad 44 (1962).)

There is another decision of the Supreme Court in the case of Khatri Hotels Private Limited & Anr. v. Union of India & Anr. reported in (2011) 9 SCC 126 , The Supreme Court noted that while enacting Article 58 of the Limitation Act, the legislature had designedly made a departure from the

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language of Article 120 of the Limitation Act, 1908. The Court noted that the word “first” has been used between the words “sue” and “accrued”. The Court said that the same would mean that if a suit is based on multiple causes of action, the period of limitation would begin to run from the date when the right of sue first accrued. In other words, the Court held that successive violation of the right would not give rise to fresh cause and the suit would be liable to be dismissed if it was beyond the period of limitation counted from the day when the right to sue first accrued.

MULTIPLE RELIEFS:

When seeking multiple reliefs in the same case, the limitation period is determined by the relief with the longest prescribed period of limitation, as per the Limitation Act, 1963.If a suit seeks multiple reliefs, the period of limitation is determined by the relief that has the longest period of limitation prescribed under the Limitation Act, 1963.If a suit seeks both a declaration of title and recovery of possession, the limitation period will be governed by the longer period applicable to the suit for recovery of possession (which is 12 years) rather than the shorter period applicable to the suit for declaration of title (which is 3 years) – N. Thajudeen v. T.N. Khadi & Village Industries Board [2024 SCC OnLine SC 3037

Time Limits for Filing Written Statements:

The defendant is required to file a written statement within 30 days from the date of service of summons. If this period is missed, the court may allow an extension, but not exceeding 90 days from the date of service. If the written statement is not filed within the stipulated time, the defendant forfeits the right to file it. (Aditya Khaitan VS IL and FS Financial Services Limited)

Amendments and Applicability : The amendments to the CPC, particularly those introduced by the Commercial Courts Act, 2015, have modified the timelines and procedures for filing written statements in commercial disputes. The provisions of Order 5 Rule 1 and Order 8 Rule 1, as amended, are mandatory, and courts are expected to adhere strictly to these timelinesunless exceptional circumstances are demonstrated.

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(Please refer Para's 36 and 37 of Amoda Iron Steel Limited, vs Sneha Analytics And Scientific s, on 25 January, 2022 before the Andhra Pradesh High Court)

LIMITATION TO ADD LEGAL HEIRS ON RECORD

The limitation period to add legal heirs on record in a pending suit or appeal is generally 90 days from the date of death, as per Article 120 of the Limitation Act, 1963, and Order 22, Rule 3 (2) of the Code of Civil Procedure. If the application isn't filed within this period, the suit or appeal can abate (become

invalid) against the deceased party. Even after the 90-day period, an application to set aside the abatement can be filed within 60 days, according to Article 121 of the Limitation Act. Courts have the discretion to condone any delay in filing the application, provided a sufficient cause is shown.

Limitation for Setting Aside Dismissed for Default:

The period for filing an application to restore such a suit is 30 days from the date of dismissal, as per Article 122 of the Limitation Act, 1963. The plaintiff must also satisfy the court that they were prevented by sufficient cause from appearing on the date fixed. If the court is satisfied with the reasons for non-appearance, it may restore the suit and set a new date for hearing.

Conclusion:

Amendments of pleadings refer to the process of modifying or altering the formal written statements submitted by parties involved in a legal case. These statements, known as pleadings, outline the facts, issues, and legal arguments supporting their claims or defences. Amendments allow parties to make necessary changes to their pleadings during the course of a trial, ensuring a more accurate presentation of their case and facilitating the fair resolution of disputes. However, amendments of pleadings must adhere to certain conditions, such as avoiding prejudice to the other party and complying with court-ordered timelines, to maintain the integrity and efficiency of the legal proceedings.

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"Law on Limitation" submission of paper presentation on the topic limitation in criminal cases in respect of offences under IPC/BNS and other Special Laws

Paper Presented By:

Smt.M.Rohini Rao, Addl.Judicial Magistrate of Ist Class, Bobbili.

INTRODUCTION

The Code of Criminal Procedure, 1973 (the Code hereinafter) came into force on the first of April, 1974. In Chapter XXXVI of the Code containing sections 467 to 473 for the first time detailed general provisions have been enacted prescribing limitation for prosecution as part of procedure for trial of offences.

- **Section 467 of CrPC:**
  - Section 467 states that the "period of limitation" is the period prescribed in Section 468 for taking cognizance of an offence.
- **Section 468 of CrPC:**
  - Clause (2) of Section 468 CrPC prescribes a graded period of limitation shall be—
    - six months, if the offence is punishable with fine only;
    - one year, if the offence is punishable with imprisonment for a term not exceeding one year;
    - three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
- **Section 469 of CrPC**
  - Section 469 CrPC is crucial for reckoning the starting point of the period of limitation.
  - Section 469 (a) spells out the general rule that the limitation shall run from the date of the offence (excluding the first day under Clause (2) of Section 469).
  - Section 469 (b) and (c) are **exceptions to the general rule** providing for deferment of running of limitation in cases where (a) the commission of the offence is not known or (b) the offender is not known.
  - In such cases the limitation would commence as follows:

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Nature of the Case	Period from which Limitation Commences
Where the commission of the offence is not known to the person aggrieved or to any police officer [Section 469(b)]	The first day on which the offence comes to the knowledge of such person or police officer, whichever is earlier;
Where it is not known by whom the offence is committed [Section 469(c)]	The first day on which the identity of the offender is known to the person aggrieved by such offence or the police officer, whichever is earlier.

- **Sections 470 to 473 of CrPC:**
  - Sections 470 and 471 provide for the **exclusion of time** in certain cases.
  - Section 472 CrPC incorporates the well-known rule that in case of a **continuing offence**, a fresh period of limitation begins to run at every moment of the time during which the offence continues.
  - Section 473 CrPC empowers the **Court to condone the delay** and take cognizance beyond the period prescribed in Section 468 CrPC if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interests of justice.

Concept of limitation in taking cognizance under BNSS (Bharatiya Nagarik Suraksha Sanhita)

In Bharatiya Nagarik Suraksha Sanhita (BNSS), Sections 515 to 519 outline the provisions related to the commencement and exclusion of the period of limitation in a criminal case. In this article, we will be examining each of them with examples.

Section 515: Commencement of Period of Limitation

Section 515 of BNSS determines when the period of limitation begins in relation to an offender. It factors in the date of the offense, the date of obtaining knowledge about offense by the aggrieved person or police officer, and date of the identification of the offender.

For example, consider a case where a fraud offense occurs on January 1, 2023. The period of limitation begins on the date of the offense unless the aggrieved person discovers it later. In such a scenario, the limitation period starts from the date of discovery.

Section 516: Exclusion of Time in Certain Cases:

This section addresses the exclusion of time during the prosecution of another case against the offender, provided it relates to the same facts and is pursued in good faith. It also considers instances where prosecution is stayed by an injunction, notice of prosecution is given, or consent/sanction is required, excluding the relevant time.

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For instance, imagine a situation where a person is diligently pursuing a prosecution against an offender for the same facts in a court that lacks jurisdiction. In such cases, the time spent prosecuting that case is excluded from the limitation period.

Section 517: Exclusion of Date on Which Court is Closed

In situations where the period of limitation ends on a day when the court is closed, Section 517 allows the court to take cognizance on the day it reopens. The section defines when a court is considered closed.

For example, if the limitation period expires on a public holiday when the court is closed, the court can consider the case on the next working day.

Section 518: Continuing Offence

Section 518 addresses continuing offenses, where a fresh period of limitation starts at every moment during which the offense persists.

For example, consider an environmental violation where pollution continues over an extended period. Each day of nuisance of pollution initiates a new limitation period, allowing authorities to address the ongoing harm.

Section 519: Extension of Period of Limitation in Certain Cases

Section 519 provides flexibility for a court to take cognizance of an offense even after the limitation period has expired. This can occur if the court is satisfied that the delay has been adequately explained or deems it necessary in the interests of justice.

For instance, if a victim delayed filing a complaint due to fear of retaliation by a powerful person, the court may extend the limitation period.

Let us now revisit the above points through some FAQs (Frequently Asked Questions).

1. What does Section 515 of BNSS determine?

- Section 515 of BNSS determines when the period of limitation begins in relation to an offender, taking into account the date of the offense, the knowledge of the offense by the aggrieved person or police officer, and the identification of the offender.

2. How does Section 516 address the exclusion of time in BNSS?

- Section 516 excludes time during the prosecution of another case against the offender if it relates to the same facts and is pursued in good faith. It also considers scenarios like injunctions, notice of prosecution, and consent/sanction requirements, excluding relevant time.

3. Under what circumstances does Section 517 of BNSS come into play?

- Section 517 comes into play when the period of limitation ends on a day when the court is closed. It allows the court to take cognizance on the day it reopens, defining when a court is considered closed.

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4. What does Section 518 of BNSS address regarding offenses?

- Section 518 addresses continuing offenses, recognizing that a fresh period of limitation starts at every moment during which the offense persists. This is particularly relevant for offenses of an ongoing nature.

5. How does Section 519 of BNSS provide flexibility in certain cases?

- Section 519 provides the court with the flexibility to take cognizance of an offense even after the limitation period has expired. This can occur if the court is satisfied that the delay has been adequately explained or deems it necessary in the interests of justice.

6. Can you provide an example of when Section 518 might apply in a real-world scenario?

- Section 518 could apply to a case of environmental violation where pollution persists over an extended period. Each day of the nuisance of pollution initiates a new limitation period, allowing authorities to address the ongoing harm.

7. Under what circumstances might Section 519 be invoked to extend the limitation period?

- Section 519 could be invoked if the court is satisfied that the delay in filing a complaint has been adequately explained or deems it necessary in the interests of justice. For instance, if a victim delayed filing a complaint due to fear of retaliation by a powerful person.

Some important land mark judgments

STATE OF H.P. Vs- TARA DUTTA, (2000)1 SCC 230 decided on the 19th November 1999 is again a Three Judge decision of the Supreme Court on the question of limitation in criminal cases. Three Judge Bench was constituted on a reference by a Two Judge Bench holding that ARUN VYAS (Supra) needs reconsideration. Two important holdings in this decision are these :- (1) that Limitation is to be applied to the offence charged and not to the offence eventually found proved at the trial in view of sub-section (3) of Section 468 added in 1978. (2) Under Section 473 of the code a discretion has been vested in the Court taking cognizance to extend the period of limitation if the delay is satisfactorily explained and it is in the interest of justice to extend the period. The said discretion has to be exercised on judicially recognized grounds and through a speaking order. By way of cutting down the width of the statement of law in this regard in relation to the offence under Section 498-A the Supreme Court reiterated above exposition of the law while adopting the need for liberal construction of the provisions of Section 473 of the Code.

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P.P.UNNIKRISHNAN AND ANOTHER –VS- PUTTIYOTTIL ALIKUTTY AND ANOTHER, AIR 2000 S.C. 2952 decided on the 5th September, 2000 is a decision where a Sub-Inspector and a Constable of Kerala Police sought to extricate themselves from a criminal complaint under Several Penal Code offences on the ground of limitation enacted in Section 64(3) of the Kerala Police Act, 1961 a provision similar to that of Section 42 of the Police Act, 1861. Failing before the Trial Court as also the High Court the two cops reached the Supreme Court to reiterate the bar under Section 64(3) of the Kerala Police Act. While upholding the conclusion of the two courts below the Supreme Court set aside the second reason for denying the protection on the ground that Section 473 of the Code additionally saves the prosecution. Thus the principal point of law laid down in this decision is that Section 473 of the Code is applicable only to the period of limitation oprescribed by the Code and not by anyother law such as the Kerala Police Act.

RAMESH CHANDRA SINHA AND OTHERS –VS- STATE OF BIHAR AND OTHERS, (2003)7 SCC 254 decided on the 18th of August 2003 is yet another decision dealing with the application of Section 473 of the Code. In that case the Trial Court on an application under Section 473 of the Code condoned a delay of about three years on the ground that further proceedings were stayed by the High Court. On facts it was found that there was no such stay. The High Court refused to interfere with the order condoning the delay. The Supreme Court set aside the order condoning the delay on irrelevant consideration and quashed the criminal proceedings because of the bar of limitation.

BHARAT DAMODAR KALE AND ANOTHER –VS- STATE OF A.P., AIR 2003 SC 4560, (2003) 8 SCC 559 decided on the 8th October 2003 marks yet another watershed in the development of the law of limitation in criminal cases. The case arose out of a complaint by the Drugs Inspector for an offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954. Competence of the concerned Drug Inspector to file the complaint and the bar of limitation are the two points argued before the High Court in a petition under Section 482 of the Code to quash the criminal proceedings. Both the points were answered against the accused petitioners by the High Court as well as the Supreme Court. On the question of limitation in para 10 and 11 of the Judgment relying on the statutory indication available from the provisions of Section 469 and 470 of the Code and applying the legal maxim “actus curiae neminem gravabit” (an act of the court shall prejudice no man) the Supreme Court laid

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down the law that the provision of chapter XXXVI of the Code "clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance." The Judgment also drew support from the Three Judge decision in RASHMI KUMAR . In the case offence was detected on 05.03.1999 and the complaint was filed on 03.03.2000 well within the one year period of limitation. The cognizance, however, was taken on 25.03.2000 about 25 days after it was filed. On these facts applying the law as above the complaint was held not to be barred by limitation.

HARNAM SINGH –VS- EVEREST CONSTRUCTION CO AND OTHERS,

2004 Cri.L.J. 4178 decided on the 17th August 2004 deals with a case where offences under section 420, 467, 471 and 474 of the Penal Code were the subject matter of a complaint on which the Magistrate took cognizance and issued process. However, the High Court without considering the stark fact that none of the offences came within Section 468 of the Code quashed the complaint only on the ground of delay. The Supreme Court set aside the order remitted the matter to the High Court for fresh disposal in accordance with the law.

M/S ZANDU PHARMACEUTICAL WORKS LTD. AND OTHERS –Vs- MD.

SHARAFUL HAQUE AND OTHERS, AIR 2005 S.C. 9, decided on the 1st of November 2004 again is a decision highlighting the error of the Magistrate in failing to notice, the provisions of Section 468 or Section 473 of the Code and taking cognizance of a complaint much delayed beyond the three year period of limitation. The High Court also failed to correct the glaring error of law. The Supreme Court quashed the proceedings on the ground of the bar of limitation.

RAMESH AND OTHERS –VS STATE T.N., (2005)3 SCC 507 decided on the 3rd March, 2005 was a case relating to offences under Section 498-A, 406 of the Penal Code and Section 4 of the Dowry Prohibition Act. Quashing of the criminal proceedings was sought on the ground of bar of limitation and lack of territorial jurisdiction. Failing in the High Court the accused persons reached the Supreme Court and urged the said two contention. The Supreme Court on the question of territorial jurisdiction relied on Y. ABRAHAM AJITH –VS- INSPECTOR OF POLICE, (2004)8 SCC 100 and came to the conclusion that the offences alleged cannot be said to have been committed wholly or partly within the territorial jurisdiction of the Trial Court and transferred the case to the Court at Chennai.

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On the question of the bar of limitation relying on ARUN VYAS (Supra) held thus :

"..... The last act of cruelty would be the starting point of limitation. The three year period as per Section 468(2) (c) would expire by 14.10.2001 even if the latter date is taken into account. But that is not the end of the matter. We have still to consider whether the benefit of the extended period of limitation could be given to the informant." Proceeding thus considering the date of the F.I.R. etc applied the provisions of Section 473 of the Code and condoned the delay without remitting the matter of condonation of delay under Section 473 of the Code to the Trial Court.

JAPANI SAHOO –VS CHANDRA SEKHAR MOHANTY, AIR 2007 S.C.

2762 decided on the 27th of July 2007 is important in as much as an attempt was made before the Supreme Court for reconsideration of BHARAT DAMODAR KA that limitation prescribed is only for filing of the complaint or initiation of proceedings and not for taking cognizance. But the attempt failed and the Supreme Court reiterated the law laid down in BHARAT DAMODAR KALE

SANAPAREDDY MAHEEDHAR SESHAGIRI & ANR –Vs- STATE OF ANDHRA PRADESH & ANR, AIR 2008 SC 787, decided on the 13th of December, 2007 deals with the question whether the Magistrate could take cognizance of offences under Section 498-A and 406 of the Penal Code read with Section 4 and 6 of the Dowry Prohibition Act after expiry of three years. The Supreme Court reviewed the earlier decisions in STATE OF PUNJUB –VS- SARWAN SINGH , VANKA RADHAMANO HARI , ARUN VYAS , STATE OF H.P. –Vs- TARA DUTTA and RAMESH and answered the question thus :-

"The ratio of the above noted judgments is that while considering applicability of Section 468 to the complaints made by the victims of matrimonial offences the court can invoke Section 473 and can take cognizance of an offence after expiry of the period of limitation.

Having held as above, however, on the facts and circumstances of that matrimonial case the Supreme Court set aside the decisions of the Trial Court and the High Court and quashed the criminal proceedings.

P.K. CHOUDHURY –Vs- COMMANDER, 48 BRTF (GREF) 2008(3) SCALE

575 decided on the 13th of March 2008 reiterates SHARADCHANDRA VINAYK DONGRE and says, among other observations, that "if the delay is not condoned, the court will have no jurisdiction to take cognizance"

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LIMITATION OF PROSECUTION FOR OFFENCES UNDER LOCAL OR SPECIAL LAWS

It has already been indicated that Section 4 and 5 of the Code have to be applied in understanding any enactment creating a bar of prosecution by reason of limitation. Special laws in this regard may be of three categories. Some statutes like the copyright Act, 1957 the Dowry Prohibition Act 1961, the Patent Act, 1970 the Wild Life (Protection) Act, 1972 and the Environment and Pollution Laws etc simply create the offence and prescribe the punishment and say nothing else. The provisions of Chapter XXXVI of the Code will determine the limitation for prosecution in such cases. In the second category will be statutes like the Indian Police Act 1861 the Trade Marks Act 1999, and the Geographical Indication of Goods (Registration and Protection) Act 1999. In cases under those Acts limitation will be governed by the period prescribed there and not under the Code. Most importantly Section 473 of the Code also will not be applicable and as such there will not be any scope for extension of period of limitation. P.P. UNNI KRISHNAN leaves no room to argue otherwise. In the third category will be statutes like the Negotiable Instruments Act 1881 where the special law not only creates the offence prescribes the period of limitation but also prescribes special provision for extension of limitation. In such cases also the provisions of the Code will not apply. Though the Child Marriage Restraint Act, 1929 has been replaced by the Prohibition of Child Marriage Act, 2006 with effect from 01.11.2007 there may still be some statutes adopting the model in Section 198(6) of the Code. In such cases neither Chapter XXXVI of the Code nor decisions like BHARAT DAMODAR KALE and JAPANI SHAHOO will apply.

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