

**30. Foreign country :—**“Foreign country” means any country other than India subsequent to August 1947. Pakistan is a foreign country and in the same way Bangladesh also is a foreign country. The “Native States” in India after independence can no longer be held to be foreign countries in view of their merger with India. Though Sec.1(2) of the Act says that it extends to the whole of India except the state of Jammu and Kashmir, the State of Jammu and Kashmir is not a foreign country for the purpose of this Act.

**31. Good faith :—**Nothing shall be deemed to be done in good faith which is not done with due care and attention while deciding the question of limitation the court must look into the definition of “good faith” in this Act.<sup>1</sup> The mere doing of a thing honestly is not sufficient to constitute good faith under this Act but such thing must be done with due care and attention.<sup>2</sup>

**32. Plaintiff :—**Plaintiff for the purposes of this Act includes any person from or through whom a plaintiff derives his right to sue or any person whose estate is represented by the plaintiff as executor, administrator or other representative.<sup>3</sup> Defendant for the purposes of this Act includes any person from or through whom a defendant denies his liability to be used or any person whose estate is represented by the defendant as executor administrator other representative.<sup>4</sup> The words “from” or “through” may refer to cases of alienation and inheritance respectively.<sup>5</sup> A trustee of an endowment denies his right to sue from or through the proceeding trustee.<sup>6</sup> The auction purchaser denies his right from or through the Judgement debtor.<sup>7</sup>

**33. Period of limitation :—**Period of limitation means the period of limitation prescribed for any suit appeal or application by the schedule prescribed period means, the period of limitation computed in accordance with the provisions of this Act while recommending the insertion of a new definition clause for “period prescribed” the Law Commission observed.<sup>8</sup>

“The expression period prescribed occurring in Sec.4 has been construed differently by different courts. Some courts take the view that it means only the periods of limitation

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1. AIR 1971 P & H 461 Amar Kaur vs. Iqbal Singh.
  2. 22 All. 248 Mathura Singh vs. Bhavani Singh.
  3. See Section 2(1) of the Limitation Act, 1963.
  4. See Section 2(e) of the Limitation Act, 1963
  5. 16 Bom. 197 All Saheb vs. Kaji Ahmed.
  6. 23 Mad. 271 (P.C) Gana Sembanda vs. Velupandaram.
  7. 18 Bom. 37 Namdeo vs. Ramachandra.
  8. See third report.

directs that in computing such prescribed period, exclusion of time should be allowed in certain circumstances, the period prescribed falls over a longer period than the time prescribed without exclusion. If, therefore, an acknowledgment is within the period of limitation prescribed but as computed after exclusion, it is within the ambit of Section 19".

**7. Sec.4 and Assignment of debt :—**Where the period prescribed for recovery of a debt expires during the vacation and such debt is assigned prior to the reopening date, such assignee can institute a suit for recovery of such debt on the reopening day,<sup>1</sup> since the limitation bars the remedy but does not extinguish the right.<sup>2</sup>

**8. Sec.4 and Secs.6 and 8 of the Limitation Act :—**Where the period of limitation subsequent to the attaining of majority which has been extended by virtue of S.6 and 8 of the Limitation Act in favour of a minor expires on a day when the court is closed he can institute a suit on the next; reopening day and such suit will be within time.<sup>3</sup>

**9. Sec.4 and Order XXI Rule 89 Civil Procedure Code :—**Order XXI Rule C.P.C. reads:— "Application to set aside sale on deposit."

1. Where immovable property has been sold in execution of a decree any person claiming an interest in the property sold at the time of the sale or at the time of making the application or acting for or in the interest of such person may apply to have the sale set aside on his depositing in court—
  - (a) for payment to the purchaser, a sum equal to five percent of the purchase money and
  - (b) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such proclamation of sale have been received by the decree holder.
2. Where a person applies under Rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

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1. AIR 1957 Mad. 14 Adiraja vs. Ariga K. Beranna Rai 19 JC 820 Vishram vs. Tabaji.
2. AIR 1940 Mad. 908 Thimmannabhai vs. Adyanathya. AIR 1940 Cal. 443 Singhania vs. Anantlal.
3. AIR 1943 Nag. 284 Dada Rao vs. Jatanbai. AIR 1932 Mad. 139 Naganna vs. Krishna Murthi.

would otherwise have been allowed from the time prescribed therefore in the third column of the First Schedule does not mean that limitation will not run at all during the continuance of the disability. The provision only means that the person under disability is entitled to an extension of time till the expiry of the period mentioned in the Schedule calculated from the cessation of his disability (subject to the limit mentioned in Section 8)".

When once time has begun to run owing to the right to the sue having accrued to the person who was not labouring under any legal disability, the subsequent disability of himself, or of his son or of other representative cannot be a ground of exemption from the operation of the ordinary rule that when once time has begun to run, nothing stops it.<sup>1</sup> Section 5 of the Act only supplements Section 6 of the Act and Sections 6, 7 and 8 have to be read together. Section 5 imposes a limitation on the concession provided under Sections 6 and 7 to a maximum of three years after cessation of the disability.<sup>2</sup> The ordinary period of limitation provided for filing pre-emption suit is not enlarged by minority or other legal disability of the pre-emptor.<sup>3</sup>

**1A. Object :—**Section 6 engrafts on enabling provision to a minor to institute a proceeding by way of filing a suit or by making an application after he ceases to be a minor within the time prescribed to any other person who is not a minor.<sup>4</sup>

**2. Section 6 and Section 5 of the Limitation Act :—**Section 6 and Section 5 of the Limitation Act are not mutually exclusive but are supplemental to each other.<sup>5</sup>

**3. Section 6 and Section 16 of the Limitation Act :—**Section 6 of the Act deals with a case where a person is under a disability to sue whereas Section 16 of the Act deals with effect of death on or before the accrual of the right to sue. A minor legal representative of a deceased person, is one who is incapable of instituting a suit because of his minority.<sup>6</sup> In *Venkateshwara Sarma styled Gnan Sivacharia Swamigal Matadhipathi and Guru of Peruru Mel Muttu vs S.N. Venkatesa Ayyar and others*,<sup>7</sup> his Lordship Abdur Rahman J., observed:

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1. AIR 1968 Mad. 161 *Aldo Costa vs. Stanislans Costa*.
  2. AIR 1965 Mad. 541 *Kolandavel vs. Chinnappan*.
  3. AIR 1972 P & H 276 *Suraj Bhan vs. Balwan Singh*.
  4. *Ajab Singh vs. Antram*, 2009 (11) SCC 53.
  5. AIR 1965 Mad. 541 *Kolandevel vs. Chinnappan*.
  6. (1896) 20 Bom. 15 *Rivett-Carnac vs. Goculdsa*. See also (1899) 23 Bom. 544 *Bhagawan Das vs. Rivatt-Carnac*.
  7. AIR 1941 Mad. 449.

period of limitation.<sup>1</sup> Acknowledgment must be before the expiry of the period prescribed for suit or application in respect of such property or right.<sup>2</sup> Endorsement made on pro-note saves the period of limitation.<sup>3</sup>

**30. In respect of such property or right:**—The expression “in respect of such property or right” clearly indicates that there must be no doubt about the identity of debt.<sup>4</sup>

**31. Has been made in writing signed by the party:**—An acknowledgment of liability in respect of such property or right under this section must have been made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability and a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.<sup>5</sup> The expression “Signed” means not only signed personally but also by an agent duly authorized in that regard.<sup>6</sup>

**32. Against whom such property or right is claimed:**—The acknowledgment of liability must be by the party against whom such property or right is claimed or by some person through whom he derives title or liability.<sup>7</sup>

**33. Acknowledgment of liability may be express or implied:**—An acknowledgment of liability always need not be express but it may be implied also depending upon the facts and circumstances of a particular case.<sup>8</sup>

**34. Acknowledgment regarding a portion of the claim:**—Where the defendant acknowledged his liability for a limited amount, it can save limitation upto that extent only and not for the entire amount.<sup>9</sup> In *Mohamad Dalil Khan vs. State of Hyderabad now Andhra*

1. AIR 1952 Mad. 136 Rajah of Vizianagaram vs. official liquidator, AIR 1964 Mad. 527 Ramanathan vs. Somasundaran, AIR 195 Ramanathan vs. Somasundaran, AIR 1957 Tripura 33 S. M. Das vs. Union of India AIR 1968 Pat. 245 L. Prasad vs. K. Prasad. AIR 1935 Lah. 515 S. Mahomad vs. Karamchand. AIR 1959 Punj. 249 D. Raj vs. H. G. D. Singh.
2. AIR 1997 Guj 24 M/s Shivam Constructions Co vs Vijaya Bank.
3. Janardhanan vs. T.A. Aneefa Rawther, AIR 2005 Ker. 89.
4. AIR 1972 Mys. 152 Kempe Gowda vs. Mahalingaiah. AIR 1922 Bom. 356 Bhagwan vs. Madhav. AIR 1941 Mad. 892 Official Assignee vs. Natesa Achari.
5. AIR 1939 Bom. 23 Balachandra vs. Channa Basappa. AIR 1957 M.P. 237 Rajmal vs. Phulchand.
6. AIR 191 S.C. 1482 Lakshmiratan Cotton Mills vs. Aluminium Corporation.
7. AIR 1963 Mad. 21 Sivagaminath vs. Dharmalinga, AIR 1925 Mad. 1108 Yagnanarayana vs. Venkata Krishna Rao, AIR 1983 Guj. (NOC) 18. Vohra Abdul Rahim vs. Voohra Abdul Karim.
8. AIR 192 Mad. 219 Swaminatha vs. Subbaraya. AIR 1975 Raj. 161 Mahila Siksha Sadan vs. Jainarayan.
9. 1966 (2) An. W.R. 455 Siva Rao vs. M.G. Brothers Kurnool. AIR 1930 All. 461 Bans Gopal vs. Mewa Ram, 1963 (1) MLJ 300 Muhamed Sultan Rowther vs. Muhamed Nurdin.

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**SYNOPSIS**

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**1. Scope:**—Article 122 of the present Act corresponds to Articles 160, 163, 168 and 172 of the repealed Act. It deals with the aspect of restoration of a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.<sup>1</sup> This Article has no application where the order is ultra vires.<sup>2</sup> It is not applicable to an insolvency matter dismissed for default or an application for a claim under Workmen's Compensation Act.<sup>3</sup>

**2. This Article is applicable in case of dismissals under the Presidency Small Cause Courts Act:**—This Article is wide enough to include the dismissals under the Presidency Small Cause Courts Act.<sup>4</sup>

**3. Suit dismissed under S.151 C.P.C.:**—Where a suit is dismissed under S.151 C.P.C. this Article has no application to such a case.<sup>5</sup>

**4. Summons had not been served:**—Where summons had not been served and the applicant was not aware of the date of hearing, there cannot be any default of appearance and this Article has no such application to such a case.<sup>6</sup>

**5. Time from which period begins to run:**—The period of Thirty days specified by this Article will begin to run from the date of dismissal.<sup>7</sup>

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1. AIR 1958 All.149 Raja Ram vs. Laxmi Narain.
  2. AIR 1956 Hyd.139 Rama Reddy vs. Yenka Reddy. AIR 1974 Pat. 289 Samar Bhuiya vs. Kapil Kumar.
  3. AIR 1984 pat. 144 Lakshman vs. Brij Nandan.
  4. I.L.R. 23 Bom.414 Soonderlal vs. Goor Prasad.
  5. (AIR 1974 P at 289 Somer Bhuiya vs. Kapil Kumar. AIR 1970 M.P. 190 Komal Chand vs. Pooran Chand, But see AIR 1973 orissa 169 Bimala Devi vs. patitapaban Dev.
  6. AIR 1956 Hyd. 139 Ram Reddy vs. Yenka Reddy, AIR 1942 Cal.390 Ananda vs. Sushil.
  7. 17 M.L.J. 215 Kuttayan Chetty vs. Ellappa Chetty, AIR 1982 orissa 75 Narasingha Charan vs. Jairam.