

THE LIMITATION ACT, 1908 [IX OF 1908]

[7th August, 1908]

An Act to consolidate and amend the law for the limitation of Suits,
and for other purposes

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property: It is hereby enacted as follows:

COMMENTS

Preamble. Provisions of Limitation Act, 1908 could not/be *stricto sensu* made applicable to the claims set forth in the constitutional jurisdiction of High Court, but if the claim on the face of it was barred by law of limitation in relation to the suit, relief would be refused to writ petitioner on the rule of laches and past and closed transaction. [PLJ 2013 SC 336]

Law of limitation was required to be construed strictly, coupled with the maxim that each day of delay to be explained by the party concerned. [MLD 2010 Lah. 68]. Law requires an indolent litigant to explain delay of each day, which cannot be done merely on the ground that dispute should be decided on merits ignoring technicalities. [2005 CLC 1781]. Structure of law is founded upon legal maxim, that delay defeats equity, time and tide wait for none and law helps the vigilant not the indolent. Bar of limitation in the adversarial litigation creates valuable right in favour of other party. [PLD 2009 Lah. 52]. Object of Limitation Act, 1908 is to help vigilant and no indolent. [2007 SCMR 1560].

Scope. Although no such thing as limitation is prescribed in criminal prosecution, but yet on the other hand the longer complaint is delayed the less becomes the chance of believing in its truth, more particularly when it is based upon entirely oral evidence. [PLJ 2010 SC 617].

Law of limitation is bad law and cannot be appreciated like in the instant case. [PLJ 2010 Lah. 346].

Suit was withdrawn with permission to file afresh, the limitation would start from the previous proceedings. [PLJ 2010 Lah. 346].

Correctness of Revenue Record. Every fresh jamabandi carrying on incorrect entry gives a fresh cause of action so the suit was not time-barred. [PLJ 2009 Pesh. 39].

Such law not only restrict rights after certain period but also discourages litigation after lapse of prescribed time and provide permanency to the right of people.

(2008 YLR 233). It may be noted that limitation does not extinguish right but restricts enforcement of the same through Court of law and can be availed for collateral purposes.

Applicability. Embargo of limitation shall not be available and attracted and totally inapplicable in matters of inheritance. [PLD 2009 Lah. 248].

Concept. Limitation once having started to run cannot be stopped by any subsequent act. [2005 YLR 384]. Which in certain cases cannot be decided without recording of evidence. [2005 CLC 1515]. Where the cases decided on merits limitation would be deemed to have been condoned. [2005 CLC 1076] Where fraud is alleged and it is also alleged that the mutation was sanctioned behind the back, limitation would start from the date of knowledge. [2005 MLD 307].

Pardanashin lady. Unless it is established that contract in question is in the interest and for the benefit of illiterate lady who executed the agreement, such agreement can be avoided by her. [2009 MLD 262]

PART I

PRELIMINARY

1. Short title, extent and commencement. (1) This Act may be called the Limitation Act, 1908.

[(2) It extends to the whole of Pakistan.]

(3) This Section and Section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

COMMENTS

Starting of limitation. Period of limitation once started running would not stop except in extraordinary circumstances attached to plaintiff. [2007 YLR 2215].

2. Definitions. In this Act, unless there is anything repugnant in the subject or context:

(1) "applicant" includes any person from or through whom an applicant derives his right to apply;

(2) "bill of exchange" [has the same meaning as in Section 5, of the Negotiable Instruments Act, 1881 (XXVI of 1881) and]² includes a hundi and cheque;

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

1. Subs. by the Central Laws (Statute Reform) Ord. 1960 w.e.f. 14.10.1955.

2. Subs. by Ord. LXII of 1980.

[S. 3]

brought before the Court is within time or out of time. Provisions of S. 3 of Limitation Act, 1908, do not apply on "cause" which has already been decided and thereafter it falls within the jurisdiction of appellate or revisional Court to see as to whether original Court had complied with S. 3 of Limitation Act, 1908, or not. [PLD 2009 Lah. 52].

Void order. It is an established principle of law that limitation does not operate against an illegal and void order. [PLJ 2000 Tr.C. (Services) 181]. Where fraud is alleged and it is also alleged that mutation was sanctioned in behind the back, the limitation would start from the date of knowledge. [2005 MLD 307]. Even void orders are subject to law of limitation. [2005 YLR 1931]. Void order is only a type of an illegal order and it creates certain consequences until get rid of it. [2007 SCMR 914].

It has been held by the Single Bench of Lahore High Court that a person who comes across with an adverse order even it be a void order, having been passed against him and being used, implemented and effecting him adversely in his interest, but he having not taken any step to get it washed and cancelled, set it aside are annulled within prescribed period of limitation cannot claim exemption from limitation after his expiry. An order can be void or voidable, valid or invalid if its sustenance in the field changed and scene or the circumstances materially, such order has to be noted with concerned and has to be stayed and stalled, to get same set aside within prescribed period of limitation, otherwise there would be no end to litigation and the provision of law of limitation would be negated in its effective application. [2005 YLR 1096].

Recalling order. Order was passed without considering particular aspect that suit was instituted on first opening day according to which suit was not barred by limitation. [PLJ 2014 Kar. 202]

Suit barred by law. Limitation would create a right in favour of opposite party when an appeal are proceedings are time barred, then duty of person approaching Court would be at least to submit application or make application in that regard. [2008 SCMR 284].

Appeal barred by four days. Appeal barred by four days, no cogent reasons for condonation of delay, nor delay of each day explained. Application dismissed. [2003 YLR 1686].

Start of limitation. Limitation once start running cannot be stopped by any subsequent act. [2004 SCMR 145].

Co-sharer. Possession of a co-sharer would be considered the possession of other co-sharer in absence of any ouster. [2005 CLC 1383]. Co-sharer in joint property is neither stopped for claiming his share therein, nor his such right can be extinguished by lapse of time at the same time his sleeping over the matter does not exclude him from the property. [2005 YLR 364]. Limited owner transferring the whole property through consent decree, plaintiff becoming co-sharer in the land in dispute, question of limitation would not arise. [2005 YLR 2198]. Plea of limitation that suit is barred by time thus becomes without any foundation. [1999 MLD 249]. Co-sharer who raises any construction on joint property without the consent of other co-sharers and without permission of the Court, is not entitled to any compensation and enhancement in value of such property. [2006 YLR 828].

Sult by the co-owner. For such co-owner, particularly in possession there is no objection. [PLD 2004 Lah 1].

Waiver. Where it is pure question of law it can be raised at any stage of proceedings. [2006 SCMR 783]. Compromise of suit culminating into decree Objection relating to limitation incorporated in specific issue would be deemed to have been waived. [1995 MLD 1899]. Being a matter of status and the provisions thereof being mandatory, same cannot be waived and even if waived can be taken up against by the party waiving it and even by the Court itself. Matter of limitation would not be left to pleadings of parties but a duty is imposed on the Court itself to decide whether the proceedings had been filed within the period of limitation. Higher forum would be competent to examine the question of limitation in filing the proceedings before the original/lower forum, if such issue is raised and agitated before it. [2006 SCMR 170]. Duty of the Court is to determine question of limitation irrespective of the fact whether such plea was raised or not by virtue of S. 3 of Limitation Act, 1908. [2006 SCMR 783].

Rejection of plaint. Principles. For rejection of plaint under O.VII, R. 11, C.P.C. the contents of the plaint were to be looked into and if from the statement of the plaintiff, the suit appeared to be barred by limitation; such plaint shall have to be rejected. [PLD 2012 Sindh 293]

4. Where Court is closed when period expires. Where the period of limitation prescribed 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 that the Court re-opens.

COMMENTS

Revision petition. Delay, condonation of. Exclusion of time consumed in obtaining certified copies of judgment/decrees and other documents required to be filed along with revision petition. Scope. Civil practical purpose, for having prescribed period of limitation for filing a revision petition would be considered a special law for purposes of Limitation Act, 1908. Had legislature intended to treat C.P.C. as a general law for purposes of Limitation Act, 1908, then same in its First Schedule would have prescribed a period of Limitation for filing revision petition. Provision of Ss. 4, 9 to 18 & 22 of Limitation Act, 1908 would, thus, apply even to revision petition filed under S. 115, C.P.C. however, S. 5 of Limitation Act, 1908, for not finding mention in S. 29 thereof shall, not be applicable to revision under S. 115, C.P.C. Any time consumed for obtaining certified copies of pleadings, documents order required in support of such petition would thus be excluded. Principles. [PLD 2012 SC 582 at p. (1186); PLD 2003 Pesh. 217 ref. 2001 SCMR 286; PLD 1960 (W.P.) Kar. 795; 2003 SCMR 176; 2006 SCMR 676; AIR 1974 SC 480; AIR 1964 SC 260 rel. PLD 2012 SC 400]

Closure on day when limitation expires. Section 4 of Limitation Act, does not extend period of limitation prescribed under law but it simply permits a suit, appeal or application to be filed on re-opening of Court if period of limitation expires on a day when Court was closed. [PLJ 2014 Karachi 202]

Reviewed of judgment. It is not time barred and institution on first re-opening day is duly protected u/S. 4 of Limitation Act. Judgment was liable to be recalled and reviewed. [PLJ 2014 Karachi 202]

Government functionaries. Exemption of limitation as expounded in Ss. 4 to 25 cannot be sought in absence of a case falling within any of the exceptions contained in Ss. 4 to 25 of Limitation Act, 1908. [2007 SCMR 1792]. Condonation of delay sought in the pleas that no funds were available for purchase of Court-fee and that High Court remained closed due to summer vacation. During summer vacation office of High Court 4 of this Act is not available even if there is any problem within the Department such problem cannot be cited as a valid ground for condonation of delay. Department held is required to explain each days delay which if lacking in a case, the Department would not deserve any condonation by the Court of law. [2006 YLR 440].

5. Extension of period in certain cases. Any appeal or application for a revision or a review or judgment or for leave to appeal or any other application to which this Section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when 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 the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

COMMENTS

Scope. In case appeal was barred by time, provisions of S. 5 of Limitation Act can only be invoked and that too by showing sufficient cause. Power to condone the delay and grant extension in time u/S. 5 of Act was discretionary. [PLJ 2014 Peshawar 52] The Code of Civil Procedure contains various provisions where S. 5 of Limitation Act, has been expressly made applicable to condone the delay in filing proceedings if sufficient cause exists in favour of the party who sort condonation of delay but said Section has not been made applicable on revision under Section 115, C.P.C. [2007 CLC 213]. So far as civil suit is concerned S. 5 itself is not applicable. Instead there exists provision in the C.P.C., as contained in O.VII, Rule 6, C.P.C., which provides that when a suit is admittedly instituted after expiration of the prescribed period of limitation, the plaintiff should show the grounds upon which the exemption from the limitation is claimed. If such exemption is not asked for in the plaint, the suit of the plaintiff shall be hit by the rule that no one can be allowed to plead and prove his case beyond the scope of his pleadings, therefore in such circumstances the plaintiff shall be liable to be rejected under O. VII, R. 11 C.P.C., as being barred by limitation. [PLD 2009 Lah. 52]. Without crossing hurdle of limitation and maintainability of petition, party cannot be permitted to touch merits and demerits of his case. [2009 YLR 1609]. The suitor is required to explain each days delay independently showing sufficient cause having not come to the Court within the time as provided in the schedule of the Limitation Act or in any other local or special law. The onus is on the plaintiff as the law requires him to come within stipulated time therefore he will have to discharge his onus in this respect. As far as fraudulent transaction are concerned it is dealt with in S. 18 of the Limitation Act, 1908. In case of appeal being

barred by time right would accrue in favour of respondent which cannot be lightly interfere with, unless there are is sufficient ground for condonation of delay, [2009 CLC 398].

Memorandum of appeal. Time consumed in taking back the memorandum of appeal and then to re-file it before the Distt. Judge was more than 28 months. No justification to condone the delay and no reason to disagree with the conclusions drawn by Distt. Judge in respect of conduct of the appellant who rightly dismissed the appeal being barred by time. [PLJ 2009 Lah. 600]. It is well established law while determining question, whether is sufficient cause to condone delay in filing appeal/revision/review, condonation of delay u/S. 5, petitioner was required to explain each day. [PLJ 2014 Fashanwar 52]

Delay in review petition. At the time of dismissal of writ petition the respondent neither requested for condonation of delay in filing of review petition nor the Court condone the delay. Simple permission to file the review petition cannot condone the delay. [PLJ 2009 SC 675].

Wrong forum. Wrong forum chosen due to mistaken advise. PLJ 1999 S.C. 308]. Time consumed before wrong forum cannot be condoned under S.5. [PLD 2001 SC 355]. Fault in approaching wrong forum for redressal of grievance does not at all be reasonable cause to condone the delay. [2002 SCMR 1004].

Order passed without notice. When an order is passed at the back of the party and without notice to the party said order would be void *ab initio*; and the mischief of limitation would not come in the way of said party. [2009 CLC 604].

Duty of Court. Court is duty bound to look beyond the pleadings of the parties, into the circumstances of each case when determining the question of condoning a delay under the limitation law. [PLJ 2009 Lah. 127].

Counter affidavit. In absence of such a counter affidavit in his petition for condonation would be deemed to have been admitted by opposite side which is the case here. There is nothing on the face of record to make a case for interference by High Court with impugned orders when under the law execution Court had condoned the limitation in exercise of its discretionary powers in terms of S. 5 of Limitation Act, after proper appreciation of facts of the case. [PLJ 2009 Lah. 347].

Condonation of delay. Plea of poverty. Held: Plea for condonation of delay on the ground of poverty is not a valid ground. [PLJ 2009 Lah. 111]. Government not to be treated in any manner differently. [2004 YLR 464]. Party guilty of limitation is under obligation to explain each days delay in filing of appeal and in case each days delay not explained satisfactorily the delay cannot be condoned. [2009 MLD 82]. Oral request for condonation of delay not to be allowed. [2009 MLD 7].

Condonation on Medical ground. If condonation of delay is claimed on medical grounds, the medical certificate must disclose that the person concerned is bedridden and is unable to move. Where medical certificate produced by the appellant does not contain the address of the doctor or that of his clinic, reading of the certificate

showing that according to the doctor the patient had recovered and was able to join his duty, such certificate will not be sufficient to condone delay on this score. [PLD 2006 Kar. 148].

Condonation of delay and deduction of time spent in legal proceedings. Scope. Scheme and purpose of condonation of delay under S. 5 of Limitation Act, 1908, and deduction of the days under S. 12 of the Act, were altogether different from each other. First was the discretion of the Court which was variable according to the circumstances of the case. Second was not one variable dependent on the discretion of the Court. Party had a right founded on the provision of law. Deduction allowed under S. 12 of Limitation Act, 1908 was applicable in case of a revision petition as well. [PLD 2010 SC 705; 2006 SCMR 676 dist. CLC 2012 Lah. 1172] Distinction between limitation and laches. [PLJ 2014 Karachi 279]

"Condonation of delay" and "exclusion of time". Distinction. Power to condone delay and grant extension of time under S. 5 of Limitation Act, 1908, is discretionary, whereas under S. 14 of Limitation Act, 1908, exclusion of time is mandatory on the satisfaction of the condition prescribed in it. [2012 SCMR 377]

First appeal by Government Department. Delay, condonation of. Plea was that filing of appeal beyond prescribed period was due to official procedure. Validity. Such plea was no ground for condonation. Appeal was dismissed for being time-barred. [2012 CLC 1165]

Right of party. Existence of valuable right of the party seeking condonation of delay is not a proper ground for condonation of delay in civil matters. [PLJ 2009 Lah. 111].

Barred by time. Provisions of S. 5 of Limitation Act, seeking condonation of delay are not applicable to revision petition. [PLJ 2009 Lah. 388].

Sufficient Cause. Counsel having no personal interest in his affidavit is to be believed which had been sworn even at cost of deposing himself to penal consequences. In condoning delay, if discretion vested in a Court had been exercised within parameters fixed by law, the same cannot be interfered by High Court in revisional jurisdiction but where discretion has not only been exercised arbitrary but the same was exercise fancifully. Application under Section 5 accepted by High Court condoning delay of one day. [2007 YLR 135]. After expiry of limitation period a valuable right stands accrued in favour of opposite party, which cannot be snatched or brushed aside leniently. Party guilty of limitation is duty bound and under obligation to explain each days delay in submission of appeal, when period of limitation is expired. Petitioner only explained his paucity to arrange court fee. Delay not satisfactorily explained. [2010 YLR 226].

Where party was neither served nor was aware of institution of proceedings affecting his right, period of limitation provided by law would commence from the date the aggrieved party becomes aware of such proceedings or adverse orders. Limitation would start from the date of knowledge. [2002 SCMR 343]. Pursuing remedy in a wrong forum on mistaken advice on counsel is not sufficient cause within the meaning of S. 5.

5. b)
[PLD 2006 Lah. 26]. Every cause for condonation of delay cannot be equated with that of sufficient cause which amounts to cogent reasoning, convincing justification and satisfactory explanation. [2007 SCMR 866]. In case of appeal being barred by time right would accrue in favour of respondent which cannot be lightly interfered with, unless they are sufficient grounds for condonation of delay. [2009 CLC 386].

Government. Party guilty of limitation was under obligation to explain each day's delay in filing of appeal and in case each day's delay had not been explained satisfactorily, the delay could not be condoned. Government could not be given different or special treatment to a party than ordinary litigant and government was also required to explain delay reasonably so as to condone the same. Delay in absence of required explanation could not be condoned. [2009 MLD 82].

Delay receipt of judgment. Appeal filed by appellant was barred by 21 days and condonation of delay was sought on the ground that copy of judgment was transmitted to appellant 15 days after announcement of the judgment. Judgment was announced by High Court on 1.12.2008 in open Court and it was not the case of appellant that either it was not represented at the time of announcement of the judgment or was unaware of the same until it had received a copy of judgment on 16.12.2008. Time of limitation to impugn a judgment started running from the date the same was announced. In case of delay, the parties had to expressly state and show that they were unaware of the pronouncement of the judgment. Supreme Court declined to condone the delay in circumstances. [2012 SCMR 136]

Power of Appellate Court. Appellate Court has lawful authority to examine the case qua condonation of delay granted by the lower Court. [2004 YLR 650].

Application for setting aside ex-parte proceedings. Defendant who was proceeded ex-parte for his failure to appear in the Court, filed an application for setting aside ex-parte proceedings initiated against him on the plea that he was neither served upon personally nor through any other means and that he was quite unaware of the proceedings. Trial Court dismissed the application; Appellate Court upheld judgment of the trial Court. Validity. Parties were legal heirs of common predecessor and the defendant once appeared in the Court at stage of interlocutory appeal filed by another legal heir against the order passed by the trial Court regarding temporary injunction. Defendant along with his counsel appeared before the Appellate Court in said appeal, but that fact had been suppressed by him in his application filed before the trial Court setting aside ex-parte proceedings and that fact had also been concealed before the High Court. Application for setting aside ex-parte proceedings was filed by the defendant after the lapse of more than six years and same was not filed along with application for condonation of delay. Conduct of the defendant, especially concealment of fact from the High Court as well as from the lower Courts, did not oblige any concession to him. In absence of any illegality or irregularity in the judgments/orders passed by the Courts below, same could not be interfered with in revision. [2012 MLD 657]

Chosen wrong forum. Time spent in pursuing proceedings before wrong forum would not be excluded. [PLJ 2014 Pesh. 227]

Act of officials. Act of officials of Court would not cause any prejudice to party. [PLJ 1999 SC 54] Court should not be reluctant in condoning the delay depending upon facts of the case under consideration. [PLD 2002 S.C. 84].

Suit for recovery of dower amount and maintenance allowance. Ex-parte decree. Application for setting aside ex-parte decree. Condonation of delay. Scope. Limitation. Defendant (husband) having failed to appear before the trial Court, ex-parte proceedings were ordered against him and after recording evidence, ex-parte decree was passed in favour of the plaintiff (wife). Application for condonation of delay in filing application, which under R. 13 of Azad Jammu and Kashmir Family Courts Procedure Rules, 1998, was 30 days, was filed after 3-1/2 months, which was time-barred. Azad Jammu and Kashmir Family Courts Act, 1993, was a special law, which had provided limitation under the Rules and there was no concept of condonation of delay under R. 13 of the said Rules. In presence of clear provisions in the special law, the provisions of S. 5 of the Limitation Act, 1908, were not applicable to the proceedings before the Family Court. Application for condonation of delay being time-barred, was rightly dismissed, in circumstances. [PLD 2007 SC (AJ&K) 14; 2005 CLC 107; 1999 MLD 216; 1996 SCMR 82 *distin.* 2012 CLC 1131 SC (AJ&K)]

Announcement of judgment. Office of High Court reporting that matter was never notified, no notice issued to the parties or their counsel for announcement of judgments, sufficient ground for condonation of delay. [PLD 2006 S.C. 214].

Revision under Section 115, C.P.C. Section 115 prescribes its own period of limitation, i.e. 90 days, benefit of S. 5 cannot be availed unless same has been made applicable as per S. 29(2), Limitation Act. [2003 MLD 169].

Void order. Affected party, despite attaining knowledge not challenging the same within prescribed period of limitation. Cannot take refuge that void order would not carry any sanction of Limitation. [2006 CLC 586].

Delay in taking back memo of appeal. The delay in taking back memo of appeal from the office of High Court and presenting the same in District Court has also to be sufficiently explained. Where there is no explanation for delay of two months in taking back memo of appeal, order refusing to condone delay upheld by the High Court. [2006 YLR 249].

Appeal. Condonation of delay. Exclusion of time. Principle. Time spent in pursuing proceedings before wrong appellate forum could not be excluded for the purposes of filing of an appeal. If appeal is barred by time, provisions of S. 5 of Limitation Act, 1908, could only be invoked, that too, by showing sufficient cause. [2012 SCMR 377]

Time barred appeal. Expiry of limitation would vest a person with valuable right which cannot be taken away by condoning delay. Negligence must have its reward to punished the indolent. [2007 SCMR 1560].