

Bar to Limitation

Definition

As per Section 3 of the Limitation Act, 1963 every suit instituted/appeal filed/application moved would be dismissed if filed after period of limitation subject to provisions contained in 4 to 24. Even though limitation has not been set up as defense.

Analysis

A. Institution of Suit: Definition

- (a) Ordinary Case: when the plaint is presented to the proper officer.
- (b) Pauper: When his application for leave to sue as pauper is made.
- (c) Claim against a Company: When a claim is made to the Official Liquidator
- (d) Application for Notice of Motion: is made on the date when the application is made to the proper officer of the Court.

B. Appeal Preferred

The section does not talk about when appeal is preferred for it, we need to depends on other branches of law. Order 41 Rules 1 of CPC (Civil Appeal) and Section 419 CRPC (Criminal Appeal)

C. Application Moved

The section does not provide as to when the application is deemed to be moved for the purpose of the Act and the same would depend upon the appropriate provisions of Code of Civil Procedure

D. Clarification

1. Set off/Counter Claim, are treated as separate suit and are deem to be instituted when:
 - (a) When set off is pleaded
 - (b) When Counter Claim is made in the court

Important Points

- It is the duty of the Plaintiff to convince that the suit is within the time limit
- The plaint should appear on face of it within time limit, if not court has power to dismiss it without even issuing summons to the defendant.
- Section 3 bars the remedy but does not destroy the right.
- Parties cannot consent or agree to alter the period of limitation

Sections to Remember

Section 3	Bar to Limitation [subject to Section 4 to 24 of the Limitation Act, 1963]
Order 41 Rule 1 CPC	Appeals

Section 419 CRPC	Directions of warrant for execution
Order 33 CPC	Application to Sue as Pauper
Order VIII, Rule 6 CPC	Set off and Counter Claim

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