

LAW OF LIMITATIONS

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1. Scope of Sec. 5 of the Limitation Act, 1963 & Condonation of Delay : Sec. 5 of the Limitation Act, 1963 applies in relation to question of condonation of delay in preferring criminal appeals. If the refusal to condone delay in preferring the appeal results into grave miscarriage of justice, the appellate court should condone the delay and permit the filing of the accused. Court should not adopt a pedantic or hyper-technical approach while considering the question of condonation of delay. The court should rather adopt a rationale and pragmatic approach and substantial justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain delay for every day for the reason that if delay for every day is required to be explained by the party/appellant, then why not delay for every hour, every minutes and every second. See :

1. **Shital Deen vs. State of U.P., 2009 (27) LCD 1380 (All—L.B.)**
2. **Maithili Sharan Dixit vs. The Board of Revenue, U.P., 2009 (27) LCD 660 (All)**
2. **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**
3. **State of Nagaland vs. Lipok AO and others, 2005 (52) ACC 788 (SC)**
4. **Vedabai vs. Shantaram, 2001 (44) ALR 577 (SC)**
5. **Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222**
6. **State of Haryana vs. Chandra Mani, 1996 (3) SCC 132**
7. **Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750**
8. **G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897**
9. **Prabha vs. Ram Prakash Kalra, 1987 Suppl. SCC 339**
10. **Collector L.A. Anentnag vs. Smt. Kitiji, AIR 1987 SC 1353**
11. **O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66**

12. **Milavi Debi vs. Dina Nath, 1982 (3) SCC 366**

13. **New India Insurance Co. vs. Shanti Misra, 1975 (2) SCC 840**

1-A. Meaning of expression “sufficient cause” used in Sec. 5 of the Limitation Act : It has been held by the Supreme Court that discretion given by Sec. 5 of the Limitation Act, 1963 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction. See : **New India Insurance Co. Ltd. vs. Smt. Shanti Mishra, AIR 1976 SC 237**

1-B Bonafides must for exercising discretion u/s. 5 of the Limitation Act, 1963 : Unless want of bonafides of such inaction or negligence as would deprive a party of the protection of Sec. 5 of the Limitation Act, 1963 is proved, the application must not be thrown out or any delay cannot be refused to be condone. See : **Shakuntala Devi Jain vs. Kuntal Kumari, AIR 1969 SC 575**

1-C. Grave miscarriage of justice to be ground of condonation of delay : If the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. See : **O.P. Kathpalia vs. Lakhmir Singh, AIR 1984 SC 1744**

1-D. “Each days’ delay must be explained” & its meaning : The Supreme Court has laid down that the expression “each days’ delay must be explained” does not mean that a pedantic approach should be made and it should be applied in a rational common sense pragmatic manner. See :

1. **Maithili Sharan Dixit vs. The Board of Revenue, U.P., 2009 (27) LCD 660 (All)**
2. **State of Haryana vs. Chandramani, AIR 1969 SC 1623**
3. **Binor Bihari Singh vs. Union of India, (1993) 1 SCC 572**
4. **M/s. Shakambari & Co. vs. Union of India, (1993) Supp (1) SCC 487**
5. **Warlu vs. Gangotribai, (1995) Supp (1) SCC 37**
6. **Ramlal Motilal vs. Rewa Coalfields Ltd., AIR 1962 SC 361**
7. **Concord of India Insurance Co. ltd. vs. Nirmala Devi, AIR 1979 SC 1666**
8. **Lala Mata Din vs. A. Narayana, AIR 1970 SC 1953**

2. **Time barred civil revisions & condonation of delay**

According to Art. 131 of the Limitation Act, 1963, limitation period for preferring a revision u/s 115 CPC is 90 days from the date of order under challenge or from the date of knowledge of the order by the revisionist. Sec. 5 of the Limitation Act applies to civil revisions also and if the delay is satisfactorily explained, the same may be condoned by the revisional court.

While considering the question of condonation of delay u/s 5 of the Limitation Act, 1963, the court should not adopt a pedantic or hyper technical approach. The Court should rather adopt liberal approach. Substantive Justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain the delay for every day because if the delay for every day is asked to be explained then why not the delay for every hour, every minute and every second. See :-

1. **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**
2. **State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)**

3. **Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222**
4. **State of Haryana vs. Chandra Mani, 1996 (3) SCC 132**
5. **Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750**
6. **G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897**
7. **Collector L.A. Anentnag vs. Smt. Kati Ji, AIR 1987 SC 1353**
8. **O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66**

3. Time barred Criminal Revisions & Condonation of Delay

(i) According to Article 131 of the Limitation Act, 1963, the limitation period for filing revision u/s. 397 Cr.P.C. is 90 days from the date of order under challenge. Revisional court can condone the delay u/s. 5 of the Limitation Act, 1963 if the delay is satisfactorily explained by the proposed revisionist. If the revisionist was not having knowledge of the order then the limitation period of 90 days to prefer revision would be computed from the date of knowledge of the order. In the cases, noted below, it has been held that a criminal revision cannot be dismissed on a technical ground like limitation otherwise if the order passed by the lower court is otherwise illegal, that illegality will perpetuate and survive if the power of revision is not exercised by the revisional court for the technical reasons like limitation. The revisional court should apply liberal approach while considering the question of limitation in regard to a time barred criminal revision. See—

1. **Shilpa vs. Madhukar & others, 2001 (1) JIC 588 (SC)**
2. **State of U.P. vs. Gauri Shanker, 1992 ALJ 606 (All—Division Bench)**
3. **Paras Nath vs. State of U.P., 1982 ALJ 392 (Allahabad)**

4. Municipal Corporation of Delhi vs. Girdharilal Sapuru, AIR 1981 SC 1169

(ii) While considering the question of condonation of delay u/s. 5 of the Limitation Act, 1963, the court is not required to adopt a hyper technical or pedantic approach. It should rather adopt a liberal approach and every day's delay should not be expected to be explained. If the party is expected to explain the delay for every day then why not the delay for every hour, every minute and every second. Substantial justice should be preferred over technical justice. See :-

1. **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**
2. **State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)**
3. **Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222**
4. **State of Haryana vs. Chandra Mani, 1996 (3) SCC 132**
5. **Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750**
6. **G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897**
7. **Collector L.A. Anentnag vs. Smt. Kitiji, AIR 1987 SC 1353**
8. **O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66**

(iii) **Power of ASJ to decide limitation application alongwith revision :**

- The expression "in respect of" as used in **Sec. 400 Cr.P.C.** is of wider connotation than the word "in" as used in **Sec. 381 Cr.P.C.** **Sec. 400 Cr.P.C.**, therefore, includes within its scope not only references and revisions (covered by Chap. XXX), but all other **incidental and ancillary matter also**. The application u/s. 5 of the Limitation Act filed alongwith the revision (which is filed beyond time) is undoubtedly an ancillary matter and it is, therefore, open to the Sessions Judge to transfer that application and the defective revision to the Court of Additional Sessions Judge for disposal. If,

therefore, the Addl. Sessions Judge decides that application and admits the revision, he has full jurisdiction to pass that order. See : - **Ram Newaz vs. Chabi Nandan Pandey, 1978 Cri.L.J. 632 (All)**

4. Time barred appeals and condonation of delay

(A) Period of limitation governing preferring of appeals to High Court or other Appellate Courts against judgment/order of acquittal or conviction/sentence, under different situations, is 90, 60, 30 days. As per Sec. 115(b)(ii) of the Limitation Act, 1963 period of limitation for preferring an appeal to the court of Sessions Judge is 30 days from the date of sentence or order.

(B) Where there was delay of 769 days in filing civil appeal but facts contained in the application for condonation of delay constituted sufficient grounds for condonation, the application was allowed u/s. 5 of the Limitation Act, 1963 at Rs. 10,000/- as cost and the delay was condoned. See : **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**

5. Plea of limitation—when not raised?

Even if the defendant intentionally does not raise the plea of limitation and the suit is ex facie barred by law of limitation u/s. 3 of the Limitation Act, 1963, court has no choice but to dismiss the same.

1. **V.M. Salgaocar & brothers vs. Board of Trustees of Port of Mormugao, (2005) 4 SCC 613**
2. **Manindra Land & Building Corp. Ltd. vs. Bhutnath Banerjee, AIR 1964 SC 1336**

6. Setting aside ex-parte decree & condonation of delay

Where defendant had admitted that he had approached plaintiff for not giving effect to decree for 1½ years prior to filing of application u/o. 9, r. 13 CPC, the application was clearly barred by Sec. 3, Limitation Act, 1963 as the same was moved by defendant after 1½ years from the date of knowledge. So application, held was rightly dismissed u/o. 9, r. 13 CPC. See--**Mahabir Singh vs. Subhash, AIR 2008 SC 276**

7. Restoration of execution case after 30 days

O. 21, r. 105, 106 CPC r/w Sec. 151 CPC r/w. Sec. 5 Limitation Act Sec. 5 of the Limitation Act, 1963 is not applicable in relation to execution cases u/o. 21 of the CPC. Sec. 151 CPC cannot be invoked for condonation of delay in moving application under rule 106 of Order 21 CPC for restoration of execution application dismissed in default. Hardship or injustice cannot be a ground for extending period of limitation. When the execution has been dismissed in default, the application for restoration must be filed within 30 days from the date of order and not thereafter or from the date of knowledge. See : **Damodaran Pillai vs. South Indian Bank Ltd., 2005 (34) AIC 83 (SC)**

8. Limitation for execution cases---Art. 136 of the Limitation Act, 1963

Art. 136 of the Limitation Act, 1963 reads as under--- “For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court, the period of limitation would be twelve years from the date when the decree or order becomes enforceable or

where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment of delivery in respect of which execution is sought, takes place :

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”

9. Where no period of limitation is provided for moving an application

If no period of limitation is provided under the Limitation Act, 1963 for moving an application, the period of limitation for moving such application would be three years from the date when the right to apply accrues.

10. Order 21, rule 32 CPC & Art. 135/136 Limitation Act

Where an application for enforcement of a decree granting perpetual prohibitory injunction was moved u/o. 21, r. 32 CPC, it has been held by the Allahabad High Court that Art. 136, proviso and not Art. 135 of the Limitation Act, 1963 would apply. See :

1. **Ram Singh vs. Salig Ram, AIR 1975 All 11**
2. **Harihar Pandey vs. Mangala Prasad Singh, AIR 1986 All 9**

11. Burden of proof of limitation : A person having the right to the possession of a movable property wrongfully taken from him by another can file a suit to recover the said specific moveable property or for compensation

therefore within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge. It is the duty of the plaintiff to establish, at any rate prima facie, that the suit is within time and is not barred by lapse of time. Under the Evidence Act there is an essential distinction between the phrase, burden of proof, as a matter of law and pleading and as a matter of adducing evidence u/s. 101 of the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other. The burden of proof, is on a plaintiff who asserts a right, and it may be, having regard to the circumstances of each case, that the onus of proof may shift to the defendant. But to say that no duty is cast upon the plaintiff even to allege the date when he had knowledge of the defendant's possession of the converted property and that the entire burden is on the defendant is contrary to the tenor of the article in the Limitation Act and also to the rules of evidence. See : **K.S. Nanji & Co. vs. Jatashankar Dossa, AIR 1961 SC 1474**

12. Mistake by counsel not always a sufficient ground- There is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose.

In that case it was held that the mistake committed by the Counsel was bona fide and it was not tainted by any malafide motive. See : **Lala Mata Din Vs. A. Narayanan, 1969 (2) SCC 770**

13. Negligence & misleading of litigant by counsel & condonation of delay : where the litigant was misled by his negligent counsel, the default in delay was condoned for the litigant to pursue his remedy. See : **Concord of India Insurance Co. Ltd. Vs. Nirmala Devi, 1979(4) SCC 365**

14. Time consume in obtaining copy of decree & condonation of delay in filing appeal : Where a decree is not drawn up immediately or soon after a judgment is pronounced and a litigant feeling aggrieved by the decision applies for the certified copy of the judgment and the decree before the decree drawn up, as he had done all that he could and has made a proper application for obtaining the necessary copies, the time requisite for obtaining the copies must necessarily include not only the time taken for the actual supply of the certified copy of the decree but also for the drawing up of the decree itself. The time taken by the office or the court in drawing up a decree after a litigant has applied for its certified copy on judgment being pronounced, would be treated as a part of the time taken for obtaining the certified copy of the said decree. Sections 96 and 100 of the CPC provide for appeal from decree passed by a court of original jurisdiction and on appeal, by a court subordinate to the High Court respectively. Neither of these Sections permit appeal against judgment. However, where decree is not drawn within 15 days of the judgment and decree, Order 20, rule 6A permits filing of appeal with a copy of the last paragraph of the judgment which by fiction is treated as decree. Therefore, the appeal lies from the decree and not

from the judgment although the word “decision” is used in sub-section (1) of Sec. 96 of the CPC. See :

1. **Hari Shanker vs. Jag Deyee, 2000 (18) LCD 872 (All)**
2. **Jagat Dhish Bhargava vs. Jawahar Lal Bhargava, AIR 1961 SC 832 (Three-Judge Bench)**

15. **Election petition & condonation of delay** : Where an election petition under U.P. Municipal Corporations Adhiniyam, 1959 was filed beyond limitation prescribed and an application for condonation of delay u/s. 5 of the Limitation Act, 1963 was also filed, it has been held that the provisions of limitation shall be deemed to be excluded and provisions of Sec. 5 Limitation Act, 1963 are not application. See : **Bharat Singh vs. Sri Ajay, 2009 (27) LCD 1591 (All—L.B.) (D.B.)**

16. **Separate application u/s 5 for condonation of delay not required** Where application for setting aside exparte decree was filed within 30 days from knowledge of passing of decree, it has been held that such application cannot be dismissed by taking hyper technical view that no separate application was filed u/s 5 of the limitation Act, 1963 and Art.123 of the Act also cannot be invoked. See.. **Bhagmal Vs. Kunwar Lal, AIR 2010 SC 2991.**

17. **Delay not to be condoned when party was having knowledge of abatement through counsel** ... Where the party had moved application u/s 5 of the Limitation Act,1963 for condonation of delay after over 2 years and was already having knowledge of

abatement through his counsel, it has been held that such delay cannot be condoned. See...

1. **Bhagmal Vs. Kunwar Lal, AIR 2010 SC 2991**
2. **Balwant Singh Vs. Jagdish Singh, AIR 2010 SC 3043**

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