The Limitation Act, 1908

(ACT NO. IX OF 1908)

[1][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:-

PART I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Limitation Act, 1908.

(2) It extends to the whole of Bangladesh.

(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.

Definitions

2. 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” includes a hundi and a 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:

(4) “defendant” includes any person from or through whom a defendant derives his liability to be sued:

(5) “easement” includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another:

(6) “foreign country” means any country other than Bangladesh [2][* * *]:

(7) “good faith”: nothing shall be deemed to be done in good faith which is not done with due care and attention:

(8) “plaintiff” includes any person from or through whom a plaintiff derives his right to sue:

(9) “promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(10) “suit” does not include an appeal or application: and

(11) “trustee” does not include a benamider, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

Dismissal of suits, etc., instituted, etc., after period of limitation

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.-A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his 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 the claimant first sends in his claim to the official liquidator.

Where Court is closed

when period expires

4. 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.

Extension of period in certain cases

5. Any appeal or application for a revision or a review of 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 Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal disability

6. (1) Where a person entitled to institute a suit or proceeding or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or proceeding or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefore in the third column of the first schedule or in section 48 of the Code of Civil Procedure, 1908.

(2) Where such person is, at the time from which the period of limitation is 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 within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within the years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insainity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Disability of one of several plaintiffs or applicants

7. Where one of several persons jointly entitled to institute a suit or proceeding or make an application for the execution of a decree is under any such disability, and discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Special exceptions

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the

cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Continuous running of time

9. Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns

their representatives

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.

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 the manager of any such property shall be deemed to be the trustee thereof.

Suits on foreign contracts

11. (1) Suits instituted in Bangladesh on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in Bangladesh on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III

COMPUTATION OF PERIOD OF LIMITATION

Exclusion of time in legal proceedings

12. (1) In computing the period of limitation prescribed 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 prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, 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 or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from Bangladesh and certain other territories

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from Bangladesh and from the territories beyond Bangladesh under the administration of the [3][Government] shall be excluded.

Exclusion of time of proceeding bona fide in Court without jurisdiction

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plantiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action 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.

(2) In computing the period of limitation prescribed 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 in a Court of appeal, 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.

Explanation I - In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II - For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III - For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Exclusion of time during which proceedings are suspended

15. (1) In computing the period of limitation prescribed 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 the 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 prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which proceedings to set aside execution-sale are pending

16. In computing the period of limitation prescribed 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.

Effect of death before right to sue accrues

17. (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, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where 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, 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 or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applied to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an

hereditary office.

Effect of fraud

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application-

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgement in writing

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgement 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 some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I - For the purposes of this section an acknowledgement 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 a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II - For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

Explanation III - For the purposes of this section an application for the execution of a decree or order is an application respect of a right.

Effect of payment on account of debt as of interest on legacy

20. (1) 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 duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by the person making the payment.

Agent of persons under disability

21. (1) The expression “agent duly authorised in his behalf,” in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgement 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 or of a 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 authorised agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid

acknowledgment or payment, as the case may be, as against a reversioner 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 authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

Effect of substituting or adding new plaintiff or defendant

22. (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 so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Continuing breaches and wrongs

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. Suit for compensation for act not actionable without special damage

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

Computation of time

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

mentioned in instruments

Illustrations

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian Calendar.

PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

Acquisition of right to easements

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to the Government, that sub-section shall be read as if for the words “twenty years” the words “sixty years” were substituted.

Explanation - Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than

the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Illustrations

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890 to 1st January, 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V

SAVINGS AND REPEALS

[Repealed]

30-31. [Repealed by section 3 and Schedule of the Repealing and Amending Act, 1930 (Act No. VIII of 1930).]

32. [Repealed by section 3 and Second Schedule of the Second Repealing and Amending Act, 1914 (Act No. XVII of 1914).]

Savings

29. (1) Nothing in this Act shall affect section 25 of the Contract Act, 1872.

(2) Where any special [4][* * *] law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provision of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special [5][* * *] law-

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special [6][* * *] law; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Divorce Act.

(4) Sections 26 and 27 and the definition of “easement” in section 2 shall not apply to cases arising in territories to which the Easements Act, 1882, may for the time being extend.

---

[1] Throughout this Act, except otherwise provided, the words “Bangladesh”, "Muslim" and "the High Court Division" were substituted, for the words "Pakistan", "Muhammadan" and "High Court" or "a High Court" or "any High Court" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

[2] The comma and words ", but includes as Acceding State" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

[3] The word "Government" was substituted, for the words "Central Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

[4] The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

[5] The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

[6] The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

Copyright © 2019, Legislative and Parliamentary Affairs Division

Ministry of Law, Justice and Parliamentary Affairs