proceeding that is described in the Code as an appeal and does not include an application for revision.[12]

[13]* * * * * * * * * *

151.	From a decree or order of [14][a High Court] in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.

Synopsis

1. Original jurisdiction. 2. Starting point.

1. Original jurisdiction. There is a distinction between the original jurisdiction of the High Court, and its ordinary original civil jurisdiction.[15] An appeal from a judgment, passed by the High Court in the exercise of its original civil jurisdiction, whether ordinary or extraordinary, in which the forum as well as the right of appeal is given by the Letters Patent is governed by Article 151 of the Limitation Act.[16] The original jurisdiction of the High Courts includes insolvency jurisdiction.[17] The matrimonial jurisdiction[18] and also company jurisdiction.[19] Therefore an appeal under S. 202 of the Companies Act, 1913, from an order passed by a Single Judge of the Lahore High Court in the exercise of its original jurisdiction will be governed by this article.[20]

Writ jurisdiction. The power of the High Court to issue high prerogative writs is part of their original jurisdiction.[1]

2. Starting point. Letters patent appeals are preferred from judgments, and not from decrees. The word "judgment" which occurs in the clause, has been interpreted so liberally, that many orders which are made with no possibility of any decree being prepared under them, have been found to be appealable. The

12. AIR 1954 All. 252 = 1954 Cri. L Jour 512.
13. Article 150-A which was inserted by the Criminal Law Amendment Act, 1923 (12 of 1923). S. 42, has been omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (2 of 1950). S. 2 and Schedule.
14. The original words "any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma", have been amended by the Repealing and Amending Act, 1930 (8 of 1930), the A.O., 1937, the A.O., 1949 and the Central Laws (Statute Reform) Ord., 1960 (21 of 1960). S. 3 and Second Sch. (with effect from the 14th October 1955), to read as above.
15. AIR 1930 Mad. 779 = 53 Mad. 237 (DB).
16. PLD 1966 Lahore 319 (DB).
17. 13 Bom. 520 = 16 Ind. App. 156 (PC) (Case under Art. 180 of the Act of 1877).
18. 22 Bom. 612 (DB).
19. AIR 1941 Lah. 257 = II R 1941 Lah. 191 (FB).
20. AIR 1941 Lah. 257 = II.R 1941 Lah. 191 (FB).
1. AIR 1930 Mad. 896 = 53 Mad. 979 (DB) + AIR 1960 Andh Pra 364 (DB) + AIR 1958 Punj. 365 = ILR 1958 Punj. 960 (DB) + AIR 1952 Cal. 753 (DB) + AIR 1953 Cal. 433 (SB).

conclusion, therefore, is that, for purpose of a Letters Patent Appeal, a decree prepared in pursuance of a judgment is of no relevance.[2]

Exclusion of time. Where a portion of the period allowed by this article is occupied by the appellant in getting the order appealed from varied and settled by the Registrar, it may be excluded under sub-section (2) of section 12.[3]

In a letters Patent Appeal copies of decrees are not only not required by law to be produced, but ordinarily will not even be necessary to look at; therefore, to try to extend the period of limitation on the ground that a copy of decree could not be obtained within 20 days cannot be accepted as a good excuse.[4] Similarly LPA against original order by Single Judge of High Court need not accompany copy of the order. Time spent in obtaining copy of order cannot be added to 20 days limitation time for filing LPA.[5]

152.	Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days	The date of the decree or order appealed from.

Synopsis

1. Date of decree.
2. Presentation of appeal after office hours.
3. Review of judgment--effect.
4. Appeals from orders.
5. Exclusion of time.
6. Appeal not filed within limitation.

1. Date of decree. Appeal to the Court of District Judge is to be filed within thirty days from the date of the decree or order appealed from.[6] The date of the decree is the date of the judgment and not the date on which the decree was actually signed.[7] Where an order fixing mesne profits directs that a formal decree would be drawn up on payment of the necessary court-fee and a formal decree was drawn up after the expiry of limitation for appeal when the court-fee was paid, the date of the formal decree would still be the date of the prior order and an appeal against the formal decree would be barred by limitation.[8] Where counsel of the parties have been duly given notice of the date for delivery of the judgment, limitation would run from that date, although neither the parties nor their counsel were present.[9] But where judgment was pronounced in the absence of the parties or their counsel on the date of which no notice had been given to them and the Judge only sent an intimation of the decision against him to the

2. PLD 1972 Karachi 84 (DB)+25 Mad. L. Jour 560+AIR 1937 Bom. 64=ILR 1937 Bom. 421 (DB).
3. AIR 1937 P.C. 107=31 Sind L R 239.
4. PLD 1972 Karachi 84 (DB)+PLD 1967 S.C. 271+PLD 1967 Kar. 537+AIR 1941 Lah. 257.
5. NLR 1988 UC 283 (DB).
6. 1990 MLD 120.
7. 13 Cal. 104 (FB)+AIR 1954 Hyd. 104=ILR 1954 Hyd. 12 (DB)+AIR 1949 Assam 23=ILR (1949) 1 Assam 134 (DB)+AIR 1930 Rang. 67+23 Bom. 442 (DB)+AIR 1915 Mad. 308 (DB)+12 All. 461 (FB)+AIR 1922 Nag. 113+AIR 1927 Rang. 335.
8. AIR 1963 Bombay 263.
9. AIR 1927 Lah. 59.

plaintiff's pleader, limitation begins to run from the date on which intimation was received.[10]

Reading of judgment not necessary. From the fact that the whole judgment has not been read out in Court, it cannot be said that the judgment is not pronounced.[11]

Amendment of decree. If the decree is amended on an application under S. 151 or S. 152, Civil P.C. and the appeal is confined to the amended portion only, the starting point would be the date of the amendment. In such a case, if the appeal is directed against the decree as it stood prior to the amendment, the starting point would be the date of the original decree.[12]

'Ex part' decree, application for setting aside. Where an application is made by the defendant to set aside an *ex parte* decree passed against him and the Court makes a conditional order directing the decree to be set aside on certain conditions in default of which the application is to be dismissed, such an order is final for the purpose of an appeal and time begins to run from the date when the order is made and not from the date when the Court makes a further order dismissing the application on failure to perform the condition.[13]

Void decree. Where a decree is found to be void and nullity, no question of limitation for appeal against it would arise.[14]

2. Presentation of appeal after office hours. Where a memorandum of appeal is presented to the District Judge at his private house after office hours, it is at the discretion of the District Judge to accept the memorandum or not; and if he accepts it he does not act beyond his jurisdiction.[15]

3. Review of judgment--effect. Where a review of judgment is granted, the result is a new decree superseding the original decree,[16] and time for appeal from the decree passed on review runs from the date thereof.[17] This is so even when original decree is ultimately upheld on review.[18]

Delay after decree in review. When extension of limitation for an appeal is prayed for under S. 5 on a ground analogous to that provided under S. 14, it is imperative that the party asking for the indulgence must explain the delay which has taken place between the termination of the period sought to be excluded and the presentation of the appeal. It is well established that when an appeal is filed in a wrong Court and is therefore taken back, it must be presented to the proper Court as speedily as possible. The same rule applies where, prior to the presentation of the appeal, the appellant was engaged unsuccessfully in review

10. AIR 1927 Lah. 839 (DB) + AIR 1938 Lah. 707 + AIR 1923 Pat. 129 = 1 Pat. 771 (DB).
11. 94 Ind. Cas. 121 (DB) (Nag.).
12. AIR 1960 Cal. 258 (DB).
13. AIR 1953 Mad. 360 (AIR 1944 Mad. 383 *Foll.*).
14. KLR 1986 CC 748 = 1986 CLC 1241.
15. AIR 1950 All. 104.
16. 30 Bom. 56 (DB) + AIR 1931 Cal. 578 (DB) + AIR 1924 Lah. 82 = 4 Lah. 185 (DB) + AIR 1923 Cal. 113 (DB) + AIR 1929 Bom. 183 (DB).
17. 6 Cal. 22 (DB) + AIR 1960 Cal. 258 (DB) + AIR 1931 Cal. 323 (DB) + AIR 1926 Oudh 55.
18. AIR 1928 Cal. 418 + AIR 1915 Low Bur 152.

proceedings. As soon as the review is rejected, the appeal must be filed without delay and if there is any delay it must be duly accounted for.[19]

4. Appeals from orders. A memorandum of appeal in the case of orders should be accompanied by a copy of the order appealed from as well as a copy of the order or judgment.[20] Where a formal order has not been drawn up, it is sufficient for the appellant to attach to the memo of appeal a copy of the judgment alone and time will run from the date of the judgment.[1] Where the formal order is an exact copy of the concluding portion of the judgment, failure to file a copy of such order will not invalidate the appeal.[2] In case of an appeal from an order under S. 47, C.P.C. it is sufficient to attach to the memorandum of appeal a copy of the order itself. A copy of decree need not be attached even if such a decree may have been drawn up.[3]

5. Exclusion of time. The period of thirty days prescribed by Article 152 is the primary period; but the total period of limitation itself has to be computed with reference to section 12 and other sections of a similar nature. If the primary period of thirty days prescribed by Article 152 plus the periods which are allowed under section 12 of the Act, show that the period of limitation has not expired, an appellant is entitled to the benefit of section 12 even though he has not applied for a copy of the judgment or decree within thirty days from the date of the decree.[4] The period for obtaining a copy of the decree is made up of two periods: (1) the period requisite for bringing the original decree into existence, and (2) the period requisite for preparing a copy after the decree has come into existence. Both these periods have to be excluded in counting, therefore, the period of limitation for an appeal, the period from the date of the judgment or the date of the decree and the date on which the decree is signed must be excluded even in cases where an application for a copy of the decree is given after the decree is signed. However, the period which is required for obtaining a copy or any part of that period cannot be considered twice over for the purpose of section 12 (2).[5]

Judgment and decree time taken for copies of. Time requisite for obtaining a copy of the decree or judgment on which it was founded would be excluded. Provisions of S. 12(2) & (3), Limitation Act, 1908 envisage that it is not the requirement of law that only one of the two *i.e.*, either the time for obtaining a copy of the decree or the time taken in obtaining a copy of the judgment would be excluded. Therefore both the period except the overlapping period may be excluded.[6]

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19. AIR 1962 Madya Pradesh 20 (DB)+AIR 1926 All. 252.
20. AIR 1918 All. 394=40 All. 12 (DB)+AIR 1948 Cal. 134=ILR (1948) 2 Cal. 1+AIR 1923 Bom. 177=47 Bom. 349 (DB).
1. 15 Cal. L Jour 498 (DB)+AIR 1948 Cal. 134=ILR (1948) 2 Cal. 1+AIR 1924 All. 162+AIR 1933 All. 762=56 All. 27 (DB).
2. AIR 1923 All. 579 (DB).
3. 6 Cal. W N 283 (DB).
4. PLD 1962 Dacca 381=14 DLR 765=PLR 1962 Dacca 455 (FB)+AIR 1960 Cal. 258 (DB).
5. AIR 1963 Gujerat 255+AIR 1961 Manipur 26.
6. 1990 MLD 120.

'Bona fide mistake'. Where through a bona fide mistake, time has been spent in prosecuting an appeal in a wrong Court, the delay may be excused under S. 5.[7] But if the appellant has been guilty of carelessness he is not entitled to extension of time spent in prosecuting his remedy in the wrong Court.[8]

6. Appeal not filed within limitation. There is no right of appeal once the 30 days prescribed by Article 152 of the Limitation Act have expired.[9]

153.	Under the same Code to High Court from an order of a subordinate Court refusing leave to appeal to [10][Supreme Court].	[11][Thirty days]	The date of the order.
154.	Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	[11][Thirty days]	The date of the sentence or order appealed from

Synopsis

1. Scope.
2. Complaint by Court.
3. Starting point of limitation.

1. Scope. Article 154 applies to appeals. An application under S. 520 of Cr. P.C. to a Court of appeal, confirmation, reference or revision is not in the nature of an appeal, so as to attract the provisions of the Limitation Act.[12]

Revision. There is no rule of practice that criminal revisions are to be filed within any fixed period of time. So far as the Calcutta High Court is concerned, the practice which has been consistently followed is that the revision in the High Court should be made within sixty days of the order complained of deducting the time taken in prosecuting with due diligence an application under section 438 of the Code of Criminal Procedure in the Court below. So far as the District Courts are concerned, the practice is that the application for revision before Court of Sessions or District Magistrates are filed within thirty days of the order complained of by analogy with the period of limitation provided for in cases of appeals. This rule is also followed more or less strictly. It is also highly desirable that a uniform practice should prevail in such cases, but at the same time, it

7. 21 Bom. 552 (DB) + 23 Cal. 526 (DB) + AIR 1933 Lah. 541 = 14 Lah. 206 (DB) + AIR 1916 All. 296.
8. 28 Bom. 235 + 34 Cal. 216 (DB) + AIR 1922 Lah. 233 = 2 Lah. 1 (DB).
9. 8 DLR 597.
10. Subs. by the P.O. 1961 (1 of 1961). Art 2 and Sch. (with effect from the 23rd March, 1956), for "His Majesty-in-Council".
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".
12. AIR 1927 Mad. 797 = 50 Mad. 916 + AIR 1947 Nag. 33 = ILR 1946 Nag. 940 = 47 Cri. L. Jour 742.

cannot be said that this rule should become an inflexible one and should not be departed from even in exceptional cases. But where it is so departed from, it would only be reasonable to expect that some reason for such departure would be given indicating the exceptional nature of the circumstances upon the ground of which the departure is being made.[13]

2. Complaint by Court. The word 'order' in Art. 154 should be interpreted as including a complaint under S. 476, Cr. P.C. and the date of the complaint is the date on which it is finalised, *i.e.*, signed by the presiding officer of the Court or in the case of the High Court by the officer appointed for the purpose.[14]

3. Starting point of limitation. Where an application under S. 476, Cr. P.C, asking the Court to make a complaint is refused, time runs from the date of the order of refusal.[15] Where an order has been made directing a complaint to be filed, time is to be calculated not from the date of such order but from the date when the complaint has been actually made.[16] According to the plain language of section 476-B the aggrieved person against whom a complaint has been made may appeal to the Court to which the Court is subordinate. Now the words "complaint has been made" clearly denote that it is the making of the complaint itself that entitles the concerned person to lodge the appeal. The words are not to the effect that "Complaint is to be made" consequently the right to appeal accrues only when the complaint is made and it does not obviously arise at a stage anterior to that, *i.e*, when the Court concerned has merely ordered that a complaint be made. Making of a complaint is presenting it where personal presentation is necessary before the Criminal Court concerned, and where personal presentation is not necessary it should at any rate be available to the Criminal Court for action and the complaint will be available for action to the Criminal Court only when it has reached that Court and not before. The expression "making of complaint" could not be limited to the act of merely signing the complaint by the person seeking to make it.[17]

Knowledge of appellant as to complaint. An appeal against the filing of a complaint under S. 476-B is a proceeding for filing which Cr. P.C, or Limitation Act do not clearly prescribe any period. Time in such a case would be taken to start from the day of the appellant's knowledge of the filing of the complaint and in every case he would be entitled to extension of time on the score of sufficient cause for his inability to file the appeal in time if any specific period is supposed to govern the appeal.[18] Thus when the appellant had filed an affidavit to the effect that he did not know of the making of the complaint for a good deal of time and came to know of it only when he received the process from the Criminal Court, it

13. PLD 1961 Dacca 239 = 12 DLR 681.
14. AIR 1963 Allahabad 352 (DB).
15. AIR 1925 All. 419 = 47 All. 462 = 26 Cri. L. Jour 961 + AIR 1955 Trav-Co. 226 = ILR 1955 Trav-Co. 510 = ILR 1955 Cr. L Jour 1404 (DB) + AIR 1955 Cri. L. Jour 514 + AIR 1925 Cal. 1228 = 52 Cal. 1009 (DB) + 1931 Mad W N 1064.
16. AIR 1928 Bom. 64 + 52 Bom. 164 = 29 Cri. L. Jour 315 (DB) + 29 Cri. L. Jour 72 (Lah) + AIR 1927 Lah. 54 = 7 Lah. 77 = 27 Cri. L. Jour 1321 + AIR 1935 Nag. 199 = 31 Nag. L. R. 370.
17. AIR 1965 Rajasthan 224 (*But see* AIR 1963 All. 352 (DB) + AIR 1954 All. 225).
18. AIR 1957 Punj. 134 = ILR 1957 Punj. 917 = 1957 Cri. L. Jour 790 (FB).

is a case where sufficient cause can be said to have been made out for not filing the appeal within 30 days from the lodging of the complaint.[19]

Restoration of complaint--appeal. Where a complaint was filed by S.D.M but the District Magistrate ordered its withdrawal. This order was set aside by the High Court and appeal was restored. For an appeal to Sessions Judge against Sub-Divisional Magistrate's complaint, days from order of withdrawal to restoration of complaint should be excluded.[20]

Jail appeal. In case of appeals preferred by the appellants in jail, time is to be calculated up to the date of presentation of the appeal to the officer in charge of the jail.[1]

155. Under the same Code to a High Court, except in the cases provided for by Article 150 and Article 157.	Sixty days	The date of the sentence or order appealed from.

Synopsis

1. Scope.
2. Appeal against order under S. 476, Cr. P.C.
3. Conviction under S. 562, Cr. P.C.
4. Condonation of delay.

1. Scope. This article applies to all appeals to the High Court under Cr. P.C. excepting appeals from sentences of death, and appeals from acquittal.[2] It extends to appeals from orders of a Single Judge of the High Court to a Division Bench of the High Court.[3] Thus an order by a Single Judge of the High Court under S. 476, Cr. P.C. is appealable, under S. 476-B to the Bench of the same High Court.[4]

Extradition Act, appeal under. Appeal to the High Court under the Extradition Act is not governed by this article.[5]

2. Appeal against order under S. 476, Cr. P.C. As appeal against the order of a Civil Court, making or refusing to make a complaint under S. 476 of Cr. P.C. is governed by this article and not by Article 156.[6] Where a complaint is directed to be made under S. 476 of the Cr. P.C., time runs from the date of making the complaint and not from the order directing the complaint to be made.[7]

19. AIR 1965 Rajast... 224.
20. AIR 1943 Sind 39=44 Cri. L. Jour 293 (FB).
1. 9 Mad. 258+1890 Pun. Re Nol. 29. p. 97 (DB)+1 Upp Bur Rul. 129.
2. AIR 1926 All. 211=2 All. 336+AIR 1925 Rang. 39=2 Rang. 386=26 Cri. L. Jour 293.
3. AIR 1926 Cal. 1203=53 Cal. 746=27 Cri. L. Jour 1304 (DB).
4. AIR 1922 Bom. 455=23 Cri. L. Jour 497=47 Bom. 270 (DB)+AIR 1918 Cal. 850=44 Cal. 816=18 Cri. L. Jour 497 (DB)+AIR 1922 Mad. 495=45 Mad. 928=24 Cri. L. Jour 78 (FB).
5. 15 Mad. 414 (DB).
6. AIR 1927 Cal. 718=28 Cri. L. Jour 840 (DB)+AIR 1955 Mad. 129=1955 Cri. L. Jour 514+AIR 1926 All. 211+AIR 1926 Sind. 215=20 Sind. L. R 90=27 Cri. L. Jour 782 (DB).
7. AIR 1929 Cal. 521=56 Cal. 932=30 Cri. L. Jour 974 (DB)+AIR 1927 Lah. 54=7 Lah. 77=27 Cri. L. Jour 1321+AIR 1943 Sind 157=45 Cri L. Jour 76=II.R 1943 Kar. 122 (DB).

3. Conviction under S. 562, Cr. P.C. A person against whom a conviction is recorded under S. 562 of the Cr. P.C. can appeal against his conviction within sixty days under this article but where he does not so appeal and is subsequently sentenced more than sixty days after the recording of the conviction, he can only appeal against the sentence within sixty days from the date of the sentence.[8]

4. Condonation of delay. Appeal against grave sentences should not be lightly refused to be entertained on the ground of limitation. An appeal against a sentence of transportation should not be held to be lightly barred by time.[9]

156. Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by Article 151 and Article 153.	Ninety days	The date of the decree or order appealed from.

Synopsis

1. Scope.
2. "Under the Code of Civil Procedure."
3. Date of the decree.
4. "Decree or order."
5. Amendment of decree.
6. Review of judgment--effect.
7. Death of party after decree.
8. Restoration of set aside decree.

1. Scope. An "appeal" means an appeal which is preferred as a matter of right and not an appeal which is entertainable or not at the discretion of the appellate Court.[10]

Pauper appeal. This Article and not Article 170 applies to pauper appeals.[11]

Writ petition. A writ petition should be filed as quickly as possible after the delivery of judgment of the inferior tribunal, and a period of 90 days, which is the period fixed for appeals to the High Court from the judgments of Courts below, should be taken as the period for application for the issue of a writ of *certiorari*. Time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist.[12]

2. "Under the Code of Civil Procedure." The expression "appeal under the Code of Civil Procedure" is not restricted to appeals, the right to prefer which is conferred by the Civil P.C.[13] Appeals under Acts making Civil P.C. applicable to their proceedings are appeals under the Civil P.C. governed by this article and by the general provisions of the Act.[14] In other words this article applies to appeals

8. AIR 1940 Rang. 257=1940 Rang L. R. 386=42 Cri. L. Jour 91+AIR 1955 Mad. 129=1955 Cri. L. Jour 514.
9. PLD 1964 Quetta 6=PLR 1965 (2) W.P. 49 (DB).
10. 10 Cal. 946 (DB)+AIR 1928 Oudh 108=3 Luck. 145 (DB).
11. AIR 1961 Punjab 391 (DB).
12. AIR 1957 All. 47 (DB).
13. AIR 1964 S.C. 1099+13 Cal. 221 (DB)+AIR 1920 Mad. 407=43 Mad. 51 (DB).
14. 34 All. 496 (FB)+AIR 1955 Mad. 129=1955 Cri. L. Jour 514.

under special Acts, the procedure in respect of which is governed by Civil P.C.[15] Thus the provisions of Article 156 of the Limitation Act would apply to appeals filed under section 54 of the Land Acquisition Act.[16]

3. Date of the decree. Ordinarily the date of the decree is the date of the judgment even though the decree is signed later. But that does not mean that date of the judgment provides the starting point of limitation under this Article. Article 156, in terms, prescribes the date of the decree and not of the judgment, as the *terminus a quo*, the duty of the litigant should be assessed in relation principally to procurement of a copy of the decree. Just as no application for copy of a judgment can be expected to be made until the judgment has at least been announced so, no litigant satisfying the law in its terms can be required to make application for a copy of the decree before that decree has come into existence. The relevant law appears clearly to distinguish between the judgment and the decree which follows upon it, and this distinction cannot be allowed to be obscured on the assumption, such as, that a decree "in a legal sense" comes into existence as soon as a judgment is pronounced, or that "in its essence" a decree is not a thing "separable from the judgment."[17] Thus where a final decree was awarded by a judgment announced on the 30th May, 1964. It was added that "the final decree be prepared after collecting deficit court-fee stamps". The decree was prepared and duly signed on the 1st September, 1964, after the deficit of stamp duty had been made up. The decree itself gave both dates, *viz.*, the date of the judgment (30th May, 1964) as well as the date of signature of the decree (1st September, 1964). An appeal lay to the High Court and an application for certified copies of the judgment and decree was made on the 6th October, 1964. The copies were delivered on the 9th October, 1964 and the appeal was instituted in the High Court on the 28th November, 1964. It was held that the time ran from the date of signing of the decree under Art. 156, Limitation Act and that the dismissal of appeal by the High Court on the ground of limitation could not be maintained.[18]

Judgment delivered without notice. Where a judgment was delivered without notice under O. 20, R. 1, Civil P.C., time for appeal will run from the date on which the party or his pleader receives intimation of decision of the case against him.[19] Thus if a person is able to make out that he was entitled to a notice of hearing before the impugned order was passed, he can prefer an appeal even after the expiry of the period of limitation provided he establishes that the order was without a notice to him.[20]

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15. AIR 1928 Lah. 488.
16. NLR 1983 Rev. 124 (SC).
17. PLD 1967 Supreme Court 271 + 19 DLR (SC) 236 (PLD 1960 Kar. 840 does not lay down correct law) + AIR 1916 Pat. 267 (FB) + AIR 1926 Nag. 207 + AIR 1924 Nag. 271 = 20 Nag. L R 1311.
18. PLD 1967 Supreme Court 271 = 19 DLR (SC) 236 + AIR 1916 Sind. 2 = 9 Sind L R 193 (DB).
19. PLD 1975 Lah. 707 = PLJ 1975 Lah. 163 + AIR 1927 Lah. 839 (DB) + AIR 1919 Lah. 102 (DB).
20. PLD 1973 Lah. 215 (DB).

Delay in delivery of copy of judgment. The copying agency must inform the appellant as to the date on which copy of the judgment would be ready. If that is not done limitation for appeal will run from the date of actual delivery of copies.[1]

Order appointing guardian, appeal against. Where an order is passed appointing a guardian and asking for security by him, time would begin to run from the date on which the security was accepted.[2]

Interlocutory and final order. Where there are several decree against different defendants on different dates starting point for an appeal for any particular defendant will be the date of the particular decree against him.[3] Where in a suit against two persons an interlocutory judgment is given against one, and then a final judgment and decree is passed after some time against both, limitation against the former begins to run from the date of the interlocutory judgment.[4]

Preliminary and final decree. Time for an appeal against a preliminary decree will run from the date of that decree and not from the date of the final decree.[5]

4. "Decree or order". No difficulty is created by limiting the word "decree" to the definition given to it by the Civil P.C.[6] But the word "decree" in this Article is not confined to a decree as defined under S. 2 of the Civil P.C. and an order having the force of a decree under special or local Acts is a decree for the purposes of this article.[7] In proceedings wherein although there is a judgment, an order is not drawn up, the concluding portion of the judgment which embodies the order is to be treated as an order against which an appeal is to be preferred, and time will run from the date of judgment.[8]

5. Amendment of decree. Amendment of a decree under S. 151 or 152 of the Civil P.C. does not give a fresh starting point of limitation for an appeal.[9] Thus an amendment of the judgment and/or the decree under sections 151 and 152, C.P.C. by correction of particulars simpliciter or by supplying any omission under sections 151 and 152, C.P.C. at a later stage would not give fresh starting point of limitation. It was held that the amendment of a decree by providing time therein in compliance with section 82, C.P.C. is only of procedural nature as it does not affect the rights and obligations of the parties recognized or imposed by the judgment, or the decree and, therefore, it would not give rise to a fresh starting point of limitation.[10] But where a decree is amended in material particulars, time would run from the date of the amendment.[11] Even otherwise where a party prejudiced by an amendment finds that, on the date of the amendment, an appeal

1. PLD 1972 Quetta 47.
2. AIR 1939 Lah. 170.
3. AIR 1916 Mad. 1010 (DB).
4. AIR 1936 Rang. 313.
5. AIR 1933 Cal. 796 (DB).
6. AIR 1920 Mad. 407=43 Mad. 51 (DB).
7. AIR 1920 Pat. 622=5 Pat. L. Jour 472 (FB).
8. 15 Cal. L. Jour 498 (DB).
9. 1983 CLC 865+3 Cal. L. Jour 188 (DB)+AIR 1920 Pat. 622 (FB).
10. 1983 CLC 865 (Kar).
11. 1983 CLC 856+AIR 1930 Pat. 142 (DB)+32 Cal. 908 (DB).

from the decree is barred if the period is calculated from the original decree, the Court will excuse the delay under section. 5.[12]

Appeal attacking amendment only. Where a decree is amended and the appeal is against the effect of the amendment only, time for an appeal runs from the date of amendment.[13]

6. Review of judgment--effect. Where a Court discovers immediately on pronouncing judgment a mistake in it and proceeds *suo motu* to review the judgment, no decree is passed till the judgment after review, the date of latter judgment should be regarded as the date of decree.[14] Where a decree is modified on review or the same decree is passed after review, the date of decree will be the date of the decree passed after review.[15] But a review of judgment not affecting a party does not give any fresh starting point to such party for filing an appeal against the decree.[16]

7. Death of party after decree. Where a party dies after passing of decree against him time for an appeal by his legal representatives will run from the date of the decree and not from the date of the death of the party.[17]

8. Restoration of set aside decree. Where a decree is set aside but is subsequently restored by the High Court limitation for an appeal begins to run only from the date of restoration of the decree. Thus where a preliminary decree on a mortgage was passed *ex parte* but on application by defendant it was set aside by the trial Court and the plaintiff applied in revision to the High Court against the order setting aside the *ex parte* decree the High Court set aside the orders and restored the *ex parte* decree. Time for appeal against the order must be computed under this article from the date of restoration of the decree.[18]

157. Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months	The date of the order appealed from.

Synopsis

1. Limitation for appeal against acquittal.
2. Exclusion of time.

1. Limitation for appeal against acquittal. The effect of this article is to fix the period of limitation in respect of all classes of cases of acquittal, whatever may

12. 3 Cal. L. Jour 188 (DB) + AIR 1930 Pat. 142 (DB).
13. AIR 1945 Mad. 62 = II R 1945 Mad. 378 (DB) + AIR 1946 Mad. 291 = II.R 1946 Mad. 845 (DB).
14. AIR 1941 Lah. 212.
15. AIR 1926 Oudh 55 + AIR 1931 Cal. 323 (DB) + AIR 1931 Cal. 578 (DB) + 20 Ind. Cas. 647 (DB) (All) + AIR 1915 Low Bur 152.
16. AIR 1924 Cal. 898.
17. AIR 1937 Rang. 199.
18. AIR 1931 Mad. 149 = 54 Mad. 455 (DB).

have been the form of trial and whatever may be the scope of the appeal.[19] Ordinarily the Court insists on promptness by the State to file appeals against acquittal, so much so that even an appeal filed within the period of limitation may be held to have not been filed with due diligence. Thus an appeal against acquittal filed after five and-a-half months was held to have been filed without due promptness though limitation was six months under Art. 157.[20]

Rules framed by Shariat Court. Where period of limitation prescribed by a special law or local law is different from that of Limitation Act, then period so prescribed prevails over that of Limitation Act and in case of conflict on the express words, Limitation Act yields. Rules framed by the Federal Shariat Court will prevail in case of any inconsistency provided the same are found to be *intra vires*.[1]

Filing of appeal beyond limitation. If the State is negligent in the presentation of an appeal against acquittal, a very clear right comes to vest in the accused person and he is entitled to claim that, save in exceptional circumstances, the delay in filing the appeal should not be condoned.[2] Thus where an order of acquittal was passed on 24-1-1962 an appeal against such order was lodged on 20-9-1964, the appeal was held to be hopelessly barred by time.[3] But in genuine cases where delay has been caused by an honest mistake the Court may excuse delay in filing the appeal. Thus where the petitioner through an honest and mistaken belief arising out of wrong advice by an ignorant lawyer that this appeal lay in the Court of the District Judge bona fide filed the appeal in that Court and prosecuted it with due diligence and care, but the District Judge who had no jurisdiction to entertain the appeal instead of returning the memorandum of appeal for presentation to the proper Court dismissed the appeal. It was held that the order of the District Judge who was without any jurisdiction to entertain the appeal cannot operate as a legal bar to apply to the High Court for condoning the delay and for registering the appeal in the High Court.[4]

2. Exclusion of time. In computing the period of limitation prescribed for an appeal, the time requisite for obtaining a copy of the order appealed from has got to be excluded regardless of the consideration whether or not any such copy was under any law required to be filed along with the memorandum of appeal.[5] The most reasonable interpretation which can be placed on the term "time requisite" for obtaining a copy as used in S. 12 (2), will, in cases where more than one application has been made within the period of limitation for obtaining copies, be the period between the date of the first application for copy and the date on which the first copy of the order, judgment or decree appealed from was obtained. The appellant cannot take credit for any period prior to the date of his application for a copy nor for any period after a copy of the order, judgment or decree had been

19. AIR 1934 Cal. 610=61 Cal. 990=35 Cri L Jour 1367.
20. AIR 1953 Vindh Pra 25=1953 Cri. L. Jour 1198.
1. 1990 SCMR 164.
2. AIR 1955 Punj. 164=1955 Cri. L. Jour 1204=II.R 1955 Punj. 186 (DB)+AIR 1955 All. 473+AIR 1965 Mys. 31 (DB).
3. 1968 P Cr L J 1328 (DB).
4. 7 DLR 272.
5. AIR 1965 Allahabad 443 (DB)+AIR 1928 P.C. 103+AIR 1956 All. 273+AIR 1922 P.C. 352. *Foll.*).

obtained. The appellant can in no circumstances say that the "time requisite" for obtaining a copy was even beyond the period on which the first copy of the order appealed from was actually obtained by him. An order acquitting the accused persons was passed on 10-11-1962. Three applications for obtaining copies of the judgment were made on behalf of the District Government Counsel, within the prescribed period of limitation. The first application was made on 15-11-1962. A copy was notified to be ready in pursuance of the first application on 3-1-1963 but the first copy of the judgment became available to the District Government Counsel as a result of the second application for copy on 20-12-1962. It was held that the only period which could be excluded in the case under S. 12(2) as 'time requisite' for obtaining a copy of the order appealed from was the period between 15-11-1962 (the date of the application for copy) and 12-1-1962 (the date on which the first copy was received).[6] Where the copying department failed to notify time when copy was ready, the period from the date of application and the date when the copy was actually delivered should be excluded.[7]

THIRD DIVISION: APPLICATIONS

Description of application	Period of limitation	Time from which period begins to run
[8][158. Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days	The date of service of the notice of filing of the award.

Synopsis

1. Scope.
2. Starting point of limitation.
3. Extension of time.
4. Effect of bar.

1. Scope. This Article is meant to fix a definite time-limit within which existence or validity of an award could be challenged after the award is filed in Court and to provide an expeditious method of getting an award translated into a judgment and made enforceable as such.[9] Therefore it has been provided that objections to an award may be filed within thirty days of the making of the award. Any objections filed after that date would be barred by limitation.[10]

6. AIR 1965 Allahabad 443 (DB).
7. 1958 Jab L J 19 (DB).
8. Subs. (From the 1st July, 1940) by the Arbitration Act, 1940, (10 of 1940) S. 49 (2) and Fourth Sch., for Art. 158 which was previously amended by the Repealing and Amending Act, 1919 (18 of 1919), S. 2 and First Schedule.
9. AIR 1947 Bom. 94.
10. PLD 1974 Kar. 413 = Law Notes 1973 Kar. 376 (DB) + PLD 1964 Dacca 106 = 15 DLR 283 = PLR 1963 Dacca 1358 (DB).

Notice of award necessary. Article 158 comes into operation only when the required notice has been served. If before the service of the notice the objection is filed the question of limitation loses all significance.[11] It is however to be noted that if a party to whom notice has to be issued has knowledge that the award has been filed, that would be sufficient compliance with S. 14 (2) and no further notice would be necessary.[12] In order to assume knowledge on the part of a party for the purpose of Art. 158 of the Limitation Act, there should be a valid award in the Court. Uncertified copy of the award not bearing the signature of the umpire or the arbitrators filed by a party to a suit cannot be regarded as a valid award in the Court and is not sufficient to hold that the other part to the suit had knowledge of the filing of the award.[13]

Modification or correction of award. An application to modify or correct an award was held not to fall under this Article before amendment.[14]

Application for setting aside award. So long as the question relates to the setting aside of the award under the Arbitration Act, 1940, for whatever reasons this may be asked for and these reasons may be covered by S. 30 or S. 33, Arbitration Act the application of this article is at once attracted as it contains no qualification and is specific in its terms.[15] Where the petitioners felt that if they filed an objection petition as such it would be hit by the Law of Limitation and they thought of the device of presenting it as an application under section 151 of the Code praying therein that their former objection petition may be treated as their objection petition against the award filed/made earlier. Their application under section 151 of the Code was, for all intents and purposes, an objection against the subsequent award. Therefore, its competency had to be examined in the light of the provisions of Article 158 of the Limitation Act.[16] But where the objections filed in response to the notice of the filing of the award do not relate to the procedure of the Court under S. 14, Arbitration Act, in that the award having been filed beyond limitation prescribed by Art. 178 no decree should be passed on it, this article does not apply and the objections can be decided even though they have been filed beyond the period of 30 days after the service of notice.[17]

Transposition of parties after filing of objections. The transposition of a respondent to the position of an applicant does not have the automatic effect of placing the original applicant in the position of respondent. When the original applicant under section 14(2) of the Arbitration Act after the transposition of one of the respondents as applicant wants to raise the same objections to the validity of the award which were raised by the respondent before transposition the bar of limitation applies to him.[18]

Form of application. An application to fall under this article need not be in any particular form and it is also not necessary to affix court-fee stamp of any

11. AIR 1960 Pat. 201.
12. AIR 1961 Andhra Pradesh 457 (DB).
13. AIR 1961 Allahabad 457 (DB).
14. AIR 1919 Mad. 877 + AIR 1933 All. 648 + 24 Mad L Jour 483.
15. AIR 1955 Raj. 153 = ILR (1955) 5 Raj. 387.
16. NLR 1981 UC 618 = PLJ 1980 Lah. 712 = 1980 CLC 512.
17. AIR 1949 All. 234 = ILR 1949 All. 631 (DB).
18. AIR 1961 Punjab 355.

value. A counter-affidavit filed by the opposite party to an application for a decree in terms of the award praying for the dismissal of the application on the ground that the award is invalid and not genuine is an application to set aside an award within the meaning of the article.[19] It must however be noted that though no form is prescribed for an application under S. 33 and that even the words "under S. 33" need not be written in the application, a written statement simpliciter containing no prayer at all, bearing no court-fee and filed after the expiry of the period of limitation for an application in response to a notice issued under S. 14(2) of the Act cannot be treated as an application under S. 33.[20] The making of an application contemplated by Art. 158 whether in the form of an objection statement or in whatever other form if may be is entirely a matter within the volition of the party and his taking time to file objections cannot extend the period of limitation. It is only when the objection is formulated and placed before the Court that the party can be regarded as having applied to the Court. The circumstance that on the date on which the counsel filed a *vakalatnama,* the Court granted time to file objections would not save limitation, if the objections were filed beyond limitation.[1]

Setting aside award on the ground that it is nullity. It was immaterial whether the award was a nullity or was sought to be set aside on a ground other than the one that it was a void award. In either eventuality the only provision under which an application could be made to set aside the award being section 33, Arbitration Act the period of limitation for such an application is provided in Article 158. It is hard to conceive that in an application under the same provision two different periods of limitation were contemplated or are applicable.[2]

Award on invalid reference. An application asking a declaration that the award was illegal on the ground of invalidity of reference does not come under S. 30 and is not subject to any limitation.[3] Article 158 contemplates an award which is within jurisdiction and which would be binding upon the parties to the arbitration proceedings unless it is avoided in accordance with the provisions of the Article. The same cannot be said of an award in so far as it affects the interest of the minor where it is given on a reference to which the minor is not a party. In that view of the matter, Art. 158 does not stand in the way of the appellant.[4]

Revision of decree on award. An application to revise a decree passed on the basis of an award is governed by this article.[5]

2. Starting point of limitation. Limitation under this Article starts from the date of notice of filing of award. There can be no such notice before an award is filed. Therefore any notice given prior to the actual filing of the award will not

19. AIR 1954 Mad. 560.
20. AIR 1964 Allahabad 38 (DB) + AIR 1963 All. 242 + AIR 1956 Cal. 321 (FB) + AIR 1954 Bom. 293 + AIR 1957 All. 106 + AIR 1962 All. 219.
1. AIR 1957 Mys. 78 = ILR 1957 Mys 57.
2. NLR 1984 Civ. 711 = PLD 1984 Pesh. 285 (DB) + PLD 1971 Quetta 30 + PLD 1970 Kar. 153 (PLD 1966 Dacca 164 (DB) and 8 DLR 305 do not lay down correct law) + AIR 1954 Bom. 293 + AIR 1956 Cal. 721 (FB).
3. NLR 1987 Civ. 581 = PLD 1986 Quetta 321 = PLJ 1987 Quetta 1 + AIR 1960 Pat. 201 (DB) + AIR 1957 Pat. 417 = 36 Pat. 35 (DB).
4. AIR 1964 Patna 398 (DB).
5. 29 Cal. 167 = 29 Ind. App. 51 (PC).

affect limitation.[6] Where an award is not properly filed. The mere handing over of the award to an officer of the Court who is not authorised to file it in judge's absence is not filing the award. A notice of such handing over will not set the time running.[7] The object of giving notice of the filing of an award is to enable the parties to file applications for the setting aside of the award. Such an application has, under Article 158, Limitation Act to be filed within thirty days of the service of the notice of the award.[8] Where no notice of the filing of the award was served on the opposite party, the time under Art. 158, Limitation Act for making an application for setting aside the award never began to run.[9]

Court is bound to give notice to the parties.[10] The limitation runs under Art. 158 only from the date the notice of the filing of the award has been served. That necessarily implies an act of the Court which has to be by an order to the effect that the award has been filed by the arbitrator or the umpire and then a notice has to go with regard to the award having been filed. Mere notice of the application filed by the arbitrator for the purpose of filing of the award is not sufficient to satisfy the requirement of Art. 158.[11] A mere direction to issue notice does not amount to giving any notice.[12] Similarly an order of Court merely recording the presence of parties when the award was filed in Court did not imply notice of the award.[13]

Notice, how may be given. According to Art. 158 of the Limitation Act, the period of limitation for an application to set aside an award under the Arbitration Act, 1940, begins to run from "the date of service of the notice of the filing of the award". There is no ground to construe the expression 'date of service of notice' to mean only a notice in writing served in a formal manner. When the Legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal,[14] or oral notice. The starting point of limitation against a party in such a case will be the date on which the information of filing of the award is received by him.[15] If a party to whom notice has to be issued has knowledge that the award has been filed, that would be sufficient compliance with S. 14(2) and no further notice would be necessary.[16] Therefore if the party was not only already cognizant of the filing of the award but had applied to the Court for facilities to examine the award there would be no necessity for serving such a party again. The date on which he enters appearance would be deemed to be the date of service of the notice of the filing of the award.[17] Similarly where the award

6. AIR 1962 S.C. 666 + AIR 1963 M.P. 20 (DB) + AIR 1961 Punjab 5.
7. AIR 1942 Lah. 190 (DB).
8. PLD 1960 Lahore 601 = PLR 1960 (2) W.P. 1168 + 1 DLR 233.
9. AIR 1964 Patna 509.
10. AIR 1930 Lah. 228 + 20 All. 474 (DB) + AIR 1925 Lah. 619 + 11 Mad. 144 (DB).
11. AIR 1961 Punjab 5.
12. AIR 1930 All. 477 (DB).
13. ILR (1954) 4 Raj. 406 + AIR 1948 East Punj. 11 = ILR 1948 East Punj. 46 (DB).
14. AIR 1962 Supreme Court 666. *(But see* PLD 1961 Quetta 30).
15. PLD 1981 Kar. 730 = PLJ 1982 Kar. 256 = KLR 1982 C.C 135.
16. AIR 1961 Andhra Pradesh 457 (DB) + AIR 1963 Orissa 143 + AIR 1948 East Punj. 11 = ILR 1948 East Punj. 46 (DB) + ILR (1954) 4 Raj. 406.
17. AIR 1952 Cal. 226 (DB) + AIR 1957 Nag. 57 = ILR 1956 Nag. 630 (DB).

was brought in by the parties themselves and the Court informed them that they should file their objections within ten days; it was held that notice must be taken to have been given to the parties.[18] Where the parties were shown the order recording the award and their initials were taken in acknowledgment of the fact that they had notice; it was held that it was sufficient giving of notice.[19]

Notice through newspapers. Thirty days time for filing objections to arbitration award in a case where defendants are served through publication in newspaper, would begin on the date on which notice of filing of award is published in the newspaper.[20]

Notice to Advocate. A notice to Advocate and duly authorised agents of parties is notice to the parties for the purposes of this article.[21] Where the Court passes an order to the effect that objection to the award should be filed on a particular date in the presence of the counsel for a party (who is absent) such order amounts to sufficient notice within the meaning of S. 14(2).[1]

New objection raised after limitation. Where a party applied for setting aside of an award on a certain ground, in the course of hearing, the party filed an affidavit and applied for setting aside of award on a totally new ground, an application should be treated as a fresh application for purposes of limitation.[2]

3. Extension of time. Under this Article the applicant is entitled to the benefit of S. 4,[3] and the Court can also extend the time allowed under Art. 158 for supplying the necessary court-fee stamp on an application to set aside an award.[4]

Addition of ground of objection after expiry of limitation. Where an application containing an additional ground of objection to the validity of an award was filed beyond time in addition to one filed within time, the Court can allow an additional ground to be added by way of amendment or entertain it for its own motion if it thinks that the ground was such as to render reference to arbitration or award based thereon absolutely invalid.[5]

Section 5 does not apply. The Court can extend the time allowed under Art. 158 for supplying the necessary court-fee stamp on an application to set aside an award.[6]

4. Effect of bar. Where an objection to the validity of an award based on a reference was not urged within thirty days the parties were precluded from relying on it in order to set aside the award and a decree based on it,[7] and a party to

18. ILR (1954) 4 Raj. 406 + AIR 1926 Bom. 312 (DB).
19. ILR (1954) 4 Raj. 406 + AIR 1927 Pat. 135 (DB).
20. NLR 1987 CLJ 129.
21. NLR 1986 Civ. 444 = 1988 CLC 2362 + KLR 1982 CC 135 = PLJ 1982 Kar. 256 = PLD 1981 Kar. 730 + AIR 1962 S C 666 + AIR 1930 All. 711 (DB) + AIR 1962 Bom. 312 (DB) + AIR 1927 Cal. 619 (DB) + AIR 1927 Pat. 135 (DB).
1. AIR 1963 Madhya Pradesh 20 (DB).
2. AIR 1951 Cal. 230.
3. AIR 1916 Lah. 321.
4. AIR 1928 Sind. 87 = 23 Sind L R 91 (DB).
5. 16 Oudh Cas. 233 (DB).
6. AIR 1928 Sind. 87 = 23 Sind. L R 91 (DB) + AIR 1965 Orissa 17.
7. 1907 Pun Re No. 4. p. 25 (DB).

arbitration debarring himself from applying to set aside a purported award cannot come to the Court to point out the grounds on which the Court should set it aside.[8] Similarly an objection to an award made without intervention of the Court that it could not be enforced for want of registration or for any other reason, filed after the expiry of limitation under Art. 158 cannot be entertained and the Court is bound to pronounce judgment according to it under S. 17, Arbitration Act.[9]

159.	For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (*f*) [10][or under Order XXXVII of the [11][Code of Civil Procedure, 1908.	[12][Ten days]	When the summons is served.

1. Scope. Ten days, time for filing application for leave to defend summary suit after setting aside of *ex parte* decree. Starts from the date of service of summons on defendant and not from the date of his knowledge of the *ex parte* decree.[13] The period fixed by the article cannot be extended by the Court under the provisions of S. 148 of the Civil P.C.[14] Where *A*, the defendant, alleged that he was served on 5th January, 1896 and obtained *ex parte* order granting an application for leave to defend. *B*, the plaintiff applied for setting aside that order on the ground that the defendant was actually served on 23rd December, 1895 and that defendant's application had been made beyond time, the Sheriff's return showed that *A* was served on 23rd December, 1895, the date of service must be taken to be the date mentioned in Sheriff's return.[15]

160.	For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days	When the application for review is rejected.

8. AIR 1947 Bom. 94.
9. AIR 1958 Pat. 252 = 37 Pat. 252 (FB).
10. Ins. by the Indian Limitation (Amendment) Act, 1925 (30 of 1925), S. 3.
11. Subs. by Act. 10 of 1940, Fourth Sch. for "same code" (from 1-7-1940).
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
13. NLR 1990 UC 140 + AIR 1963 Cal. 36 (DB).
14. AIR 1963 Cal. 36 (SB) + 5 Cal. W N 259 + 53 Cal. W N 192.
15. 28 Cal. 573.

1. Extension of time. The period fixed by the article cannot be extended by the Court on any ground.[16]

161.	For a review of judgment by a [17]* Court of Small Causes [18]* * * or by a Court invested with the jurisdiction of a [19]* Court of Small Causes when exercising that jurisdiction.	[20][Fifteen days]	The date of the decree or order.

1. Scope. Limitation for filing a review petition has been imposed with a view to secure finality of litigation. If this bar of time is not placed on the power of review, it would mean that a judgment can never become final. Every order the effect of which is to vitiate the previous judgment is entirely foreign to the jurisdiction in review especially when no time limit is placed on that power.[1] When an application for review is filed on the last date of limitation without deposit of security and the security is deposited after the expiry of the period of limitation, the application is barred.[2]

162.	For a review of judgment by [3][a High Court] in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.

Synopsis

1. Original jurisdiction.
2. Review under inherent powers.
3. Starting point of limitation.

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16. AIR 1915 Lah. 176.
17. The word "Provincial" omitted by the Berar Laws Act, 1941 (4 of 1941), S. 2 and Third Sch., (with effect from the 1st August, 1941).
18. The parentheses and words "(other than a Presidency Small Cause Court)" which were inserted by Berar Laws Act, 1941 (4 of 1941), S. 2 and Third Sch., have been omitted by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), S. 3 and Second Schedule.
19. The word "Provincial" omitted by Act (4 of 1941), S. 2 and Third Sch. (with effect from the 1st August, 1941).
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
1. PLD 1956 Cusr. W P. 34.
2. 54 Cal. W. N. (2 DR) 67.
3. Subs. by the Central laws (Statute Reform) Ord., 1960 (21 of 1960), S. 3 and Second Sch. (with effect from the 14th October, 1955).

1. Original jurisdiction. The original jurisdiction of the High Court includes matrimonial jurisdiction.[4]

2. Review under inherent powers. The article does not govern a case where the Court reviews its judgment under its inherent powers.[5] It is to be noted that the High Court has, under the Criminal Procedure Code, no right of review in criminal cases and its inherent powers in such matters do not extend to reviewing a judgment.[6]

3. Starting point of limitation. Time under Art. 162 runs from the date of the decree or order sought to be reviewed and not from the date of the knowledge of the decree or order.[7] But where according to the practice of the High Court, a party has to apply to have the order drawn up and he fails to do so, he cannot escape the bar of limitation merely because the order has not been drawn up.[8]

Time taken in obtaining certified copy of order sought to be reviewed. Where a review petition was filed without obtaining certified copy of the order sought to be reviewed. It was held that the time taken in obtaining this certified copy was not time which was required within the meaning of section 12 of the Limitation Act for filing a time-barred review application in the High Court. Therefore such time could not be excused from limitation for filing the review petition.[9]

[10]* * * * * * * * * * * *

163.	By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of the dismissal.

Synopsis

1. Scope.
2. Application by a plaintiff.
3. "To set aside a dismissal."
4. Application for restoration dismissed for default, restoration of suit.
5. Starting point of limitation.
6. Section 5 and this Article.
7. Extension of time.
8. Court's inherent power to extend time.

4. (82) 6 Bom. 416.
5. AIR 1929 Oudh 385 = 4 Luck. 562 (FB).
6. AIR 1928 Lah. 462 = 10 Lah. 1 = 29 Cri. L. Jour 669 (DB).
7. AIR 1950 Cal. 217.
8. AIR 1938 Cal. 321 = ILR (1938) 2 Cal. 22.
9. 1980 SCMR 959 = NLR 1980 SCJ 433.
10. Art. 162A ins. by the Limitation (Amendment) Ord., 1962 (43 of 1962), S. 5 (with effect from the 7th June, 1962), has been omitted by the Limitation (Amdt.) Act, 1965 (11 of 1965), S. 2.

1. Scope. An application under R. 4 or R. 9 of O. 9, Civil P.C. would be governed by this article.[11] If an application to set aside a dismissal for default under Order 9, Rule 9, C.P.C., is made after the period prescribed for making such application has expired, even the inherent jurisdiction of the Court cannot be invoked to set aside the dismissal.[12]

Original side of High Court. Article 163 applies to applications made on the original side of the High Court.[13] Where a suit is dismissed for the default on the original side of the High Court, an application before a Judge is necessary. Notice to the opposite side or filing it with the Registrar within thirty days is not sufficient.[14]

Restoration of suit and setting aside decree. In the case of restoration of suit Art. 163 applies, while in case of setting aside decree Art. 164 of the Limitation Act would apply. Application for restoration of suit had to be filed within thirty days from the date of dismissal of suit.[15]

2. Application by plaintiff. Article 163 would apply to a case where "a plaintiff" applies for setting aside the dismissal of a suit; prima facie Art. 163 would not apply to a case where the applicant is not a plaintiff and where the dismissal is not that of a suit.[16] An application for restoration of a probate dismissed for default must be deemed to be an application by a plaintiff.[17]

Death of plaintiff. Where a suit was dismissed for default of plaintiff's appearance and the plaintiff died, an application by the legal representative to set aside the dismissal will be barred under this article if it is made beyond thirty days from the order of dismissal.[18] Where a Court dismissed a suit for default in ignorance of death of the plaintiff, the legal representatives of the plaintiff were required to apply to set aside the dismissal within the time prescribed by this article.[19]

3. "To set aside a dismissal." Where the order of dismissal is void *ab initio* this Article does not provide the period within which an application to set it aside must be made. Thus where a dismissal for default is without jurisdiction it is not necessary that it should be set aside within the thirty days prescribed by this article.[20] There can be default of appearance only when a party has been called upon to appear on a particular date and has knowledge that he has been so called upon to appear. There can be default of appearance when he has no such knowledge.[1] If the Court reached a conclusion that the plaintiff was not at all aware of the date of hearing and was also not informed about the change of

11. PLD 1966 Dacca 555 = 17 DLR 602 (DB) + 2 Cal. W N 318 (DB) + 31 Cal. 150 + AIR 1961 Cal. 474 (DB).
12. PLD 1970 Lahore 412 = PLR 1970 (2) W.P. 794.
13. AIR 1950 Cal. 217.
14. AIR 1943 Cal. 257 = ILR (1943) 2 Cal. 227 (DB).
15. 1989 CLC 656 = PLD 1989 Kar 1 (DB).
16. AIR 1958 All. 149.
17. AIR 1958 All. 149.
18. 10 Oudh W N 1008 (DB).
19. 14 Ind. Cas. 711 (DB) (Oudh) + 14 Ind. Cas. 221 (DB) (Oudh).
20. AIR 1931 Mad. 590 = 54 Mad. 770 + AIR 1935 Pesh. 186.
1. AIR 1958 All. 149.

Court, plaintiff, could legitimately rely on the inherent powers of the Court under section 151 of the Code, and Limitation will then be regulated under Article 181 of the Limitation Act.[2] Where the case was taken up on a date other than the one fixed for its hearing, the order would be void and without jurisdiction and this Article would not apply to an application to set it aside.[3] Thus where the Court is satisfied that the applicant was not aware of the date of hearing, it can in exercise of its inherent jurisdiction under section 151 of the Civil Procedure Code, entertain and grant an application by such applicant for restoration of his application and order the application to the restored.[4] When no date at all was fixed for hearing of the suit and no notice was given to the plaintiff of such date and the Court dismissed the suit for default. An application to set aside the dismissal was one not under O. 9, R. 9, but one under S. 151, Civil P.C. and was governed not by Art. 163 but by Art. 181.[5]

Suit not dismissed under O. 9, R. 9. Article 163 would apply only if the dismissal order was properly covered under order IX of the Code. If the dismissal order is void *ab initio* or passed without jurisdiction restoration may be allowed under S. 151, CPC and Art. 181, Limitation Act is applicable to the case.[6] Where a suit was dismissed under O. 17, R. 2, and an application was made for its restoration. It was held that as the appellant's case does not fall under Order 9, Rule 9, C.P.C he is entitled to invoke the inherent power of the Court under section 151, C.P.C. provided he makes out a case for the exercise of that jurisdiction. Such an application does not fall under Article 163; it can only fall under the residuary Article 181 which provides a period of limitation of three years.[7]

4. Application for restoration dismissed for default, restoration of suit. Where a suit is dismissed for default, and an application for its restoration is also dismissed for default, an applicant is not debarred from making a fresh application for restoration of the suit, provided it is made within the period prescribed by this article.[8]

Restoration of application for restoration dismissed for default. Where a suit is dismissed for default of appearance and an application for its restoration is also dismissed for default, an application for restoration of the former application does not lie under this Article. Article 181, being the residuary article applies to it.[9]

5. Starting point of limitation. An application filed beyond thirty days of the date of dismissal is barred, even though the plaintiff was not aware of the dismissal.[10]

6. Section 5 and this Article. Section 5 of the Limitation Act has not been made applicable by any enactment or rule to an application under Order 9, Rule 9

2. KLR 1985 CC 319 = PLD 1985 Lah. 327.
3. PLD 1971 Lah. 746.
4. KLR 1985 CC 319 = PLD 1985 Lah. 327 + AIR 1964 Bombay 40.
5. AIR 1956 Hyd 139 = ILR 1956 Hyd 551 (DB).
6. KLR 1985 CC 319 = PLD 1985 Lah. 327.
7. PLD 1971 Quetta 77.
8. AIR 1914 Mad. 438 + AIR 1958 Him Pra. 9.
9. PLD 1985 Pesh. 8 = NLR 1985 Civ. 103 (DB) + 1981 CLC 1326
10. AIR 1933 Pat. 557 + AIR 1950 Cal. 217.

of the C.P.C. and, therefore, the Court had no jurisdiction to admit the application after the period of limitation had expired.[11]

7. Extension of time. Time requisite for obtaining a copy of the order dismissing a suit for default cannot be excluded under section 12 in computing the period of thirty days prescribed by this Article.[12] Time spent in obtaining copies of the judgment and order for appeal under the wrong impression that an appeal lay may be excluded as time spent in prosecuting another proceeding in a wrong Court.[13] But the period after obtaining copies and before filing the appeal in the wrong Court cannot be excluded under section 14.[14]

8. Court's inherent power to extend time. A Court has no inherent power to extend the period of limitation under this article.[15]

164. By a defendant, for an order to set aside a decree passed *ex parte*.	[16][Thirty days]	The date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree.

Synopsis

1. Scope.
2. Decree under Provincial Small Cause Courts Act.
3. "Defendant."
4. Starting point of limitation.
5. "Summons."
6. "Knowledge of the decree."
7. Extension of time.
8. Section 18 and this section.
9. Defect in application corrected after limitation.
10. Onus of proof.
11. Subsequent application beyond limitation.

1. Scope. The Article speaks simpliciter of an application to set aside an *ex parte* decree. Its application is not limited to cases falling under O. 21, C.P.C.[17] Where any cause is shown for non-appearance at the first hearing whether non-service of 'summons' or any other sufficient cause, *e.g.*, an accident on the way, an act of God or act of State beyond human control, only Article 164 would apply

11. PLD 1970 Lahore. 412=PLR 1970 (2) W.P. 794+AIR 1929 All. 127=51 All. 487+AIR 1948 Mad. 480+AIR 1947 Mad. 153+1902 Pun Re No. 13, p. 335+1897 Pun. Re. No. 15, p. 54+AIR 1928 Mad. 556+AIR 1928 Nag. 91=23 Nag. L. R. 183+AIR 1933 Pat. 557+AIR 1924 Rang. 274 (DB).
12. 93 Ind. Cas. 1023 (Lah).
13. 15 Cal. L. Jour 160 (DB).
14. AIR 1928 Mad. 556.
15. PLD 1970 Lah. 412=PLR 1970 (2) W.P. 794+AIR 1931 Cal. 319+AIR 1950 Cal. 217+AIR 1948 Mad. 480+AIR 1936 Lah. 495+AIR 1925 Lah. 321+AIR 1926 Mad. 980=50 Mad. 67 (DB)+AIR 1933 Mad. 258 (DB)+AIR 1928 Nag. 91=23 Nag. L R 183+AIR 1935 Rang. 466=13 Rang. 595 (DB)+AIR 1924 Rang. 274 (DB).
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".
17. PLD 1962 Karachi 8=PLR 1962 (1) W.P. 523.

and limitation would commence from the date of the knowledge of the decree, when the 'summons' was not duly served; otherwise from the date of the decree. And the remaining cases, other than those of first hearing, would not be governed by Article 164.[18]

Article applies to suits only. This Article was limited to suit only, and had no application to an application for setting aside an order. In the latter case the Court applied the residuary provisions in Article 181 of the Limitation Act to the case.[19] Where under any enactment, a particular proceeding is to take the form of a suit and the order passed is to be enforced as a decree, and application to set aside such a decree passed *ex parte* will be governed by this article.[20] Proceedings under section 13, West Pakistan Urban Rent Restriction Ordinance (VI of 1959), are in *pari materia* with a suit. Order 9, Rule 13, C.P.C. is, therefore, applicable to these proceedings as being an enabling provision and the time prescribed by Article 164 of the Limitation Act would be similarly attracted.[21] An application to set aside an order which does not amount to a decree cannot be governed by this article.[22] Where an order was made under Order 21, rule 50(2) of the C.P. Code granting leave to execute a decree against any person on the ground that he was a partner. The order did not amount to a decree and therefore, Article 164 of the Limitation Act was not applicable. Similarly a decision given under section 152 of the Code of Civil Procedure granting an application for amendment of a decree was an order and not a decree and hence an application to set aside such an order was governed by Article 181 and not by Article 164 of the Limitation Act.[1]

'Ex parte' proceedings, setting aside of. There is no specific Article in the Limitation Act governing an application for setting aside *ex parte* proceedings. Article 164 of the Limitation Act applies only when an *ex parte* decree had been passed.[2]

Decree vitiated by fraud. This Article does not apply to a suit to set aside an *ex parte* decree on the ground of fraud.[3]

Revocation of probate of will. This Article does not apply to an application for revocation of probate of will by a person not cited in the probate proceedings.[4]

Decree in summary suit. Article 164 does not apply to an application made by a defendant against whom a decree has been passed in a summary suit when he was precluded from appearing by reason of the fact that leave to defend was not given.[5]

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18. PLD 1981 SC 21 = PLJ 1981 SC 146.
19. PLJ 1979 SC 30 = PLD 1979 SC 18 = NLR 1979 Civ. 29.
20. AIR 1915 Cal. 85 = 41 Cal. 819 (DB).
21. PLD 1967 Lah. 653.
22. AIR 1933 Rang. 264 + ILR 1958 Andh Pra 822 (DB) + AIR 1920 Lah. 51 = 1 Lah. 187 (DB) + AIR 1929 Bom. 386 = 53 Bom. 839.
1. PLJ 1979 SC 30 = PLD 1979 SC 18 = NLR 1979 Civ. 29.
2. KLR 1986 CC 668 = PLD 1986 Pesh. 121 = PLJ 1986 Pesh 76 = NLR 1986 Civ. 635 = 1986 Law Notes 728.
3. 26 Cal. 326*n* (DB).
4. NLR 1979 Civ. 29 = PLD 1979 SC 18 = PLJ 1979 SC 30 + AIR 1915 Cal. 85 = 41 Cal. 819 (DB).
5. AIR 1958 Bom. 10 = ILR 1957 Bom. 520.

Decree passed by mistake of Court. There is nothing in Art. 164 which should or would prevent the Court from exercising its inherent jurisdiction and set aside a decree which has been passed in utter disregard of a mandatory rule of procedure and thereby prevent a wrong which has been occasioned by its mistake.[6]

Date of application to set aside decree. The date of application to set aside an *ex parte* decree is the date when the first motion in this matter is made. Where a decree was passed on 28-3-1952 and the first day of hearing of the motion was on 7-4-1952 and the Court on that day gave directions for the filing of affidavits and adjourned the hearing to the 28th April; it was held that the application was made on that day and was within time.[7]

Articles 181 and 164. Time for application seeking setting aside of *ex parte* decree in a case where defendant having once appeared absents himself on any subsequent date would be three years as provided by Art. 181 and not thirty days as provided by Art. 164. Limitation of thirty days provided by Art. 164 would apply only to a case where defendant fails to appear on the date specified in summons despite service.[8] Where the defendant makes an application for setting aside an *ex parte* decree, which is not covered by Article 164, it would be governed by residuary Article 181 and the period of limitation would be three years from the accrual of the right to apply.[9] An application for setting aside *ex parte* decree on plea of want of service after restoration of suit, would fall under Article 181 for which limitation is 3 years.[10]

Void 'ex parte' decree. An *ex parte* decree, affecting rights of a person should be vigilantly challenged within time by such person even if it be void. Question of limitation cannot be overlooked for the reason that impugned order was nullity.[11]

2. Decree under Provincial Small Cause Courts Act. Unless the deposit or the security under S. 17 of the Provincial Small Cause Courts Act accompanies the application to set aside an *ex parte* decree, there is no valid application.[12] But if the decretal amount or the security is furnished though not at the time when the application under Order 9, Rule 13, Civil P.C. is made for setting aside the *ex parte* decree but within the limitation prescribed under Article 161 it would be sufficient compliance of the proviso to section 17 of the Provincial Small Cause Courts Act.[13] Where the security so furnished is found insufficient and the deficiency is made up after expiry of limitation, the provisions of section 17 of Provincial Small Cause Courts Act should be held to have been complied with.[14]

3. "Defendant" The word "defendant" in this article includes the legal representative of the defendant.[15]

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6. ILR (1958) 8 Raj. 95.
7. AIR 1954 Cal. 352 = ILR (1956) 2 Cal. 214 (AIR 1950 Cal. 217, *Overruled*).
8. NLR 1989 Civ. 379 = 1989 CLC 825. (*But see:* NLR 1989 Civ. 123).
9. PLD 1981 SC 21 = PLJ 1981 SC 146.
10. PLJ 1988 Lah. 212 = 1988 CLC 806.
11. 1987 CLC 2143 = NLR 1988 CLJ 9.
12. AIR 1938 Lah. 18 = ILR 1937 Lah. 728 (DB) + AIR 1939 All. 46.
13. PLD [illegible] Karachi 141.
14. AIR 19[illegible] Oudh 406 + AIR 1936 Oudh 407 = 12 Luck 287 + AIR 1936 Mad. 524.
15. AIR 1925 Oudh 370 = 27 Oudh Cas. 299 + AIR 1915 Mad. 1204 = 38 Mad. 442 (DB).

4. Starting point of limitation. Under Art. 164, time runs from the date of the decree, or when the summons was not duly served, from the date when the applicant has knowledge of the decree.[16] Where the defendant was served properly, it will be presumed that he had knowledge of the suit against him. Where it is further clear that he had knowledge of the decree passed against him; it was held that limitation for setting aside the decree will begin to run from the date of decree and not from the knowledge of the defendant that a decree had been passed against him.[17]

Summons duly served. The expression "duly served" in Art. 164 must receive a strict interpretation and it means service of summons in compliance with the provisions laid down in Civil P.C.[18] Thus though the object of service of summons is that the defendant may be informed of the institution of the suit in due time before the date fixed for hearing; it does not necessarily follow that whenever the defendant knows of the institution of the suit and the date fixed for hearing in sufficient time, he must be deemed to have been duly served, apart from the question whether the manner of service of summons as prescribed by the Code is carried out or not.[19] Where in a suit, summons has been duly served on the defendant and he makes his appearance in response to it but subsequently fails to do so and an *ex parte* decree against him is passed by the Court, his application under O. 9, Rule 13 of the Civil Procedure Code, 1908 must be filed within 30 days from the date of the *ex parte* decree and not from the date of the knowledge of such decree.[20]

Summons not duly served. Service cannot be said to be due service where it has not achieved the object of bringing to the knowledge of the defendant the claim against him.[1] Due service has reference not merely to the mode of service but to the propriety of the summons where it fixes a date for hearing, on which date by reason of the delay in service or of some action of the Court itself or of its officer or by reason of a governmental order it is not possible for the defendant to do what he is asked to do and the case cannot be taken up.[2] Where a summons is served on the defendant too late to afford him opportunity of appearing at hearing of the suit, it cannot be said to be duly served under this article.[3] Thus where summonses are served after the date which is fixed for appearance has expired

16. PLD 1979 SC 18=PLJ 1979 SC 30=NLR 1979 Civ. 29+1980 CLC 602+PLD 1973 Kar. 603+1981 CLC 550+54 Cal. W N 242.
17. PLD 1979 SC (AJ&K) 120=PLJ 1979 SC (AJ&K) 52+PLD 1965 Pesh. 20 (DB).
18. AIR 1960 Madh Pra. 378.
19. AIR 1954 Sau 84.
20. PLJ 1988 Pesh. 60=PLD 1988 Pesh. 33=NLR 1988 Civ. 332+PLD 1962 Dacca 60=13 DLR 225+PLD 1958 Kar. 141+PLD 1952 Lah. 456=PLR 1952 Lah. 514+AIR 1925 Bom. 444 (DB)+AIR 1958 Pat. 27 (DB)+AIR 1953 Pat. 399+AIR 1952 Kutch 48+AIR 1949 Assam 5=ILR (1949) 1 Assam 129 (DB)+AIR 1932 Oudh 326 (DB)+AIR 1916 Cal. 651.
1. AIR 1931 Mad. 813=55 Mad. 223 (DB)+AIR 1957 Andh Pra 1=ILR 1956 Andh 250 (FB)+AIR 1959 Madh Pra 193+AIR 1954 Mad. 195+AIR 1954 Sau 84 (AIR 1931 Mad. 813 and AIR 1939 Rang. 456, *Rel on.*)+Mad. B L J 1954 H C R 858+AIR 1939 Oudh 11+AIR 1931 All. 727=54 All. 154 (FB)+AIR 1939 Rang. 436=1939 Rang. 187=2 Rang. 655+AIR 1931 Oudh 369.
2. AIR 1957 All. 76 (DB).
3. AIR 1941 Mad. 435.

though the mode of service is perfect, *i.e.*, there is personal service, it can hardly be said that it is "due service".[4]

Time will run from the date of knowledge only where the summons is not duly served.[5] Thus where the defendant was duly served for appearance on 14-1-1961 which was declared a holiday. On the next date of hearing, *i.e.*, 20-2-1961, the Court issued a fresh summons which was served on the defendant by way of substituted service. Since the defendant did not appear on the date of hearing, the Court passed an *ex parte* decree. In execution of the decree when a writ of attachment was taken to the house of the defendant on 12-8-1961 the defendant came to know of the decree and thereupon he applied on 23-8-1961 for setting aside the *ex parte* decree. It was found that the substituted service was not proper. The question was whether the application was within limitation. It was held that the first summons issued to the defendant for appearance on 14-1-1961 was not a proper summons as required by O. 5, R. 1 C.P.C. because the date mentioned therein happened to be a holiday. Hence it was not a good service for purposes of Art. 164, Limitation Act. Since the substituted service was admittedly illegal the summons was not duly served and Limitation under Art. 164 began to run only from the date of the knowledge of the decree, *viz.*, 12-8-1961. The fact that the defendant had knowledge of the suit when he received the summons on 14-1-1961 did not mean that he had knowledge of the decree. Hence the application was within time.[6]

Substituted service. Substituted service cannot always be deemed to be due service within the meaning of Article 164 of the Limitation Act, or Rule 13 of Order 9 of the Civil Procedure Code and it is due service only when it has been effective and has achieved the object of service by bringing the claim against him to the knowledge of the defendant or respondent.[7] Where the circumstances justifying service of notice in the manner as laid down in O. 5, R.17, Civil, P.C. do not exist and the Court in accepting the service does not act judicially or in accordance with law by disregarding the provisions of O. 5, R. 19, Civil P.C., there is no due service.[8] The provision under O. 5, R. 20(2) of the Civil P.C. does not preclude the defendant against whom an *ex parte* decree has been passed, from showing that the circumstances justifying the order for substituted service did not exist.[9] Thus personal service may be shown not to have been duly made.[10] Where the defendant deliberately kept out of way to avoid service of summons, substituted service would be due service irrespective of the actual knowledge of

4. AIR 1957 All. 76 (DB).
5. PLD 1981 SC 21 = PLJ 1981 SC 146 + PLD 1979 SC (AJ&K) 120 = PLJ 1979 SC (AJ&K) 52 + 3 DLR 317 + 108 Ind Cas 753 (DB) (Mad) + AIR 1923 Nag. 13 (DB) + AIR 1926 Cal. 327 (DB).
6. AIR 1964 Madhya Pradesh 261.
7. PLJ 1979 SC 30 = PLD 1979 SC 18 = NLR 1979 Civ. 29 + AIR 1954 Mad. 195 + AIR 1954 Mad. 372 + AIR 1931 All. 727.
8. AIR 1964 Mad. 372 + AIR 1952 Assam 45 = ILR (1951) 3 Assam 233 (DB).
9. AIR 1935 Pesh 137 + AIR 1959 Madh Pra. 193 + AIR 1934 Cal. 745 (DB) + AIR 1924 Lah. 191 + AIR 1931 Mad. 813 = 55 Mad. 223 (DB) + AIR 1930 Mad. 222 + 9 Nag. L R 35 + AIR 1935 Pesh. 112.
10. AIR 1931 Mad. 813 = 55 Mad. 223 (DB) + AIR 1939 Rang. 436 = 1939 Rang. L R 606 (DB).

the suit on his part.[11] It is however to be noted that the Court hearing an application to set aside an *ex parte* decree is only entitled to consider whether the trial Court acted judicially and according to law in ordering substituted service and the correctness of the order cannot be questioned except to this extent.[12]

5. "Summons." The word "summons" is not used in Article 164 in a general sense as meaning every from of judicial process in a proceeding including a 'notice'.[13] It refers to the first summons issued to the defendants after the institution of the suit.[14] Thus where in a suit, summons has been duly served on the defendant and he makes an appearance in response to it but subsequently fails to do so and an *ex parte* decree against him is passed by the Court, his application under O. 9, R. 13, C.P.C. must be filed within 30 days from the date of the *ex parte* decree and not from the date of the knowledge of such decree.[15] But where the notices which if required to be served under rules of natural justice and equity were not duly served, the case would be governed by residuary Article 181 of the Act as the word 'summons' used in Article 164 governs the entire article.[16]

Transfer of case. Where summons for the first hearing were duly served on the defendant. The fact that the case was transferred to another Court and notice of such transfer was not duly served on the defendant will not give fresh starting point of limitation under this article.[17]

Remand of case by appellate Court. Where summons for the first hearing were duly served on the defendant, the fact that suit was remanded by appellate Court for re-hearing and no notice of the date of hearing on remand was duly served on the defendant will not give a fresh staring point of limitation under the article.[18]

Resumption of hearing after stay of suit by appellate Court. In case there is no interruption in the hearing of the suit and the suit proceeds in ordinary course, the word 'summons' in Art. 164 refers to the summons issued in the first instance. But if there is an interruption in the hearing and there is stay of proceeding on the order of the superior Court, the first hearing in that instance is the first date on which the case again starts after the case is sent back from the High Court and the hearing is again resumed.[19]

Death of party. Where a party died during the hearing after he had been duly served, an *ex parte* decree was passed against the legal representative of the deceased. It was held that time under this Article ran from the date of the decree

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11. AIR 1931 Mad. 812=55 Mad. 240 (DB)+AIR 1931 All. 727=54 All. 154 (FB)+AIR 1939 Rang. 436=1939 Rang. L R 606 (DB).
12. AIR 1927 Mad. 507+AIR 1932 Mad. 472+AIR 1931 Lah. 118.
13. PLD 1981 SC 21=PLJ 1981 SC 146.
14. PLD 1985 SC (AJ&K) 74=1985 PSC 490+PLD 1962 Dacca 6=13 DLR 233+PLD 1952 Lah. 45=PLR 1952 Lah. 514.
15. PLD 1985 SC (AJ&K) 74+PLD 1981 SC 21=PLJ 1981 SC 146+PLD 1962 Dacca 60=13 DLR 225+AIR 1963 All. 361+AIR 1961 Assam 80.
16. PLD 1981 SC 21=PLJ 1981 SC 146+1973 Dhaka LR 250.
17. AIR 1932 Lah. 539+AIR 1956 Hyd. 29=ILR 1955 Hyd 734 (DB)+AIR 1954 Punj. 137=ILR 1955 Punj. 1 (DB).
18. AIR 1935 Pesh. 7.
19. AIR 1957 All. 805.

and not from the date when the legal representative got knowledge of the decree.[20]

6. "Knowledge of the decree." Mere information that some person has obtained some decree against the defendant is not sufficient information from which period of limitation under Art. 164 would start. The knowledge of the decree mentioned in Art. 164 means that the applicant (defendant) must have knowledge not merely that a decree has been passed against him, but that a particular decree has been passed against him in a particular Court in favour of a particular man for a particular sum.[1]

Knowledge of suit. Knowledge of the suit is not knowledge of the decree.[2] Thus a defendant cannot be said to have knowledge of the decree against him from the mere fact that he had been given some information about a suit of which he was given no details.[3] The applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed against him, in a particular Court, in favour of a particular person, for a particular sum and in respect of a particular subject-matter. A vague suspicion that the defendant must have heard of some decree is not enough to dismiss his petition on the ground that it is barred by limitation.[4] Where the applicant admits that he had knowledge of the suit and the claim made in it and when a decree was passed *ex parte* he had come to know of it. It cannot be said that he had no knowledge of the contents of the decree. Therefore the date of such knowledge is the date when time would begin to run under this Article.[5] Where a summons is served on the defendant too late to enable him to appear at the hearing. He may reasonably expect fresh summons to issue and omission of defendant to prosecute an inquiry which might have led to knowledge of the date of hearing cannot be regarded as culpable or wilful so as to carry with it the consequence of knowledge.[6]

Date of knowledge of decree. Before holding that the application for setting aside the decree is barred by limitation the Court is bound to make an inquiry as to when the defendant got knowledge of the decree.[7] Question when the applicant has knowledge of the decree is one of fact.[8] Where applicant claims to have obtained knowledge of filing of suit as well as *ex parte* decree for the first time on service of notice of execution application. Application for setting aside *ex parte* decree filed within fifteen days of issuance of notice may not be considered time barred.[9] But when there is no mention of the date when the applicant came to

20. AIR 1915 Mad. 1204 = 38 Mad. 442 (DB).
1. 1982 CLC 840 = NLR 1982 CLJ 103 + 1973 Dhaka LR 91 + AIR 1961 Raj. 32 + 38 Cal. 394 (DB) + AIR 1923 Bom. 193 (DB) + AIR 1937 Pat. 17 (DB) + AIR 1931 Nag. 119 = 27 Nag. L. R. 53.
2. AIR 1930 Lah. 397 + 33 Pat. 1025 + AIR 1933 Pat. 279 = 12 Pat. 745 (DB).
3. AIR 1927 Mad. 381.
4. 1982 CLC 840 = NLR 1982 CLJ 103 (Lah).
5. PLD 1983 SC 387 = PLJ 1983 SC 384.
6. AIR 1941 Mad. 435.
7. AIR 1934 All 1011 (DB) + 33 Pat. 1025.
8. 12 Mad. 512 (PC).
9. ILR 1954 Trav-Co. 683.

know of the decree in the application to set it aside, and the application is barred by limitation, the decree cannot be set aside.[10]

Knowledge of legal representative. In the case of an application by the legal representative of a deceased defendant the limitation has to be calculated from the date of the defendant's knowledge of the decree and not from the date of the legal representative's knowledge of the decree.[11] Thus where the defendant made an application to set aside an *ex parte* decree. On his death the legal representative continued the application. The date of knowledge of the legal representative is immaterial and it must be shown that an application by the defendant was made within thirty days of the defendant's knowledge.[12] But where the legal representative of the deceased defendant against whom *ex parte* decree has been passed, wishes to file an application to set aside the decree on the ground that the summons was not duly served on the defendant. He should do so within thirty days of his, *i.e.*, the applicant's, knowledge of the decree.[13] If the person claiming under the defendant having purchased the equity of redemption *pendente lite* has made the application under O. 9, R. 13 by way of a personal remedy he cannot be relegated to the position of the defendant himself and if he was not a party to the suit and the summons was not served on him, he would be entitled to make the application within 30 days from the date of his knowledge of the decree.[14]

7. Extension of time. The Court cannot, on any equitable grounds, override, under its inherent powers, the period prescribed by this article.[15] Unless S. 5 has been made applicable to applications under this article by or under any other enactment, it cannot be resorted to for excusing the delay in filing the application.[16] The exclusion of time requisite allowed by S. 12(2) cannot be had in computing the period of limitation prescribed for an application for setting aside an *ex parte* decree.[17] Where an application under this article was prima facie filed beyond time and no application for extension was made. The application may be dismissed. The party seeking dismissal of the application need not produce any evidence.[18]

Exclusion of time under section 14. The time during which the applicant has been prosecuting another civil proceeding in a wrong Court may be excluded under S. 14.[19] In this context it must be noted that section 14 applies to

10. PLJ 1979 Lah. 547 = 1979 CLC 147 = 1979 LN 503 + PLD 1973 Kar. 603.
11. ILR 1954 Trav-Co. 683.
12. AIR 1927 Mad. 507.
13. AIR 1925 Oudh 320 = 27 Oudh Cas. 299.
14. AIR 1955 Nag. 238 = ILR 1955 Nag. 509 (DB).
15. AIR 1926 Lah. 135 + AIR 1922 Lah. 266 + AIR 1927 Lah. 342 + AIR 1930 Rang. 305 + AIR 1957 Manipur 13 + AIR 1935 Pesh. 146 + 12 Bom. L. R. 462 + AIR 1928 Rang. 273 = 6 Rang. 494 + AIR 1934 Nag. 43 + AIR 1922 Pat. 479 = 1 Pat. 277 (DB).
16. AIR 1916 Cal. 651 (DB) + AIR 1957 Manipur 13 + AIR 1956 Mad. 422 (DB) + AIR 1954 Sau 84 + AIR 1925 Oudh 446 + AIR 1925 Rang. 187 = 2 Rang. 655 + AIR 1933 Rang. 110 + AIR 1927 Lah. 342 + AIR 1922 Lah. 266 + 12 Bom. L R 462 + AIR 1934 Nag 43.
17. AIR 1952 Kutch 48.
18. PLD 1981 AJ&K 126.
19. AIR 1932 All. 340 = 54 All. 423 (AIR 1923 All. 319. *Dissented from*) + 15 Cal. W N 102 (DB) + AIR 1920 Bom. 351.

applications contemplated by S. 17 of the Provincial Small Cause Courts Act as it stands amended in 1935.[20]

Deposit of security. Where the application under O. 9, R. 13 is made within time and the deposit is made or security is furnished beyond the prescribed time, S. 5 can have no application.[1]

8. Section 18 and this section. The fact that an *ex parte* decree has been obtained by fraud is not a ground for postponing the period of limitation under S. 18.[2]

Under S. 18, the fraud must be such as to have kept the applicant from knowledge of his right to apply and not such as has prevented him from exercising his right.[3] Therefore where the holder of a preliminary decree represented to judgment-debtor that he should not and need not appear in final decree proceedings on assurance that such proceedings would be dropped, but continued proceedings and obtained a final decree, S. 18 could be availed of by the judgment-debtor in an application to set aside *ex parte* decree.[4] But where the petitioner alleged that he went to the decree-holder and asked him about the decree and the latter said that he would come and settle things with him; the fraud alleged was not of the nature contemplated by S. 18 and it did not affect limitation.[5]

9. Defect in application corrected after limitation. If the application is made in time, the fact that the person in whose favour the decree was passed was not named in it at the time but later, does not affect limitation.[6]

10. Onus of proof. Where an application for setting aside an *ex parte* decree was made more than thirty days from the date of decree and the applicant alleged that he was not duly served. The onus is on him to show that summons was not "duly served" or he was prevented from appearing by sufficient cause,[7] that he did not have knowledge of decree more than thirty days before the application was made.[8] If the applicant fails to prove that he had knowledge of the passing of the decree within 30 days prior to the date of his application the application is bound to fail.[9] The onus cannot be shifted by the bare denial of knowledge made by the defendant.[10]

11. Subsequent application beyond limitation. Where an application to set aside *ex parte* decree was made in time. Owing to the impossibility of serving the opposite side with notice, the Court consigned the application to the record room. The judgment-debtor renewed his application beyond time to set aside the decree.

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20. AIR 1956 Mad. 422 (DB).
1. AIR 1956 Mad. 422 (DB).
2. AIR 1920 Lah. 261.
3. AIR 1957 Manipur 13.
4. AIR 1926 Nag. 388.
5. AIR 1933 Rang. 110.
6. AIR 1935 Cal. 506 = 62 Cal. 1057.
7. PLJ 1979 SC 30 = PLJ 1979 SC 18 = NLR 1979 Civ. 29.
8. AIR 1938 Cal. 535 + AIR 1959 Madh Pra 193 + 6 Sau L R 343 + AIR 1954 Sau 84 + AIR 1936 Rang. 305 + AIR 1930 Lah. 192 + 33 Pun L R 123 + AIR 1946 Pesh. 7 (DB).
9. 1979 CLC 147 = PLJ 1979 Lah. 547 = 1979 L N 503 + AIR 1954 Sau 96.
10. 6 Sau L R 343.

A subsequent application must be considered as one in continuance of suspended original application.[11] But where the prior application made within limitation was dismissed for default, a subsequent application was a fresh application and it might be treated as an original application to set aside *ex parte* decree, if it was made within the time prescribed by this article.[12]

165.	Under the Code of Civil Procedure, 1908 by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	[13][Thirty days]	The date of the disposses-sion.

Synopsis

1. Scope.
2. "Dispossession."
3. Sub-purchaser, not impleaded within limitation--effect.

1. Scope. This article does not apply to applications by the judgment-debtors.[14] To an application by the judgment-debtor to restore the property in excess of that decreed, Art. 181 and this article applies.[15]

2. "Dispossession." Mere symbolic delivery of possession does not amount to dispossession so as to entitle a person to apply under O. 21, R. 100, Civil P.C.[16] Where actual possession was delivered to the purchaser in Court sale, in spite of objection by the third party and in the presence of the latter's agent it would amount to "dispossession."[17]

Date of dispossession. Where the possession was delivered by Court Amin, the date of delivery of possession by the Amin and not the date of his report as to such delivery, is the starting point of limitation,[18] and in computing the period of limitation, the date of dispossession must be excluded.[19]

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11. AIR 1920 Lah. 69 (DB).
12. AIR 1924 All. 503=46 All. 319 (DB).
13. Subs. by the Repealing and Amending Act, 1923 (11 of 1923) S. 2 and First Sch., for "Ditto".
14. AIR 1916 All. 104=38 All. 339 (DB)+AIR 1956 S C 87=1955-2 SCR 938+AIR 1932 Mad. 377 (DB)+AIR 1919 Mad. 269=42 Mad. 753 (FB) (21 Mad. 494, *Overruled*)+AIR 1929 Oudh 76=4 Luck. 209 (DB)+AIR 1922 Bom. 271=46 Bom. 1031 (DB)+AIR 1931 Bom. 446 (DB)+AIR 1923 Cal. 287 (DB)+AIR 1919 Lah. 430 (DB)+AIR 1918 Upp Bur 3=3 Upp Bur Rul 79.
15. AIR 1944 Pat. 254=23 Pat. 145 (DB).
16. 30 Cal. 710 (DB).
17. 27 Mad. 262 (DB).
18. 1864 Suth WR (Misc.) 18 (DB).
19. 2 Bom. 673 (DB).

3. **Sub-purchaser, not impleaded within limitation--effect.** Where an application under O. 21, R. 100, Civil P.C. was filed within thirty days from the date of dispossession impleading the purchaser who dispossessed the applicant. The application cannot be considered to be defective and barred simply because the sub-purchaser had not been originally impleaded as a party.[20]

166.	Under the same Code to set aside a sale in execution of a decree [21][including any such application by a judgment-debtor].	[1][Thirty days]	The date of the sale.

Synopsis

1. Scope.
2. Application, to record adjustment and set aside sale.
3. Application under Order 21, R. 89, C.P.C.
4. Judgment-debtor having no saleable interest in property.
5. Sale in insolvency proceedings.
6. Joindor of parties to application after limitation.
7. Notice to person affected by application.
8. Suit to avoid sale treated as proceeding under section 47, C.P.C.
9. Setting aside of sale under inherent powers.
10. Fresh ground for setting aside sale if may be urged after limitation.
11. Extension of time.
12. Effect of fraud.
13. Defence not barred.
14. Starting point of limitation.
15. Order setting aside sale subsequently reversed--Limitation for fresh application.

1. Scope. The article cannot override the special provisions of the Civil Procedure Code to the contrary.[2] It applies only to an application for setting aside a sale where such setting aside is specifically provided for in the C.P.C.[3] The article is applicable to all applications under Civil P.C. to set aside sale in execution irrespective of the ground on which or the provisions of the Code under which the application is made.[4] It is immaterial whether the application is under

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20. AIR 1931 Cal. 385=58 Cal. 55.
21. Ins. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), S. 4 (2).
1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
2. AIR 1937 Mad. 560.
3. PLD 1966 Supreme Court 375.
4. AIR 1940 Pat. 192 (DB)+AIR 1924 Mad. 137=47 Mad. 525 (DB)+AIR 1945 Mad. 499+AIR 1942 Pat. 238=21 Pat. 281 (DB)+AIR 1924 Rang. 124=1 Rang. 533+AIR 1935 All. 889 (DB)+AIR 1932 Cal. 627 (DB)+AIR 1920 Cal. 165=46 Cal. 975 (DB)+AIR 1934 Nag. 82=30 Nag. L. R 135+AIR 1919 Lah. 152+AIR 1921 Bom. 285=45 Bom. 174 (DB)+AIR 1916 Bom. 61=41 Bom. 357 (DB)+AIR 1934 All. 314 (DB).

any of the rules in O. 21 or is one under section 47, Civil P.C.[5] It is however to be noted that if an application is merely for setting aside the sale and the auction itself has not been questioned to be void and without jurisdiction, then limitation for such objection petition would be one month as prescribed by Article 166 of the Limitation Act but if the sale is questioned on the basis of being null and void and of no effect then Article 166 may have no application.[6]

Application made after confirmation of sale. Where an application to set aside a sale is within time under this Article, it is not barred merely because it is made after the confirmation of the sale.[7]

No sale held. In order that this article may apply, the application must be one to set aside a sale in execution.[8] The article has no application to a case where it is alleged that there was no sale and the law itself provides that on a default having been made, the defaulting purchaser shall forfeit any claims to the property and the property shall be resold.[9]

Void sale. Where a sale is voidable an application to set it aside must be made within the period prescribed by this article.[10] But where the sale is void, it need not be set aside and can be disregarded without any proceeding to set it aside.[11] Even, if an application to set aside a void sale is made, the Article would not apply to it.[12]

Article 181 and this Article. Article 181 of the Limitation Act provides limitation of three years in the case of an application for which no period of limitation is provided elsewhere in the schedule or by section 48 of the Civil P.C. Article 166 provides limitation for 30 days under the Civil P.C. to set aside the sale in execution of a decree including any application by a judgment-debtor and the limitation runs from the date of the sale. Thus Article 166 applies to an

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5. AIR 1938 Nag. 558+AIR 1957 Andh Pra 38 (Petition under O. 21, R. 90)+AIR 1954 Hyd. 23=ILR 1953 Hyd 610 (DB). (Article 166 and not 181 applies to application for setting aside sale under S. 47, Civil P C)+AIR 1948 Nag. 52=ILR 1947 Nag. 52=ILR 1947 Nag. 344+AIR 1937 Rang. 126=1937 Rangl L R 164+AIR 1931 All. 145 (DB)+AIR 1943 Pat. 75=21 Pat. 774 (DB)+AIR 1941 Pat. 566 (DB)+AIR 1938 Cal. 113=ILR (1938) 1 Cal. 280 (DB)+AIR 1931 Cal. 425+AIR 1942 Lah. 153=ILR 1942 Lah. 559 (FB). (Word 'sale' in Art. refers to auction sale)+AIR 1943 Nag. 330=ILR 1944 Nag. 159.
6. PLD 1973 Lah. 96.
7. AIR 1915 Low Bur 97.
8. AIR 1927 Cal. 818=54 Cal. 493 (DB).
9. AIR 1955 All. 226 (DB).
10. PLJ 1973 Lah. 96+AIR 1962 Pat. 72 (FB)+AIR 1961 Pat. 508 (DB)+AIR 1948 Oudh 175 (DB)+AIR 1940 Pat. 303 (DB)+AIR 1941 Pat. 566 (DB)+AIR 1923 Mad. 48 (DB).
11. PLJ 1973 Lah. 96+32 Cal. 296=82 Ind. App. 23 (PC).
12. PLD 1966 S.C. 375+AIR 1961 Pat. 508 (DB)+AIR 1961 A.P. 500+AIR 1964 Mad. 424+AIR 1936 Pat. 496 (DB)+AIR 1956 S.C. 87=1955=2 S C R 938+AIR 1957 Andh Pra. 38+AIR 1957 Trav-Co. 153 (DB)+AIR 1959 Raj. 135=ILR (1959) 9 Raj. 494 (DB). (AIR 1953 Raj. 51, *Held overruled* by AIR 1954 S C 349)+AIR 1950 Mad. 367+AIR 1948 Nag. 52=ILR 1947 Nag. 344+AIR 1948 Oudh 175=22 Luck. 230 (DB)+AIR 1937 Rang. 126=1937 Rang. L R 164+AIR 1938 Cal. 113=ILR (1938) 1 Cal. 280 (DB)+AIR 1930 Lah. 17+AIR 1924 Mad. 431=47 Mad. 288 (FB)+AIR 1924 Cal. 638=51 Cal. 224 (DB)+AIR 1934 All. 314 (DB)+AIR 1955 All. 226 (FB)+AIR 1952 Trav-Co. 136=ILR 1951 Trav-Co. 728+AIR 1950 Mad. 367+AIR 1920 Mad. 402=43 Mad. 313 (DB)+AIR 1928 Cal. 60=55 Cal. 96 (DB)+AIR 1931 Lah. 586 (DB).

application by a judgment-debtor where the judgment-debtor himself applied for setting aside the sale under section 47 of the Civil P.C. But if the execution is a nullity, namely, made without jurisdiction or is void *ab initio*. Article 166 has no application and Article 181 would come in.[13] The question whether Article 166 or 181 would apply to an application to set aside a sale in execution would depend upon the allegations in the application for setting aside the sale. If the sale is sought to be set aside only under O. 21, R. 90, Civil P.C. Art. 166 would apply and the application would be barred if not made within 30 days from the date of sale. If, however, allegations in the application amount to a pleading that the sale is void, the Article applicable is Art. 181.[14] Where a judgment-debtor applies under S. 47, Civil P.C., for declaring a sale void on the ground that the property being inalienable he had no saleable interest in the property; the application is governed by Art. 166 and not by Art. 181.[15] Where the judgment-debtor filed an application after the expiry of 30 days from the date of sale for setting aside the sale under S. 47. C.P.C. on the ground that the sale was contrary to the direction of Court and therefore it was a nullity. It was held that the application for setting aside the sale filed after 30 days from the date of the sale was barred by limitation under Article 166. Limitation Act.[16] But where property is sold in execution of an *ex parte* decree and purchased by the decree-holder himself but the decree is set aside, an application by the judgment-debtor to set aside the sale was governed not by this article but by Art. 181.[17] Similarly where property is sold first to *A* in execution, then before confirmation of sale to *B*, the sale to *A* was confirmed and *B*, applied to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property; *B's* application was held to be not governed by Art. 166, but by Art. 181.[18]

2. Application, to record adjustment and set aside sale. Where the decree-holder himself is the purchaser and no third party's interest is to be protected, an adjustment of decree, though made after the execution sale, can be recorded under O. 21, R. 2, C.P. Code and the sale may be set aside.[19] Where one of the terms of adjustment is that judgment-debtor must, as condition of adjustment being recorded and sale being set aside, deposit in Court or pay to the decree-holder within a particular time a certain amount, the Court cannot extend the time so fixed except with the consent of the parties.[20]

3. Application under Order 21, R. 89, C.P.C. An application to set aside a sale need not be in writing.[1] The application is good though it does not contain an express prayer for the setting aside of the sale.[2] In order to prevent the bar of

13. PLD 1957 Dacca 198=7 DLR 627=PLR 1956 Dacca 305.
14. AIR 1962 Pat. 72 (FB)+AIR 1964 Mad. 424+AIR 1952 Pat. 244 (AIR 1947 Pat. 139 *Rel. on.*).
15. AIR 1948 Mad. 226=ILR 1948 Mad. 522 (FB)+AIR 1948 Mad. 301.
16. AIR 1964 Orissa 91.
17. AIR 1919 Bom. 175=43 Bom. 235 (DB).
18. 14 Cal. W N 1096 (DB).
19. AIR 1928 Pat. 40 (DB)+AIR 1934 Lah. 508=15 Lah. 801 (DB)+AIR 1936 Oudh 55=11 Luck. 418 (DB).
20. AIR 1917 Pat. 344 (DB).
1. AIR 1929 All. 593=51 All. 910 (DB)+9 All. L. Jour 12+AIR 1925 Mad. 909+AIR 1914 Mad. 209.
2. AIR 1928 Nag. 111.

limitation under this article there must be an application to set aside the sale within thirty days from the sale,[3] and an application and deposit required under Rule 89 must be made within thirty days of the sale.[4] But where the deposit is made after the expiry of thirty days from the sale due to the fault of the Court or its officers and not of the applicant, the deposit must be held to be in time.[5]

Application under Articles 89 and 90. Where a person making an application under R. 90 and in alternative under R. 89 subsequently abandons his prayer under R. 90, his application under R. 89 must be deemed to be made on the date of the abandonment of the prayer under R. 90 and where such date is beyond thirty days from the date of sale, the application must be held to be barred.[6]

Acceptance of intervenors application--effect. Where auction-purchaser deposited balance amount beyond period allowed by the Court, and intervenor's offer was accepted conditionally on his depositing the balance amount within three days but the same was made after seven days. Judgment-debtor in the meanwhile, had made application under O. XXI, R. 89, C.P.C. and made deposit provided thereunder, in accordance with law, within the time limit provided under Art. 166, Limitation Act. Settlement arrived at between the judgment-debtor and decree-holder was thus recorded by the Court and full satisfaction thereof was noted in the decree and sale in favour of intervenor was not made absolute but was set aside as per terms of O. XXI, R. 89, Civil Procedure Code.[7]

4. Judgment-debtor having no saleable interest in property. There is no distinction in principle between a case where the auction-purchaser applies under O. 21, R. 91, Civil P.C., to set aside the sale and a case where the judgment-debtor himself applies under S. 47, Civil P.C. to have the sale declared void on the ground that he had no saleable interest in the property sold. In either case the application will be governed by this article.[8] Thus an application by the purchaser to set aside a sale on the ground that the judgment-debtor had no saleable interest in the property is governed by this article.[9] Where a purchaser who is a decree-holder does not apply to set aside the sale within the period prescribed by this article, he cannot thereafter ignore the sale and apply again for execution of the decree as if the prior sale was a nullity.[10]

Application where property is sold in execution of another person's decree. Where property belonging to a party to suit is sold in execution of the decree

3. 9 Ind. Cas. 33+AIR 1919 Bom. 130=43 Bom. 735 (DB)+AIR 1925 Mad. 639+AIR 1917 Mad. 662 (DB)+AIR 1925 Oudh 411.
4. AIR 1931 P.C. 33=58 Ind. App. 50=27 Nag. L. R. 95+AIR 1937 Pat. 413=16 Pat. 202 (FB).
5. AIR 1922 All. 195+AIR 1915 All. 414=37 All. 591 (DB)+AIR 1930 Cal. 249 (DB)+15 Cal. L Jour 83 (DB)+AIR 1934 Lah. 875+AIR 1926 Nag. 331.
6. AIR 1940 Sind. 181=ILR 1940 Kar. 360 (DB).
7. 1990 MLD 258.
8. AIR 1948 Mad. 226=ILR 1948 Mad. 552 (FB)+AIR 1948 Mad. 301
9. AIR 1935 All. 889 (DB)+AIR 1922 Bom. 205=46 Bom. 833 (DB)+AIR 1923 Cal. 85=50 Cal. 115+AIR 1927 Mad. 835 (DB)+AIR 1927 Mad. 394=50 Mad. 639 (DB)+AIR 1930 Oudh 148=5 Luck 552 (FB).
10. AIR 1935 Pat. 97=15 Pat. 308 (FB)+AIR 1927 Mad. 835 (DB)+AIR 1927 Mad. 394=50 Mad. 639 (DB).

against *B*. *A* applies under S. 47 of Civil P.C. for relief in respect of such sale his application is not governed by this article.[11]

5. Sale in insolvency proceedings. An application to set aside a sale in insolvency proceedings is governed by Article 181 and not by this article.[12]

6. Joinder of parties to application after limitation. It is not necessary that the decree-holder or the auction-purchaser must be joined as parties to the application to set aside a sale within the period prescribed by this article.[13] Thus where an application to set aside a sale in execution was made within time. The opposite party was dead at the time of the application but was added under *bona fide* belief that he was alive. Substitution of legal representative of the party was made after thirty days. The application was held to be competent under the circumstances.[14] Where ostensible purchaser was joined within time but the real purchaser was joined after the time, the application is valid.[15]

7. Notice to person affected by application. Where an application is made to set aside a sale within a period of thirty days from the date of sale, the sale may be set aside although notice required by proviso to O. 21, R. 92, sub-rule (2), Civil P.C. is given after the expiry of such period.[16]

8. Suit to avoid sale treated as proceeding under section 47, C.P.C. Where a suit to avoid a sale is treated as a proceeding under S. 47 of the Civil P.C., the period of limitation applicable to the case is that applicable to an application under S. 47,[17] which must be deemed, for purposes of limitation, to have been filed on the day on which the suit was instituted.[18]

9. Setting aside of sale under inherent powers. Where the Court has inherent power to set aside a sale, this article does not apply and the Court can set aside the sale in the exercise of such power although the period of limitation under this article may have expired.[19]

10. Fresh ground for setting aside sale, if may be urged after limitation. Where an application to set aside a sale is made in time, a new ground of objection cannot be urged for the first time after the period of limitation.[20] But

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11. AIR 1938 Cal. 113=ILR (1938) 1 Cal. 280 (DB).
12. AIR 1914 Lah. 209.
13. AIR 1929 All. 593=51 All. 910 (DB)+AIR 1955 Raj. 51=ILR (1954) 4 Raj. 900 (DB)+AIR 1935 Cal. 502=62 Cal. 286 (DB)+AIR 1923 Cal. 394 (DB)+AIR 1928 Lah. 413+AIR 1928 Lah. 414+AIR 1914 Oudh 307=17 Oudh Cas. 306+143 Ind. Cas. 552 (FB) (Cochin)+AIR 1932 Pat. 255=11 Pat. 504 (DB)+AIR 1930 All. 167+AIR 1924 Pat. 37=2 Pat. 800 (DB).
14. AIR 1932 Cal. 733 (DB).
15. AIR 1923 All. 462.
16. AIR 1924 Pat. 37=2 Pat. 800 (DB)+AIR 1928 Lah. 413+AIR 1922 Oudh 129 (DB)+37 Bom. 387+AIR 1929 Mad. 763=52 Mad. 861 (DB)+AIR 1932 Pat. 255=14 Pat. 504 (DB).
17. AIR 1917 Mad. 453 (DB)+AIR 1921 Bom. 285=45 Bom. 174 (DB)+AIR 1927 Cal. 614=54 Cal. 419 (DB)+22 All. 376.
18. AIR 1935 Cal. 15+AIR 1952 Trav-Co. 397.
19. AIR 1915 Oudh 140+AIR 1948 Nag. 52=ILR 1947 Nag. 344+AIR 1963 Punj. 230.
20. AIR 1932 Lah. 576 (DB)+AIR 1954 Hyd. 23=ILR 1953 Hyd. 610 (DB).

where any grounds have been already raised in the original application, further particulars of such grounds can be given after the period of limitation.[1]

11. Extension of time. The period fixed by this article cannot be enlarged except under the express provisions of the Act.[2] A Court has no power to extend the period of limitation fixed by this article.[3] It has been held that time occupied in obtaining a copy of the report of the sale officer cannot be excluded in computing the period of limitation under this article.[4] Similarly minority or other disability of the applicant will not affect the period of limitation for an application to set aside a sale.[5]

Section 5 not applicable. Where section 5 was not made applicable by any enactment to an application to set said a sale, such application made after the expiry of the period under this article cannot be admitted under that section.[6]

Date of hearing objections fixed beyond thirty days of sale. The fact that the Court fixes a date beyond thirty days of the sale for hearing objections will not enable an application to set aside the sale being made after the expiry of the period prescribed.[7]

Holiday on last day of limitation. Where the period prescribed by this article expired on the day when the Court was closed, application may be made on the day on which the Court reopens.[8]

12. Effect of fraud. In order to claim the benefit of S. 18 there must be fraud by the opposite party,[9] and the fraud must have resulted in the applicant being kept from the knowledge of his right to apply.[10] In other words it must be established that ignorance of the sale proceedings on the part of the applicant was brought about by the fraud of the opposite party.[11] The fact that the opposite party has, by fraud, induced the applicant not to apply within the period of limitation is not sufficient to extend limitation under this section.[12]

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1. AIR 1926 All. 305=48 All. 286.
2. AIR 1932 Cal. 381 (DB)+AIR 1919 Lah. 422+AIR 1933 Rang. 8+AIR 1928 Rang 286=6 Rang. 490 (DB)+AIR 1926 Lah. 639+AIR 1917 Pat. 344+AIR 1918 Cal. 77 (DB).
3. AIR 1934 Lah. 875+13 Cal. L. Jour 535+AIR 1934 Pesh. 25+AIR 1935 Rang. 466=13 Rang. 595 (DB)+AIR 1924 All. 668=46 All. 631+AIR 1929 All. 485 (DB)+AIR 1917 Mad. 176 (DB).
4. AIR 1929 All. 593=51 All. 910 (DB).
5. AIR 1935 Pat. 450 (DB).
6. AIR 1934 All. 314 (DB)+13 Cal. L. Jour 535+AIR 1919 Lah. 422+AIR 1919 Lah. 152+AIR 1925 Oudh 411+AIR 1934 Pesh. 25.
7. AIR 1920 Lah. 71.
8. AIR 1938 Bom. 209+AIR 1948 Nag. 63=ILR 1947 Nag. 494+AIR 1933 Cal. 836=60 Cal. 1106+AIR 1922 All. 195.
9. AIR 1919 Lah. 152+AIR 1953 Mys. 48+AIR 1922 Pat. 507=2 Pat. 65 (DB)+1 Cal. W N 67 (DB)+AIR 1932 Cal. 627 (DB).
10. AIR 1921 Pat. 145 (DB)+AIR 1929 Rang. 62=7 Rang. 104 (DB)+14 Cal. L. Jour 346 (DB)+16 Cal. W N 894 (DB).
11. AIR 1925 Cal. 515.
12. AIR 1918 All. 336 (DB).

Fraud antecedent to the sale may extend limitation if the applicant has been kept from the knowledge of his right to apply.[13] Thus where owing to the fraudulent concealment of the proceedings by the decree-holder all knowledge of the proceedings up to the time of sale is withheld from the judgment-debtor, then so long as he does not come to know of the sale, the effect of the fraud continues, and the only conclusion to which the Courts can come is that he had been kept from the knowledge of the sale in consequence of the initial fraud practised by the decree-holder. It is only after he becomes aware of the sale that he comes to know of his right to apply. The case, therefore, fell within S. 18, Limitation Act and limitation to set aside the sale under Art. 165, Limitation Act, started only from the date of such knowledge on the part of the judgment-debtor.[14]

Application made after confirmation of sale. Where an applicant is entitled to an extension of time on the ground of fraud, his right will not be affected by the fact that the sale had been confirmed before he made his application.[15] But where an application for setting aside a sale in favour of a third person is made after its confirmation, the ignorance of judgment-debtor of his right to apply due to fraud of decree-holder is not alone sufficient. The fraud of auction-purchaser must also be established.[16]

Burden of proof. Where an application to set aside sale is *prima facie* barred by limitation, and the applicant claims extension of limitation under S. 18, the burden is on the applicant to prove that he was, by fraud of opposite party, kept from knowledge of his right to apply.[17] Where fraud has been established the onus lay on the decree-holders to prove that the judgment-debtor had acquired definite knowledge of the facts constituting the fraud at a time which was too remote to allow him to make an application to set aside the execution sale. Where the date of the knowledge of the sale and the date of knowledge of the fraud did not coincide, the *terminus a quo* could not be the former date.[18] In other words the burden is on the opposite party to show that the applicant became aware of the fraud more than thirty days before the date of his application.[19]

Whose fraud is sufficient to extend time. The fraud of the auction-purchaser,[20] or the fraud of the decree-holder alone will be sufficient to extend the period of

13. AIR 1942 Pat. 496+23 Cut. L. T 178+AIR 1952 Mys. 151 (DB)+AIR 1926 Cal. 229 (DB)+AIR 1925 Pat. 521+AIR 1921 Cal. 251=48 Cal. 119 (DB)+AIR 1923 Mad. 853 (DB).
14. AIR 1964 Kerala 88+AIR 1925 All. 778+AIR 1939 Cal. 663.
15. 112 Ind. Cas. 847 (Lah.)+AIR 1923 All. 282=45 All. 316 (DB)+16 Ind. Cas. 436 (DB) (Cal)+AIR 1922 Pat. 422.
16. AIR 1950 Mad. 460.
17. 36 Cal. 654 (DB)+23 Cut L T 178+AIR 1952 Mys 47=ILR 1952 Mys 151 (DB)+AIR 1939 Cal. 663=ILR (1939) 2 Cal. 163+AIR 1918 Cal. 77 (DB).
18. AIR 1964 Patna 529 (DB)+AIR 1929 Pat. 228+AIR 1947 Pat. 139.
19. PLD 1961 Dacca 580=13 DLR 101+AIR 1947 Pat. 139)DB)+AIR 1952 Mys. 47=ILR 1952 Mys. 151 (DB)+AIR 1928 Cal. 349 (DB)+AIR 1927 Cal. 633 (DB)+AIR 1925 Pat. 521+AIR 1929 Pat. 228 (DB)+112 Ind. Cas. 847 (Lah).
20. AIR 1935 Cal. 89 (DB)+AIR 1960 Mys. 297 (AIR 1950 Mad. 460+AIR 1950 Cal. 520 and AIR 1954 Cal. 604, *Dissented from*)+AIR 1960 Mad. 509+AIR 1933 Mad. 626+56 Mad. 734 (DB).

limitation for an application to set aside a sale.[1] It has been held that a decree-holder is not bound to bring the legal representatives of a deceased judgment-debtor on record within 30 days. A Court cannot, therefore, presume that simply because a decree-holder does not implead the legal representative of a judgment-debtor within time to enable him to present an application under O. 21, R. 89 or 90 of the Code he has committed a fraud and the provisions of S. 18, Limitation Act, cannot come to the aid of the legal representative.[2]

13. Defence not barred. Where the judgment-debtor continues to be in possession of property sold. He can resist the suit for possession by the purchaser on the ground that the sale is voidable by him although the has not applied within limitation under this article.[3]

14. Starting point of limitation. Under this Article the starting point of limitation is the date of the sale and not that of its confirmation.[4] Having regard to the language of Article 166 of the Limitation Act the date of sale is the date on which the hammer falls at a public auction or in case of private sale when the offer is accepted. Therefore time cannot be reckoned from the date of issuance of the sale certificate.[5]

Completion of sale. Limitation starts from the date when the sale is complete. A sale becomes complete only when the highest bid has been accepted by the Court.[6] It does not become complete merely on the highest bid being made.[7]

Payment of full amount of purchase money is not necessary for the completion of a sale in execution.[8] But ordinarily a deposit of twenty-five per cent of the purchase money under O. 21, R. 84 of the Civil P.C. is necessary to complete the sale.[9]

15. Order setting aside sale subsequently reversed--Limitation for fresh application. Where two judgment-debtors *A* and *B* applied for setting aside a sale under O. 21, R. 90 and O. 21, R. 89 respectively. *A's* application was allowed and the sale was set aside. The auction-purchaser appealed from such order. On application by *B* for withdrawal of his application, the Court dismissed his application and the deposit was refunded. Subsequently the auction purchaser's appeal was allowed and the sale was restored. A fresh application under O. 21, R.

1. 54 Mad. L. Jour 24 (NRC)+AIR 1960 Mys. 297 (AIR 1950 Mad. 460, AIR 1950 Cal. 520 and AIR 1954 Cal. 604, *Dissented from*)+AIR 1952 Mys. 47=ILR 1951 Mys. 151 (DB)+AIR 1950 Mad. 509+44 Cal. L. Jour 565+AIR 1934 All. 255=56 All. 613 (FB).
2. AIR 1957 Raj. 154=ILR (1957) 7 Raj. 520 (DB).
3. AIR 1926 Bom. 33 (DB)+AIR 1923 Cal. 302 (DB).
4. AIR 1936 Pat. 558+29 Cal. 626 (DB)+14 Cal. 644 (DB)+8 Nag. L R 177+AIR 1924 Nag. 108=19 Nag. L R 162+AIR 1942 Lah. 102=ILR 1942 Lah. 349 (FB).
5. 1981 SCMR 108=PLJ 1981 SC 242.
6. AIR 1940 Oudh 261 (DB)+AIR 1953 Mys 87+ILR 1953 Mys. 570+AIR 1935 Oudh 131=0 Luck 557 (DB)+AIR 1932 Lah. 525+AIR 1923 Pat. 525=2 Pat. 548 (DB).
7. 35 All. 65 (DB)+AIR 1930 Lah. 41+AIR 1928 Nag. 111+1938 Nag. L. Jour 10.
8. AIR 1919 Lah. 309 (*Dissenting from* 1 Ind Cas 12).
9. AIR 1919 Lah. 309+AIR 1953 Vindh Pra. 12. (35 All. 65; AIR 1919 Lah. 309 and AIR 1934 Pesh. 25. *Rel. on;* AIR 1924 Nag. 108 and AIR 1935 Pesh. 160. *Not foll.*)+1 Ind. Cas. 12 (Lah.)+AIR 1934 Pesh. 25.

89 by *B* after thirty days of the sale with the prayer for reviving the previous application was barred.[10]

167.	Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	[11][Thirty days]	The date of the resistance or obstruction.

Synopsis

1. Scope.
2. Several obstructions.
3. Conversion of application to suit.
4. Date of obstruction.

1. Scope. Where a decree-holder or auction-purchaser is resisted by a stranger in obtaining delivery of property pursuant to a decree for possession or to an auction sale, he should file an application under O. 21, R. 97 and this should be done within the period of limitation prescribed in this article.[12]

2. Several obstructions. Where an auction-purchaser is resisted or obstructed by the judgment-debtor in obtaining possession but he does not apply under O. 21, R. 97 of the Civil P.C. within limitation, he will not be precluded from applying again under Order 21, Rule 95 for delivery of possession.[13] In such a case if there is obstruction, the application complaining of it may be made within thirty days of the second obstruction.[14] But if the second obstruction is by the same person who made first obstruction and in the same character, the starting point would be the date of the earlier obstruction.[15] Thus where a decree-holder auction-purchaser applied to Bombay High Court under O. 21, R. 97, Civil P.C. and also for further execution under O. 21, R. 50 against a partner of the judgment-debtor firm. The Bombay High Court transferred the decree for execution to a Sind Court which held that the matter of removal of obstruction was not to be dealt with in an application under O. 21, R. 97. The decree-holder then made a fresh application under O. 21, R. 97 to the Sind Court which was dismissed as barred by time. On appeal it was held that time for the said application should be computed from the date of the application to Bombay High Court.[16]

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10. AIR 1934 Mad. 593 (DB).
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
12. Madh B L J 1955 H C R 353.
13. AIR 1941 Nag. 322 = ILR 1942 Nag. 633 + AIR 1962 Mad. 338 + AIR 1944 Mad. 60.
14. AIR 1939 Cal. 494 + AIR 1959 Cal. 613 (DB) + 1958 Cal. L Jour 314 + AIR 1957 Trav-Co. 287 = ILR 1956 Trav-Co. 1139 (AIR 1953 Cal. 499 = 1 Ind. Cas. 785 (Cal.), *Rel. on;* AIR 1933 Bom. 457 (FB)--Held obiter and *Dissented from*) + AIR 1947 Sind 118 = ILR 1945 Kar. 317 = 1 Ind. Cas. 785 (DB) (Cal) + 18 All. 233 (DB) + 1928 Mad W N 236 + AIR 1921 Mad. 539 (DB) + AIR 1938 Cal. 332.
15. AIR 1933 Bom. 457 (DB).
16. AIR 1936 Sind. 11 = 30 Sind L. R 290 (DB).

3. Conversion of application to suit. If an application for the removal of obstruction is allowed to be converted into a suit, the law of Limitation applicable is the law relating to suit.[17] But where an application under Order 21, Rule 97, Civil P.C. was made after a lapse of thirty days from the date of obstruction, the Court should dismiss the application itself as barred by time instead of converting an application into a suit and dismissing it.[18]

4. Date of obstruction. The date of the resistance or obstruction contemplated by the Article when read along with O. 21, R. 97, Civil P.C. must mean the date of actual resistance or obstruction and not the date of the anticipatory application filed by the prospective resister or obstructor.[19]

168. For the readmission of an appeal dismissed for want of prosecution.	[20][Thirty days]	The date of the dismissal.

Synopsis

1. Scope.
2. Dismissal must be under C.P.C.
3. Inherent powers, readmission under.
4. Revision.
5. Starting point of limitation.
6. Extension of time.

1. Scope. Article 168 relates only to the re-admission of an appeal dismissed for want of prosecution.[1] The Article does not apply to an application to set aside a compromise decree in appeal on the ground of fraud.[2] Where an appeal is filed but process fee is not paid within 7 days, and the date fixed for appearance is not intimated to the appellant's Counsel, the dismissal of the appeal cannot be said to be a dismissal for non-prosecution and Article 168 does not apply to an application for readmission of such application.[3] Similarly where the date of the adjourned hearing of an appeal is fixed in the absence of the appellant or his counsel and is not communicated to them, the dismissal of the appeal for failure of the appellant or his pleader to appear on such adjourned hearing is not a dismissal for want of prosecution within the meaning of this article.[4]

Application for rehearing dismissed for default. An application for re-hearing of appeal dismissed for want of prosecution is governed by time prescribed by Art. 168 and not by time prescribed by Art. 181.[5]

17. 18 Bom. 37 (DB) + 1885 Bom. P J 163 (DB).
18. 21 Mad. L. Jour 466 (DB).
19. AIR 1955 Hyd 58 = ILR 1954 Hyd. 856.
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
1. 1982 SCMR 201 + 1975 SCMR 179 = 1975 SCMR 199 + PLD 1954 Baluchistan 21.
2. AIR 1915 Cal. 622 (DB).
3. PLD 1967 Lah. 151.
4. 1983 PSC 1218 + AIR 1953 All. 368.
5. NLR 1985 SCJ 91.

2. **Dismissal must be under C.P.C.** An appellate Court can only dismiss and not reject an appeal.[6] An application for readmission of appeal referred to in this article is one under the Civil P.C.[7] Thus the article applies to an application for readmission under O. 41, R. 19, Civil P.C.[8] Section 107 read with O. 25, R. 2 of Civil P.C. empowers the appellate Court to set aside the rejection of an appeal under O. 41, R. 10 and an application for that purpose would be governed by this article.[9] Where *A* files a memorandum of appeal but fails to pay sufficient stamp fee and the Court grants him some time to make good the deficiency. On his failure to do so, the Court rejects the memorandum of appeal. An application for readmission of appeal is governed by this article.[10]

Application under Rules of High Court. This Article does not apply to an application for readmission under the rules of High Court.[11] Thus where the appeal is dismissed for failure to comply with the order to pay printing costs of an appeal, O 41, R. 19, Civil P.C., does not apply, and Art. 168 has no application to an application made under S. 151, Civil P.C. for vacating order of dismissal.[12]

3. **Inherent powers, readmission under.** The Court can restore, under its inherent powers, an appeal which has been rejected or dismissed in cases not covered by any specific provision of law,[13] and such application is not governed by any period of limitation.[14] Unless the dismissal of the appeal is under O. 41, R. 17 neither Rule 19, Civil P.C. nor Art. 168 of the Limitation Act will apply. In such a case the order can be corrected by the Court in its inherent jurisdiction for which Art. 168 does not stand in the way. Where neither the parties nor their counsel had knowledge of the date fixed for final hearing of appeal and the appeal was dismissed for default, the order of dismissal could not be under R. 17 and the application for restoration filed more than 30 days after the order of dismissal of appeal could be allowed.[15] Article 168 is not applicable to the case of an application for restoration of the appeal which has been rejected under Order 41, Rule 10, for default of the appellant in furnishing security. In such a case, no period of limitation is provided for an application for restoration. The situation is governed by the inherent jurisdiction of the Court which may be exercised in a suitable case in favour of the petitioner if the circumstances would justify restoration of the appeal.[16] Where, in spite of the intimation of the date fixed for hearing of the appeal, which was given to the appellant through his counsel, the appellant or his counsel failed to appear on that date and the appeal was consequently dismissed, an application under S. 151, C.P.C. for restoration of the appeal filed after expiry of 30 days, prescribed by Art. 168, is not maintainable.[17]

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6. AIR 1922 Nag. 62 = 18 Nag L R 15.
7. AIR 1930 Rang. 228 = 8 Rang. 380 (FB).
8. AIR 1921 Bom. 20 = 45 Bom. 648 (DB) + AIR 1950 East Punjab 225 (FB).
9. AIR 1932 Mad. 170 (DB).
10. 1889 All. W N 151 (DB).
11. 23 Cal. 339 (DB).
12. AIR 1949 Pat. 112 = 27 Pat. 745 (DB).
13. 8 All. 315 = 13 Ind. App. 57 (PC) + AIR 1951 Raj. 47 + AIR 1949 All. 36.
14. ILR (1953) 3 Raj. 264 + AIR 1949 Pat. 112 = 27 Pat. 745 (DB).
15. AIR 1962 Allahabad 622.
16. AIR 1965 Patna 500 (DB).
17. AIR 1964 Allabahad 124 + AIR 1965 All. 64.

An application for readmission of an appeal which could have been filed under O. 41, R. 19 of the Civil P.C. but is not filed within the period prescribed by this article, cannot be entertained under its inherent powers.[18] But such application can be treated as an application for review.[19]

4. Revision. Application for restoration of an application for revision is not governed by any period of limitation.[20] Thus this Article would not apply where dismissal of an appeal purporting to be under O. 41, R. 17, Civil P.C. was without jurisdiction.[1]

5. Starting point of limitation. Under this Article time runs from the date of the order of dismissal and not from the date of the applicant's knowledge of the order.[2] Even minority of the applicant is no answer to a plea of limitation under this article.[3]

Death of appellant. Where an appellant dies within thirty days of the date of dismissal of the appeal for default his legal representative cannot make an application for restoration beyond the prescribed period of 30 days from the date of dismissal by invoking the inherent powers of the Court. The applicant has a remedy under O 41, R. 19. Simply because the applicant had allowed his remedy under O. 41, R. 19 to become time barred he cannot be given the benefit of S. 151.[4]

6. Extension of time. In provinces in which S. 5 has not been extended to applications under O. 41, R. 19, Civil P.C. the Court cannot resort to its provisions for extending the period prescribed by this article.[5] In a case which clearly comes under Order 41, Rule 19, section 151, C.P.C. should never be used by a Court as it will mean that the Court would thereby be extending the provisions of section 5 of the Limitation Act to an application to which it cannot be applied.[6]

169. For the re-hearing of an appeal heard *ex parte*.	[7][Thirty days]	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has

18. AIR 1920 Lah. 309 = 1 Lah. 363 (DB) + 91 Ind. Cas. 168 (DB) (Lah) + AIR 1924 Mad. 114 = 47 Mad. 171 (DB) + AIR 1924 All. 446 = 46 All. 144 + 1890 All. W N 196 (DB).
19. 1901 Pun LR No. 44. p. 18.
20. AIR 1960 Ajmer 6.
1. AIR 1924 Lah. 279.
2. 1975 SCMR 179 = 1975 SCMR 199 + 1974 L N 271 + AIR 1920 Lah. 309 (DB).
3. AIR 1921 Bom. 20 = 45 Bom. 648 (DB).
4. AIR 1952 Raj. 4 = II.R (1951) 1 Raj. 327 (DB).
5. PLD 1967 Lah. 151 (Time cannot be extended under S. 5) + 1889 All. W N 151 (DB) + 1882 Pun Re No. 44. p. 128 + 91 Ind Cas. 168 (DB) (Lah) + AIR 1933 Rang. 96 (DB).
6. AIR 1962 Tripura 20.
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".

knowledge of the decree.

Synopsis

1. Scope. 2. Extension of time.
3. Starting point of limitation.

1. Scope. Respondent may apply for rehearing of appeal if he satisfies the Court that notice of appeal was not "duly served" or he was prevented from appearing by sufficient cause. Prescribed limitation period of thirty days runs from the date of decree in case notice is duly served and from date of knowledge of the decree if notice was not duly served.[8]

Appeal from order. The wording of Art. 169 shows that it can apply only where the hearing of appeal has resulted in a decree. Therefore, for rehearing of a rent appeal, heard and decided *ex parte*, it will be Article 181 of the Limitation Act that would apply and not Article 169 which is applicable only where the decision results in a decree.[9] The proper Article to apply, in the case of an application for re-hearing of an appeal, decided *ex parte* (from an order refusing an interim injunction) is the residuary Art. 181 and not Art. 169, and an application for re-hearing presented within 3 years of the *ex parte* order is in time.[10]

2. Extension of time. Period of thirty days fixed by this Article, cannot be extended by the Court.[11]

3. Starting point of limitation. Limitation under this Article commences from the date when the appl- -nt gains knowledge of the disposal of the appeal. Expression "notice of the appeal" should be taken to mean notice (actual or constructive) of the date of the disposal, and not any earlier notice.[12] Such as notice of the filing of the appeal.[13] It is for the applicant to show when he actually got knowledge of the decree.[14] It must be a clear knowledge of the *ex parte* decree and not any vague information about the appeal wherein that decree is passed.[15]

Application filed in time but amended beyond limitation. An application for rehearing presented originally within limitation but returned for amendment and represented after amendment after the period of limitation, cannot be rejected as being out of time.[16]

170.	For leave to appeal as a pauper.	[17][Thirty days]	The date of the decree appealed from.

8. PLD 1979 SC 18 = PLJ 1979 SC 30 = NLR 1979 Civ. 29 + PLD 1959 Kar. 19.
9. 1990 CLC 621.
10. PLJ 1979 SC 30 = PLD 1979 SC 18 = NLR 1979 Civ. 29.
11. 1883 Pun Re No. 66, p. 137.
12. 1980 SCMR 466 + AIR 1963 All. 311 + AIR 1940 Lah. 49.
13. AIR 1940 Lah. 49 + AIR 1963 All. 311.
14. AIR 1933 Lah. 882 + AIR 1949 Pat. 502.
15. AIR 1956 Pat. 511 (DB).
16. 5 Cal. W N 816 (DB).
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope.
2. Exclusion of time.
3. Condonation of delay.
4. Minor, application by.

1. Scope. Article 170 of the Limitation Act applies to a case where the appeal is originally filed in *forma pauperis* and not where the appeal is filed in the ordinary manner but the appellants are subsequently allowed to continue the appeal in *forma pauperis*. For such cases there is one limitation that the appellant has to apply for leave to continue the appeal in *forma pauperis* before the expiry of the date fixed by the Court for making up the deficiency in the Court-fee otherwise the suit or appeal shall be dismissed and after such dismissal no permission can be granted to continue the proceedings in *forma pauperis*.[18]

Pauper appeal. This Article applies only to leave for appeal as a pauper and not to pauper appeals to which Art. 156 applies.[19] Therefore an application seeking permission to appeal as pauper must be made within thirty days of judgment appealed against.[20] Thus time, under this article, runs from the date of the decree, and the period of limitation is thirty days even though the period of limitation for the appeal itself might be ninety days.[1]

Objection in 'forma pauperis'. This article applies only to application for leave to appeal in *forma pauperis* and not to applications for leave to file cross objections in *forma pauperis* in an appeal.[2]

2. Exclusion of time. The time taken for obtaining a copy of the judgment should be excluded in computing the period of limitation for an application for leave to appeal in *forma pauperis*.[3]

3. Condonation of delay. The Court can condone delay in filing an application for leave to appeal in *forma pauperis*, only when each day's delay has been satisfactorily explained.[4] Where there was a delay of sixty days in presenting a second appeal in *forma pauperis* due to the mistaken advice of the advocate's clerk on the question of limitation in that instead of thirty days under Art. 170 he advised that ninety days under Art. 156 were available. It was held, that the delay could not be condoned.[5]

4. Minor, application by. An application by the next friend of a minor must be within the time allowed by this article.[6]

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18. PLD 1966 Azad J & K 15 (DB). (*But see* AIR 1915 All. 310 (DB) and 19 Bom. 48 (DB).
19. AIR 1961 Punj. 391 (DB).
20. 1974 SCMR 492.
1. 12 All. 79 (DB) (Per Mahmood, J).
2. 12 Cal. L. Jour 173 (DB) + AIR 1929 Pat. 31 = 7 Pat. 827 (DB).
3. AIR 1961 Kerala 173 (DB). (AIR 1939 Lah. 43 and AIR 1954 Bom. 525, and AIR 1952 Punj. 1 *dissented from*).
4. 1974 SCMR 492.
5. AIR 1959 Andh Pra. 507.
6. 4 Ind. Cas. 1002 (DB) (Lah.).

171.	[7][By the legal representative of a deceased plaintiff or defendant for setting aside an order or judgment made or pronounced in his absence.]	Sixty days	[7][The date of the order or judgment.]

Synopsis

1. Abatement prior to amendment by L.R.O.
2. Condition of delay.

1. Abatement prior to amendment by L.R.O. Applications where the abatement had taken place before the 14th of April, 1972, *i.e.*, before the coming into force of Ordinance, XII of 1972, are to be decided in the light of the old provision of Order XXII, C.P.C. and of Articles 176 and 177, Limitation Act for impleading the legal representatives,[8] and Article 171 of the Limitation Act for setting aside the abatement.[9]

2. Condonation of delay. Where an application for setting aside abatement is made beyond the period of limitation, each day's delay must be explained to the satisfaction of the Court. Benefit of section 5 of the Act is not available to an applicant who fails to explain the delay for each and every day.[10]

172.	Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	[11][Sixty days]	The date of the order of dismissal.
173.	For a review of judgment except in the cases provided for by Article 161 and Article 162.	Ninety days	The date of the decree or order.

Synopsis

1. Scope.
2. Court-fee Act, effect of.
3. Starting point of limitation.

7. Subs. by L.O.R., 1972.
8. NLR 1990 SCJ 155 + 1983 CLC 2565.
9. 1983 CLC 2565 (Lah.).
10. PLJ 1974 A J & K 46 (DB).
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Scope. No question of limitation arises where a review is made by the Court under its inherent powers.[12]

Review under Dastur-ul-amal (Kalat). As no period of limitation is prescribed by Dastur-ul-Amal (Kalat) for a review application, the review application should have been filed within a period of ninety days, as prescribed by Article 173 of the First Schedule to the Limitation Act.[13]

2. Court Fee Act, effect of. The Court-fees Act cannot affect the period of limitation prescribed by this Act.[14] In calculating the period of 90 days for the purpose of Art.4 or Art.5 of Sch.1 of the Court-fee Act, the question whether the application for review is barred by limitation or not is immaterial.[15] Article 5 of the Court-fees Act cannot entitle a party to pay only half the fee on the ground that the application is not barred by limitation, if actually it has been made on or after the ninetieth day from the date of the decree.[16] Where an application for review was presented with insufficient stamp and no mistake or inadvertence was involved, and the deficiency was made up only after expiry of the period of limitation. Section 28 of the Court-fees Act did not apply and the application was barred.[17]

3. Starting point of limitation. Time runs from the date the judgment sought to be reviewed was pronounced.[18] It is to be noted that the mere fact that a judgment has been written will not start limitation running. The judgment must be pronounced.[19] The fact that the applicant had knowledge of the decree at a later date does not postpone the starting point to such date.[20]

Amendment of decree. Where a decree is amended, the date of the decree is not altered and therefore amendment does not alter the starting point of limitation.[1]

174. For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	[2][Ninety days]	When the payment or adjustment is made.

12. AIR 1918 All. 229=40 All. 68.
13. PLD 1962 Quetta 82 (DB).
14. AIR 1918 All. 229=40 All. 68.
15. AIR 1957 Pat. 143.
16. 7 C P L R 111.
17. 96 Ind. Cas. 433 (DB) (Cal).
18. 1884 All. W N 330 (DB).
19. AIR 1923 Pat. 129=1 Pat. 771 (DB).
20. AIR 1929 All. 545 (DB)+AIR 1929 All. 485 (DB).
1. AIR 1920 Pat. 622=5 Pat. L Jour 472 (FB)+AIR 1917 Low Bur 162+22 Mad. 364 (DB)+AIR 1923 All. 22 (DB).
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), for "Ditto".

Synopsis

1. Scope.
2. Application must be made by judgment-debtor.
3. Adjustment, meaning of.
4. Starting point of limitation.
5. Fraud, effect of.
6. Bar of limitation--effect.

1. Scope. This Article refers to an application by a judgment-debtor under O. 21, R. 2, sub-rule (2) of the Civil P.C.[3] It is not open to a judgment-debtor to get over the period of limitation prescribed by Art. 174 by simply omitting to cite O. 21, R. 2(2) at the head of his application.[4] But where the matter does not fall under O. 21, R. 2, C.P.C. this Article does not apply. Thus an application to record on alleged agreement not to execute the decree entered into prior to the passing of the decree cannot be entertained under O. 21, R. 2, Civil P.C. and Art. 174 will not govern such an application.[5]

Decree need not be money decree. It is not necessary for the application of this Article that the decree be a money decree.[6] Therefore to an application made by the judgment-debtors under S. 47 and O. 21, R. 2 of the Code of Civil Procedure before the trial Court to the effect that in pursuance of the terms of the compromise, they had constructed a house within the stipulated time and given delivery of possession thereof to the decree-holders, but as the decree-holders have not taken possession of the house and left it vacant, it is prayed that full satisfaction of the decree be entered, Art. 174, Limitation Act applies and not Art. 181.[7]

Certification by decree-holder. This article is not applicable to certification by the decree-holder.[8] Thus where a decree-holder applied for recording satisfaction of a decree within thirty days of the payment. A third party who had attached the decree objected to the application; an inquiry was held. The application was struck off for default but the Court reserved the right of judgment debtor to claim full satisfaction in proper proceedings. The judgment-debtor applied under O. 21, R. 2(2), Civil P.C. after the period of ninety days had expired. The order striking off decree-holder's application was not proper and subsequent application by the judgment-debtor could be treated as one to continue the former proceedings.[9]

Applications under Insolvency Act. The Article is not intended to apply to applications made under the Insolvency Acts.[10]

2. Application must be made by judgment-debtor. An application under this Article must be made by the judgment-debtor. Even where a written statement by the judgment-debtor in answer to an application by the decree-holder for execution of a decree alleging adjustment was filed within ninety days

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3. AIR 1939 All. 581 + AIR 1938 Rang. 328 (DB).
4. AIR 1959 Mys 155 = ILR 1958 Mys. 450.
5. AIR 1928 Rang. 36 = 5 Rang. 685 (DB).
6. AIR 1963 Mys. 79 + AIR 1952 All. 814 + AIR 1928 Cal. 715.
7. AIR 1963 Mysore 79.
8. AIR 1929 P.C. 19 = 3 Luck 684 = 56 Ind. App. 50 + AIR 1952 All. 715 = ILR (1952) 2 All. 772 (FB) + AIR 1962 Mys. 100.
9. AIR 1939 Mad. 163.
10. AIR 1927 Rang. 263 = 5 Rang 384 (DB).

of the alleged adjustment, the executing Court was entitled to go into the matter and certify it.[11] If the judgment-debtor does not make the application in time, he cannot do so later on but a surety for a judgment-debtor can plead an uncertified payment or adjustment made by him.[12]

Dismissal of execution petition. An application for certification under O. 21, R. 2(2), Civil P.C. by judgment-debtor though filed in the course of the execution proceedings does not stand dismissed by implication if the execution petition is itself dismissed for default or otherwise. Hence a fresh application for certification in fresh execution proceedings should be treated as an application for revival of the earlier application for certification which is still undecided.[13]

3. Adjustment, meaning of. A payment is not a contract of executory, nature whereas an adjustment is a contract of such nature.[14] An "adjustment" of a decree is an agreement which extinguishes the decree as such in whole or in part and results in a satisfaction of the whole or portion of the decree in respect of the particular relief or reliefs granted by the decree.[15] It cannot mean an adjustment, to give effect to the terms of which would be to create a new decree at variance with the decree under execution and which will again have to be executed.[16]

Reduction of decretal amount. An agreement reducing the amount of the decree by reason of certain arrangements between the parties is an adjustment.[17] Similarly an agreement to accept a portion of the decretal amount in full satisfaction of the decree is an adjustment within O. 21, R. 2 of the Code and need not be reduced to writing.[18]

4. Starting point of limitation. The statutory period of limitation under this Article cannot be changed by an agreement between the parties.[19]

Amendment of decree. An application by judgment-debtor to record satisfaction of a money decree made more than ninety days from the date of payment will be barred, even if it may be within ninety days from the date of a revised decree against the defendants other than himself.[20]

Operation of adjustment. Where the judgment-debtor under a mortgage-decree agrees with the decree-holder that if the latter purchased property in a Court-auction, the judgment-debtor would put him in possession and he is so put in possession, time for an application by the judgment-debtor to have the

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11. AIR 1935 Bom. 303+AIR 1957 All. 622=ILR (1957) 2 All. 1 (DB)+AIR 1939 All. 581+AIR 1929 All. 79+AIR 1950 Pat. 526=9 Pat. 521 (DB)+AIR 1928 Rang. 62=5 Rang. 833+11 Ind Cas. 780 (Low Bur).
12. AIR 1926 Sind 105=20 Sind. L R 362+AIR 1928 Lah. 61.
13. AIR 1955 Hyd. 64=ILR 1955 Hyd 307 (DB).
14. AIR 1938 Rang. 328 (DB).
15. 7 All. 424 (DB).
16. AIR 1928 Cal. 527 (DB).
17. AIR 1921 Pat. 135=6 Pat. L J 337 (DB).
18. AIR 1935 Bom. 303+AIR 1933 Lah. 806=14 Lah. 668.
19. AIR 1938 Rang. 328 (DB).
20. AIR 1916 Mad. 1010 (DB) (33 All. 264=38 Ind. App. 37 (PC), *Distinguished*).

adjustment recorded will run only from the date when the decree-holder gets possession of property.[1]

Application for recording adjustment, when may be made. An application under O. 21, R. 2, sub-rul (2), Civil P.C. is maintainable even before the decree is formally drawn up.[2]

5. Fraud, effect of. Even if fraud is imputed to the decree-holder, the Court executing the decree cannot recognize an uncertified payment and the judgment-debtor cannot claim an extension of time under S. 18.[3] The judgment-debtor can neither override the period of limitation provided by this article, nor secure investigation of the very same matter and extension of time by invoking terms of S. 47, Civil P.C.[4] He must be content to seek his remedy in damages elsewhere.[5]

6. Bar of limitation--effect. Where an application under R. 2, sub-rule (2) of O. 21 of the Civil P.C. is barred by limitation, the judgment-debtor will not be allowed to evade provisions of this article by securing investigation of the same matter under S. 47 of the Civil P.C. in execution proceedings,[6] or by filing a suit for declaration that the decree has been satisfied and is incapable of execution.[7] But if the satisfaction and adjustment made outside the Court was brought to the notice of the Court within the requisite time by a request for recording satisfaction, but the Court overlooked the fact and did not record satisfaction, it was open to the judgment-debtor to plead it subsequently.[8]

Punjab. In Punjab sub-rule (3) of O. 21, R. 2, Civil P.C. has been omitted by S. 36 of the Punjab Relief of Indebtedness Act and the result of this is that if the decree-holder files an application for execution, the judgment-debtor notwithstanding that he did not move the Court under sub-rule (2) for the adjustment being certified within ninety days, could take up the plea that the execution should not be allowed, because of adjustment.[9]

175.	For payment of the amount of a decree by instalments.	Six months	The date of the decree.

Synopsis

1. Appellate decree.
2. Application entertained after limitation.
3. Commencement of limitation.

1. AIR 1935 Mad. 581 (DB) + AIR 1943 Cal. 634 = ILR (1943) 1 Cal. 195.
2. AIR 1924 Cal. 1064 (DB).
3. 29 Mad. 312 (DB) + AIR 1935 Mad. 257 + AIR 1925 Bom. 309 = 49 Bom. 548 (FB) + AIR 1916 Bom. 217 + AIR 1922 Bom. 380 = 46 Bom. 226 (DB) + AIR 1923 Cal. 342 = 50 Cal. 468 (DB) + AIR 1915 Cal. 73 (DB) + AIR 1923 Rang. 103 + AIR 1919 Upp Bur 26 + AIR 1936 Pat. 270 = 15 Pat. 422 (DB).
4. AIR 1938 Pat. 465 = 17 Pat. 128 (DB) + AIR 1925 Nag. 374 + 12 Cal. L. Jour 312 (DB).
5. AIR 1915 Cal. 73 (DB) + 16 Cal. L. Jour 174 (DB) + AIR 1936 Pat. 270 = 15 Pat. 422 (DB).
6. AIR 1934 All. 209 = 56 All. 694 (DB) + AIR 1915 Cal. 73 (DB) + AIR 1925 Lah. 566 + AIR 1931 Lah. 105 = 32 Cal. L. Jour 647 + AIR 1932 Mad. 372 = 55 Mad. 720 (FB) + AIR 1936 Pat. 270 = 15 Pat. 422 (DB) + AIR 1938 Pat. 465 = 17 Pat. 128 (DB).
7. AIR 1922 Lah. 428 = 3 Lah. 319 (FB) + 15 Mad. 302 (DB) + 21 Cal. 437 (DB).
8. AIR 1964 Andhra Pradesh 458 (DB).
9. AIR 1962 Punjab 293 + AIR 1963 Punjab 133 + AIR 1938 Lah. 602 + AIR 1938 Lah. 126.

1. Appellate decree. Where the decree of the original Court is appealed against time will run from the date of the appellate decree whether it merely confirms original Court's decree or supersedes it.[10] But, where an appeal is filed but it is not entertained at all, the original decree is and continues to be the subsisting and final decree for limitation.[11] Where a decree is not appealed against, the date of decree in appeal against order of attachment does not furnish date of commencement of limitation for application to grant instalments.[12]

2. Application entertained after limitation. Application for payment of decretal amount by instalments filed after 6 months of the date of the decree was barred by time.[13] Where an application contemplated by this article is entertained by the Court after the expiry of the period of six months and an order is passed allowing the application, the Court will be considered to have decided that it was within time and parties would be bound by such order.[14]

3. Commencement of limitation. Article 175 of the Limitation Act provides a period of 6 months from the date of decree for application for an order of payment of decretal amount by instalments, and not the date when notice of execution was served from which judgment-debtor acquired knowledge that decree had been signed.[15]

176.	Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	[16][Ninety days]	The date of the death of the deceased plaintiff or appellant.

Synopsis

1. Scope.
2. "Legal representative."
3. Proceedings in appeal.
4. Application after limitation.
5. Extension of time.
6. Date of death, proof of.

1. Scope. The article does not apply to applications for substitution not made in the course of a suit or appeal.[17] Thus this Article does not apply to

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10. AIR 1916 Mad. 883=39 Mad. 1196 (DB)+AIR 1932 Rang. 54 (DB).
11. AIR 1916 Mad. 883=39 Mad. 1196 (DB).
12. PLD 1976 Kar. 472=PLJ 1978 Kar. 165=1978 Law Notes 258.
13. PLD 1976 Kar. 472=PLJ 1978 Kar. 165=1978 Law Notes 258.
14. AIR 1932 All. 273=54 All. 573 (FB)+AIR 1937 Cal. 236 (DB)+15 Cal. 502 (DB)+AIR 1923 Lah. 381 (DB) (Estoppel by consent)+1894 Pun Re No. 26, p. 69.
15. NLR 1979 Civ. 625.
16. Subs. by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), S. 2. for "Ditto".
17. PLD 1962 Pesh. 105+11 Cal W N 156 (DB)+AIR 1949 Lah. 186=Pak. L R 1948 Lah. 225 (FB)+AIR 1958 Punj. 171=ILR 1958 Punj. 886+AIR 1954 Him Pra 44 (AIR 1938 Mad. 115 and AIR 1953 Madh B 272, *Dissented from*)+AIR 1953 Raj. 169=ILR (1953) 3 Raj. 175 (FB)+AIR 1953 Raj. 69=ILR (1952) 2 Raj. 811 (DB)+AIR 1953 All. 414=ILR (1953) 1 All. 661+AIR 1933 All 111+3 Bom. 221 (DB)+3 All. 759 (DB)+AIR 1923 Cal. 626=50

revision applications,[18] or to proceedings under S. 18 of the Land Acquisition Act.[19]

Application under Order 9, R. 9, C.P.C. Period of limitation for bringing the legal representatives of plaintiff/defendant, etc., on record as provided in Arts. 176 & 177, Limitation Act, would not govern an application under O. IX, R. 9, C.P.C. because of provisions of S. 141, C.P.C. Period of limitation for bringing on record legal representatives of an applicant or non-applicant in an application under O. IX, R. 9 or for restoration of such application would be three years from the date of the death of the party and not ninety days as prescribed under Arts. 176 & 177, Limitation Act, 1908.[20]

Companies Act, proceedings under. Where a creditor submited a petition under S. 235, Companies Act, 1913 and later died, the procedure prescribed under Order 22, Rule 3, Civil P.C. was held to be applicable, and the provision as to limitation under Art. 176 of the Limitation Act which too are procedural in nature should be taken to be attracted.[1]

2. "Legal representative." The expression "legal representative" means and includes one person as well as several persons according as they represent the whole interest of the deceased person.[2] Even an intermeddler may be representative and can be made a party in place of the deceased.[3]

Several legal representatives. Where one of the two legal representatives applied in time to be made a party and his application was granted, the other legal representative may be brought on record subsequently.[4] But where there is a conflict between the interest of the legal representatives, the position is different. Thus where there are two rival claimants seeking to be brought on record. One is claiming by inheritance and the other by bequest. The right to be brought on record vests in one or the other with effect from the date of death of the deceased party, and limitation begins to run against both from that date and each will get barred by time at the expiry of limitation prescribed by this article. The one who did not apply to be brought on record within time cannot continue the suit revived by his rival's application in time.[5]

Government seeking substitution as legal representative. Where it is found that the plaintiff dies heirless and that the property has escheated to the Government the Court should allow substitution, bringing the Provincial Government on record as plaintiff, not as a legal representative but as a persion upon whom the

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Cal. 650 (DB)+AIR 1929 Pat. 200+AIR 1932 Mad. 73=55 Mad. 352 (FB)+AIR 1934 Sind. 36=28 Sind L R 150 (FB)+AIR 1946 Bom. 201=ILR 1945 Bom. 905+AIR 1930 Pat. 81+9 Pat. 240 (SB).

18. PLD 1962 Pesh. 105.
19. AIR 1964 M P 171 (DB).
20. 1990 CLC 191+NLR 1986 AC 327=1986 CLC 1320 SC (AJ&K).
1. AIR 1962 Madhya Pradesh 120+AIR 1920 Lah. 51+AIR 1949 Mad. 675+AIR 1950 E.P. 11 (FB)+AIR 1955 Nag. 78+AIR 1928 Lah. 376+AIR 1938 Lah. 658.
2. AIR 1927 Lah. 94 (DB).
3. AIR 1922 Lah. 175 (DB).
4. 13 Ind. Cas. 313 (DB) (Mad.)+AIR 1950 Kutch 83+AIR 1933 Rang. 234 (DB).
5. AIR 1927 Nag. 343.

interest of the plaintiff devolved under O. 22, Rule 10, Civil P.C. This can be done within three years under the residuary Art. 181.[6]

3. Proceedings in appeal. Where the appellant died before the appeal was dismissed for default, legal representative's right to be brought on record need not be exercised within the period limited by Art. 168. An application can be made within the period prescribed by this article.[7]

4. Application after limitation. Before allowing an application for setting aside abatement, the Court is to investigate whether the applicant was lawfully prevented from making the application for substitution within the statutory period and should direct its attention to the question whether the applicant was entitled to the benefit of section 5 of the Limitation Act read with Article 171 and Order 22, Rule 9, C.P.C., because abatement is automatic after ninety days (Article 176 of the Limitation Act) and the appeal or suit is dead unless abatement is set aside within sixty days (Article 171) or a period further extended under section 5 of the Limitation Act. Where there has been gross negligence on the part of legal representatives of the deceased to come to Court and they file an application for setting aside abatement seven months after the abatement, the prayer cannot be granted.[8] Where the petitioner made an application for impleading the legal representatives and also made a prayer for setting aside the abatement after more than 7 months of the death of the plaintiff. It was held that in the absence of any specific prayer claiming the benefit of section 5, the Court would have no jurisdiction whatsoever to set aside the abatement and it is incumbent on the Court where no application under section 5 is moved to reject the application for setting aside abatement as time-barred, in that it is well-established principle of law that the Court cannot grant unsought for relief.

5. Extension of time. Section 6 does not apply to applications contemplated by this article.[10]

6. Date of death, proof of. Onus is on the applicant to prove the date of the death of the deceased plaintiff or appellant and that the application has been made within the period prescribed by this article.[11] Where substitution is sought to be made on the basis of a presumption of death under Act, 124 of Q.S.O. this article does not apply.[12]

177.	Under the same Code to have the legal representative of a	[13][Ninety days]	The date of the death of the deceased defen-

6. AIR 1936 Allahabad 357.
7. 35 All. 331=16 Oudh Cas. 194=40 Ind. App. 151 (PC).
8. PLD 1973 Lah. 372.
9. PLD 1967 Peshawar 186=ILR (1967) 2 W.P. 426. (*But see* AIR 1924 Lah. 424+AIR 1928 Lah. 746 where it is held that such application can be treated as one for setting aside abatement).
10. AIR 1917 Low Bur 132+AIR 1952 Bhopal 20.
11. 1887 All. W N 60.
12. 53 Cal W N 713 (DB).
13. Subs. by the Indian Limitation Act and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), S. 2 for "Ditto".

deceased defendant or of a deceased respondent made a party.

dant or respondent.

Synopsis

1. Scope. 2. Execution proceedings.
3. Extension of time.

1. Scope. This article does not apply where the deceased person was not "defendant" in suit or "respondent" in appeal.[14]

Second appeal. This article applies to application to make legal representatives of a deceased respondent in second appeal parties to the appeal.[15]

Revision. The Article does not apply to a revision application.[16] If there is laches the Court may not implead the legal representatives. Where during the pendency of revision by the plaintiff, one of the defendants died and an application to bring on record his legal representatives was dismissed because no process fees were paid. When the case went back to the trial Court no one appeared and thereupon the Court issued notice to the parties. The plaintiff thereupon filed an application to bring the legal representatives of the deceased defendant on record nearly after 10 months from the receipt of notice and two years after the date of death. It was held that the application was barred by limitation.[17]

Writ petitions. The provisions of Order 22, rule 4, Civil Procedure Code, do not apply to writ petitions and the omission on the part of the appellants to implead the legal representatives of the deceased within the time specified in Article 177 of the Limitation Act did not result in the abatement of the proceedings.[18] Position is however different where the matter relates to an appeal from a decision in a writ proceeding. The word "appeals" appearing in rule 11, Order 12 of the Civil Procedure Code, 1908 is intended to include within its scope appeals entertained under clause 10 of the Letters Patent (Lahore). The provisions of the Civil Procedure Code, 1908 are applicable to proceedings in writ jurisdiction and to Letters Patent Appeals. Therefore, a writ petition or a Letters Patent Appeal arising from a writ petition will abate under Order 22, C.P.C. if an application for the substitution of the legal representatives is not made within 90 days under Article 177 of the Limitation Act, 1908.[19]

Income-tax reference. The Article cannot be said to be specifically applicable to an income tax reference under S. 66 of the Income tax Act or to an application made by the Commissioner of Income tax giving the names of the legal

14. AIR 1929 Sind. 136+AIR 1951 Cal. 518 (DB)+AIR 1928 Mad. 278=51 Mad. 697+33 Cal. 1163 (DB)+7 Bom. 373 (DB)+AIR 1934 Sind. 36=28 Sind L R 150 (DB)+31 Mad. 86 (DB)+AIR 1914 Cal. 895 (DB).
15. 28 Mad. 498 (DB)+29 All. 535 (DB)+10 Bom. L R 509 (DB)+34 Mad. 529 (DB).
16. AIR 1940 Oudh 394=16 Luck 72 (DB)+AIR 1951 Hyd. 55=ILR 1951 Hyd. 429 (DB)+AIR 1939 Oudh 277=15 Luck. 26+AIR 1920 Sind. 120 (DB).
17. AIR 1953 Hyd. 208=ILR 1952 Hyd. 1 (DB).
18. PLD 1965 Lahore 596 (DB).
19. PLD 1973 Lah. 325 (DB).

representatives of the deceased assessee and praying that notice be issued to them and they be brought on the record.[20]

2. **Execution proceedings.** This article will not govern an application for substitution in execution proceedings.[1] In such proceedings the proper course is to apply for execution against the legal representatives themselves,[2] and the decree-holder should get at least the period prescribed by this article for applying to bring his legal representatives on the record.[3]

Execution appeals. Applications for substitution of the legal representatives of a deceased respondent in appeal against an order will be governed by this article.[4]

3. **Extension of time.** Under O. 22, R. 4 if no application for substitution is made within the period of ninety days from the death of the defendant or respondent, the suit or appeal abates and the Court has no power to enlarge the time for sufficient cause. Section 5, Limitation Act does not apply.[5] Thus the period of ninety days cannot be enlarged by reason of the applicant's minority.[6]

Ignorance of death. Mere ignorance of death is not sufficient for extension of time under this Article.[7] But it can be deemed to be a good ground for delay in presenting an application to bring the legal representative of the deceased respondent on record when such ignorance is not attributable to any negligence.[8] It follows that the applicant must state reasons which according to him led to his not knowing of the death of the defendant within a reasonable time and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit. It is for the appellant, in the first instance, to allege why he did not know of the death of the respondent earlier or why he could not know about it despite his efforts, if he had made any efforts on having some cause to apprehend that the respondent might have died. The correctness of his reasons can be challenged by the other party. The Court will then decide how far those reasons have been established and suffice to hold that the appellant had sufficient cause for not making an application to bring the legal representative of deceased respondent earlier on the record.[9] Where delay is not properly explained there can be no extension of time.[10]

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20. AIR 1953 All. 414 = ILR (1953) All. 661 (DB).
1. AIR 1932 Pat. 222 = 11 Pat. 546 (DB) + AIR 1924 Lah. 316 + 1911 Pun L R No. 174, p. 639 + AIR 1929 Pat. 200 + AIR 1923 Lah. 560 + 3 Bom. 221 (DB).
2. AIR 1914 P.C. 129 = 42 Cal. 72 = 41 Ind. App. 251.
3. 62 Ind. Cas. 52 (Pat.).
4. AIR 1934 Mad. 664 (DB).
5. AIR 1922 Lah. 131 + AIR 1914 All. 94 (DB).
6. AIR 1917 Low Bur 132.
7. AIR 1961 Punj. 555 (DB).
8. AIR 1961 Punjab 358 (DB) + AIR 1960 Punjab 335 (FB).
9. All. 1964 Supreme Court 215 + AIR 1964 Punj. 336 + AIR 1962 S.C. 361.
10. AIR 1965 Punjab 367 (DB).

Limitation Act, S. 4. The time limited by law for making an application contemplated by O. 22, R. 4, sub-rule (1) is the time prescribed by Art. 177 as extended by S. 4 of the Act.[11]

Several legal representatives. If one of the representatives of the deceased defendant or respondent is brought on the record in time, there is no bar to bring the other representatives on record subsequently.[12] The Courts are always inclined to look at the plea of "sufficient cause" in a practical way and they are averse to adopt any doctrinaire approach to the question.[13] In such cases where there are several legal representatives of a deceased defendant, it is sufficient if all the legal representatives known after due diligent enquiry are joined within the period of limitation. Where some of the legal representatives have been brought on record on an application made within limitation, the subsequent application for bringing the other persons on record as legal representatives is not governed by the 90 days' rule but is governed by the limitation of three years, as provided for under Article 181, Limitation Act.[14]

Stay of proceedings--effect. Where during the stay of the appeal, one of the respondents dies, his legal representative need not be substituted, so long as the stay continues. Application for substitution can be made on the expiry of the stay, even though it is beyond the period of limitation from the death of the respondent or from the knowledge of his death.[15]

Government, application by. Under Article 177 no indulgence can be shown merely because the party concerned is the Federal or the Provincial Government.[16]

[17][178. Under the Arbitration Act, 1940, for the filing in Court of an award.	Ninety days	The date of service of the notice of the making of the award].

Synopsis

1. Scope.
2. "Award."
3. Starting point of limitation.
4. Extension of time.

1. Scope. There is no express provision in the Arbitration Act (1940) for an application to the Court for filing an award. The Act only contemplates the filing of an award by the arbitrators, and their act in filing an award is not an application

11. AIR 1954 Cal. 569 = ILR (1953) 2 Cal. 144 (DB).
12. 13 Ind. Cas. 313 (DB) (Mad) + AIR 1949 Mad. 274 + AIR 1926 Pat. 276 (DB).
13. PLD 1965 Kar 36 + AIR 1962 Punjab 446 (DB) + AIR 1927 Lah. 6 + AIR 1920 Lah. 228 + AIR 1935 Lah. 712 + AIR 1938 Lah. 439.
14. AIR 1963 Andhra Pradesh 406 + AIR 1945 Nag. 52.
15. AIR 1959 All. 625.
16. PLD 1959 Lahore 500.
17. Subs. by the Arbitration Act, 1940 (10 of 1940). Fourth Sch., for the original Art. 178 (with effect from the 1st July, 1940).

at all.[18] If a party to the arbitration agreement does not make a request to the arbitrator or umpire for filing the award in Court it can directly come to the Court and request it to order the arbitrator or the umpire to file the award or a signed copy thereof in the Court. Such an application will be governed by Article 178 of the Limitation Act, if notice of the award has been given to the applicant, as provided by sub-section (1) of section 14. But if no notice is given then the only Article which would be attracted would be the residuary Article 181 of the Limitation Act, which provides a period of three years from the date when the right to apply accrues. The right to apply accrues to a party immediately when an award is made and he receives the knowledge thereof.[19]

The article will apply where a party to the arbitration proceedings applies to the Court for the filing of the award. It does not apply to an application made by the arbitrator himself to file an award,[20] or to a case where the award is already on the record of the Court.[1]

Award filed with application. Where the award is made in the presence of the parties and handed over to one of them in whose favour it is made and the latter applies for making the award the rule of the Court, filing the award with his application, the application cannot be regarded as one for filing the award and this article has no application.[2]

Application for enforcement of award. The Article does not apply to applications for the enforcement of the award.[3] Thus an application under S. 17 of the Arbitration Act, passing a decree in terms of an award is not governed by this Article.[4]

Foreign award. An application for filing a foreign award in Court and passing a decree in terms thereof made under the Arbitration (Protocol and Convention) Act, 1937 is not governed by Art. 178, Limitation Act.[5]

Application to arbitrators to file award. An application to the arbitrators them selves to file the award in Court will not be an application within the meaning of this article.[6]

2. "Award." An award must be a single instrument complete in itself.[7] But where the agreement to refer provides that the matter in dispute may be taken up

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18. AIR 1949 All. 234=ILR 1949 All. 631 (DB)+AIR 1945 Bom. 417=ILR 1946 Bom. 113+AIR 1942 Cal. 542=ILR (1942) 2 Cal. 69+AIR 1960 S.C. 629+AIR 1959 Madh Pra. 422.
19. PLD 1960 Lahore 591=PLR 1960 (2) W.P. 1332.
20. PLD 1968 Dacca 937=PLR 1968 (1) Dacca 340 (DB)+AIR 1964 Mad. 19 (FB)+AIR 1951 Nag. 32=ILR 1952 Nag. 136+AIR 1949 All. 234=ILR 1949 All. 631 (DB). (AIR 1942 Cal. 542 & AIR 1945 Bom. 417, *Rel. on*)+AIR 1945 Bom. 417=ILR 1946 Bom. 113+AIR 1943 Sind. 33=ILR 1942 Kar. 466+AIR 1960 S.C. 629+AIR 1959 Madh Pra 422+AIR 1956 Mad. 749 (DB)+AIR 1955 Nag. 116=ILR 1955 Nag. 224 (DB).
1. AIR 1965 Allahabad 602 (DB).
2. AIR 1944 Lah. 398+AIR 1952 All. 856 (DB).
3. AIR 1955 Punj. 145=ILR 1955 Punj. 402 (DB).
4. PLD 1968 Dacca 937=PLR 1968 (1) Dacca 340+AIR 1957 Andh Pra. 11.
5. PLJ 1982 Kar. 297=PLD 1982 Kar. 619+AIR 1960 Bom. 91.
6. AIR 1948 Pat. 171 (DB).
7. 12 Suth W R 397=8 Beng. L R 319*n* (DB).

and dealt with seriatim, and the award delivered bit by bit, a portion so decided may be taken as a distinct award.[8] Similarly an award filed without the intervention of the Court can be split up and need not be filed as a whole.[9]

Separate orders on award. When the order filing the award and the order passing a decree in terms of it are contained in the same order, the two parts can be separated and it has been held that though there may be no appeal against the decree an appeal can be filed against the earlier portion of the order directing the filing of the award.[10]

Award not made rule of Court within limitation. An award cannot be invalidated on the ground that it was filed after the date on which it was directed to be filed by the Court,[11] or because it has not been made a rule of the Court within the prescribed period of limitation.[12]

3. Starting point of limitation. The notice referred to in the article is the notice which the arbitrators or umpire have to give to the parties under S. 42, sub-section (1) of the Arbitration Act when they have made and signed their award.[13] No time is fixed either by the Arbitration Act or by the Limitation Act within which the arbitrators should give notice of the making of the award. It is their duty after they make and sign the award to give notice to the parties within a reasonable time.[14] The notice has to be served as required by S. 42 of the Arbitration Act. Section 14 has to be complied with strictly and any other compliance thereof would not make limitation run under Art. 178.[15] The fact that the award came to the knowledge of the parties would not dispense with the necessity of service of notice in order to invoke the penalty of dismissal under this article.[16] Therefore, mere fact that Arbitrator pronounced award in presence of parties and obtained their signatures thereon was not sufficient to attract provisions of Art. 178.[17] It follows that if a party does not receive a notice of the award as prescribed by law (S 14 (2), Arbitration Act) he would evidently be within his rights to wait for the receipt of such notice and if he finds after some time that no notice has been received by him, it would be open to him to make an application for filing of the award even if no notice has been received, but in all such cases the application would not become barred by time.[18]

4. Extension of time. Time, under this Article, cannot be extended by reference to section 5 as that section applies only to certain specified applications and does not cover an application to file an award.[19] Similarly section 6 applies only to suits and applications for execution and therefore, does not apply to

8. 4 Cal. L R 92 (DB).
9. AIR 1929 Bom. 193.
10. AIR 1928 Mad. 969 (DB).
11. AIR 1951 Cal. 230.
12. AIR 1930 Oudh 51.
13. AIR 1949 Pat. 393 = 27 Pat. 86 (DB) + AIR 1944 Lah. 398.
14. AIR 1943 Bom. 221.
15. AIR 1955 Nag. 126 = ILR 1955 Nag. 321 (DB) + AIR 1960 Punj. 204 = ILR (1960) 1 Punj. 373 + AIR 1958 Andh Pra 166 + AIR 1955 Punj. 145 = ILR 1955 Punj. 402 (DB).
16. PLD 1964 Kar. 66 + AIR 1962 Mys. 135 (DB) + AIR 1957 Andh Pra 11.
17. NLR 1988 Civ. 251 = PLJ 1988 Kar. 111 = 1988 CLC 267.
18. AIR 1955 All. 573 (DB).
19. AIR 1915 All. 369 = 38 All. 85 (DB).

applications to file awards.[20] Section 14 may, however, apply to applications to file awards and the time spent *bona fide* in infructuous proceedings in a wrong Court may be excluded in computing the period of limitation prescribed by this Article.[21]

179.	By a person desiring to appeal under the [22][Code of Civil Procedure, 1908] to [1][the Supreme Court] for leave to appeal.	[2][Ninety days]	The date of decree appealed from.

Synopsis

1. Scope
2. Starting point of limitation.
3. Exclusion of time.

1. Scope. Article 179 applies to applications for leave to appeal to Supreme Court as, though in law appeal to the Supreme Court lies under the Constitution; in fact, such an appeal has to be made under the Civil P.C. by taking the steps prescribed therein.[3] This article will apply to applications for leave to appeal in cases under the Income-tax Act.[4]

Application for leave to appeal filed before Supreme Court. Article 179 deals with petitions for grant of certificates by the High Court for appeal to the Supreme Court and has nothing to do with petition for leave to appeal to be filed directly before the Supreme Court.[5]

Arbitration Act, application under. The Article will not apply to an application under S. 33, Arbitration Act.[6]

Criminal cases. The Article does not apply to an application for leave to appeal in criminal cases.[7]

Two decrees following one judgment. Where two decrees followed one judgment and consequently two appeals had to be filed against them but a single application was filed within time for leave to appeal against both the decrees the application was bad in law but was allowed to be amended by restricting prayer to one decree.[8]

2. Starting point of limitation. Limitation under this Article runs from the date of the decree appealed from and not from the date when information of the

20. AIR 1936 Pat. 161 = 14 Pat. 855 (DB) + AIR 1923 Rang. 226 = 1 Rang. 256 (DB).
21. 9 Ind. Cas. 157 (DB) (Mad.).
22. Subs. by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), S. 2 for "Ditto".
1. Subs. *ibid*, for "same Code" (with effect from the 1st July, 1940).
2. Subs. by A.O., 1961, Art. 2 and Sch. for "His Majesty-in-Council *w.e.f.* 23rd March, 1956.
3. AIR 1958 Cal. 296 (DB).
4. AIR 1932 Cal. 587 = 59 Cal. 251 (DB) + AIR 1955 Pepsu 127 = ILR 1955 Patiala 84 (DB).
5. 1979 SCMR 52 = PLJ 1979 SC 374.
6. AIR 1955 Nag 116 = ILR 1955 Nag. 224 (DB).
7. AIR 1924 Cal. 338 = 25 Cri. L. Jour 1371 (DB).
8. AIR 1932 Lah. 441 (DB).

order is received.[9] Where the High Court sends down issue for finding of lower Court under O. 41, R. 25, Civil P.C. and passes a decree on receipt of the finding; an application for leave to appeal can be made within ninety days of the final decree.[10]

Writ petition. There is no decree following the judgment of the Court in writ petition and the judgment itself is the order to be appealed from. An application for necessary certificate has therefore to be field within 90 days under Art. 179.[11]

3. Exclusion of time. Where it is not necessary for the applicant to file a copy of the decree with the grounds of appeal or the application, section 12 has no application and the period between the delivery of the judgment and the signing of the decree cannot be excluded.[12] An in case of an application for leave to appeal to Supreme Court, there is no requirement in these rules that the copies of the judgment and decree should be filed along with the application for leave to appeal.[13]

Time taken in review application. In case of an application for leave to appeal, time taken up in review of judgment sought to be appealed against can be excluded.[14] But, time taken for prosecuting a review application cannot be excluded from the time under this article if there were no reasonable ground for review.[15]

180.	By a purchaser of immovable property at a sale in execution of a decree for delive.. of possession.	Three years	When the sale become absolute.

Synopsis

1. Scope.
2. "Purchaser"--meaning of.
3. Starting point of limitation.
4. Exclusion of time.
5. Extension of time.
6. Successive applications.

1. Scope. This article applies only to applications. A suit for the same relief is governed for purposes of limitation by Art. 138.[16] Even an application for delivery of possession even of immovable property purchased at a sale held by civil Court in execution of a certificate issued by the Registrar, Co-operative Societies is governed by this article.[17]

9. AIR 1945 All. W R (Rev). 203.
10. AIR 1938 Bom. 251 (DB).
11. AIR 1956 Manipur 33.
12. PLD 1966 Baghdad-ul-Jadid 11 (DB).
13. PLD 1966 Baghdad-ul-Jadid 11 (DB) + AIR 1935 Lah. 341.
14. AIR 1946 Cal. 10 (DB).
15. 1941 All. W. N. (Rev.) 1090.
16. AIR 1955 Cal. 369 = II.R (1955) 1 Cal. 295 (DB) + AIR 1955 Cal. 400 (DB).
17. AIR 1952 Trav-Co. 37 = 1950 Trav-Co. L R 5 (DB).

2. **"Purchaser"--meaning of.** The word 'purchaser' includes both a decree-holder purchaser and a stranger purchaser.[18] A transferee from an auction purchaser is competent to apply under O. 21, Rr. 95 and 96 of the Civil P.C. and his application would be governed by this article.[18a]

3. **Starting point of limitation.** Limitation under this Article starts from the date when sale becomes absolute. Where there has been an appeal from an order of the Judge disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Art. 180 until the disposal of the appeal, even though the Court of first instance may have confirmed the sale.[19] Where the confirmation of the execution sale was stayed by order on the trial side pending disposal of a petition under O. 9, R. 13, filed by the defendant. The petition under O. 9, R. 13 was eventually dismissed by the appellate Court and disposal was appraised to the executing Court by the decree-holder by filing a certified copy of the order. The executing Court thereafter passed an order confirming the sale. It was held, that the Court sale became absolute only when it was specifically confirmed.[20] It is to be noted in this context that a purchaser who has not obtained a sale certificate under O. 21, R. 94, Civil P.C. is not incompetent to apply for delivery of possession. The issue of a certificate is not the *sine qua non* of the application.[1]

4. **Exclusion of time.** There is no provision for excluding in favour of the auction-purchaser the period of the pendency of a suit filed by the judgment-debtor to set aside the sale.[2] Similarly section 15 does not apply to an application governed by this Article and an application for delivery of possession although it may be an application for execution.[3]

5. **Extension of time.** Section 5 does not apply to an application governed by this article.[4]

6. **Successive applications.** An order for delivery of possession cannot be kept alive by periodical applications.[5] Where an application for delivery of possession is simply dismissed for default a subsequent application cannot be considered to be one for continuation of the first application.[6] But where an application for delivery of possession filed in time is dismissed or struck off or closed for statistical purposes a subsequent application for delivery though made beyond three years after confirmation of sale, will be considered as reminder to Court to continue the pending application.[7] Where upon confirmation of execution sale the decree-holder auction-purchaser applied under O. 21, R. 95 for delivery of possession. The writ for delivery of possession was however returned unexecuted as it was obstructed by a third party. The decree-holder then applied

18. AIR 1935 Mad. 803=58 Mad. 893 (FB)+AIR 1941 Pesh. 10 (DB).
18a AIR 1918 All. 405=40 All. 216 (DB).
19. AIR 1934 P.C. 134=61 Ind. App. 248=61 Cal. 945. (*Reversing* AIR 1932 Cal. 75).
20. 1957 Ker. L T 571.
1. AIR 1953 Nag. 215=ILR 1953 Nag. 557 (DB).
2. AIR 1926 Mad. 857 (DB).
3. AIR 1935 Cal 333=62 Cal. 66+AIR 1919 Mad. 1001.
4. AIR 1932 Cal. 75 (DB). (*Reversed in* AIR 1934 P.C. 134 on another point).
5. AIR 1926 Mad. 385 (DB).
6. 7 DLR 172+AIR 1941 Pesh. 10.
7. AIR 1933 Mad. 745+AIR 1930 Mad. 328.

for time to file an application under O. 21, R. 97, and the Court while allowing the prayer, ordered that the petition for possession be disposed of. It was held that the order though purporting to dispose of the petition for possession was not in substance a disposal of the matter and in law the petition for possession was still pending. The subsequent application under R. 95, therefore, could not but be considered to be merely a prayer for further action on the previous application for delivery of possession.[8]

Obstruction to delivery. Where on an application for delivery an order for delivery was passed but the property was not delivered owing to no fault of applicant but to obstruction by the judgment-debtor and the petition was dismissed. The dismissal must be considered to be one for statistical purposes only.[9] Even if no application is made by the petitioner for removing obstruction and the application is struck off, a subsequent application for delivery is in continuation of the old application.[10] But where delivery was, not made owing to laches of the applicant himself and the petition was dismissed, the dismissal cannot be considered to be one for statistical purposes. Subsequent, application for delivery can only be considered as a fresh application.[11]

181.	Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	[12][Three years]	When the right to apply accrues.

Synopsis

1. Scope.
2. Applications under O. 34, Rr. 3 and 5, C.P.C.
3. Application for final decree in redemption suit.
4. Application for personal decree in mortgage suit.
5. Application for restitution.
6. Application to set aside sale.
7. Application under S. 47, C.P.C.
8. Application under S. 151, Civil Procedure Code.
9. Application for enforcement of surety bond.
10. Application for enforcement of default clause in instalment decree.
11. Application for revival of execution proceedings.
12. Application for refund of purchase money.
13. Application to bring on record legal representatives.
14. Application to rescind leave to sue.
15. Miscellaneous applications under Civil C.P.

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8. ILR (1954) 1 Cal. 287.
9. AIR 1933 Mad. 745 + AIR 1957 Mad. 385 (DB) + AIR 1942 Mad. 718.
10. AIR 1944 Mad. 60.
11. AIR 1950 Mad. 234 = ILR 1950 Mad. 692 + AIR 1926 Mad. 385 (DB).
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), for "Ditto".

16. Application for final decree in partition and partnership cases.
17. Mesne profits, application for ascertainment of.
18. Certification of payment by decree-holder.
19. Application to amend decree.
20. Application to add parties.
21. Application for sale certificate.
22. Application under other Acts.
23. Criminal Procedure Code, application under.
24. Starting point of limitation.
25. Enlargement of time.

1. Scope. The article is restricted to applications.[13] It does not apply to an application under S. 16, Telegraph Act (1885) as such application is in the nature of a suit.[14] If an application is governed by any other article in the schedule this Article being a residuary Article will not apply.[15] As the wording of Art. 189 shows that it can apply only where one has a decree, the proper Article to apply, in the case of an application for re-hearing of an appeal, decided *ex parte* (from an order refusing an interim injunction) is the residuary Art. 181 and not Art. 169, and an application for re-hearing presented within 3 years of the *ex part* order is in time.[16] After the incorporation of Articles 158 and 178 in the First Schedule which make specific provision for applications under the Arbitration Act, 1940, it is no longer possible to say that the Articles contained in the Third Division of the First Schedule to the Limitation Act apply only to applications under the Code of Civil Procedure, because, all the other Articles contained in this Division apply to such applications. With the incorporation of Articles 158 and 178, that reason no longer holds good, and, therefore, the scope of Article 181, which is in the nature of a residuary Article, must necessarily be extended to all kinds of applications for which no specific period of limitation has been provided for either in the First Schedule to the Limitation Act or in any other Statute. To hold otherwise would lead to the anomalous result that for applications which have not been expressly provided for in the Third Division of the First Schedule to the Limitation Act there will be no period of limitation at all. This could not have been the intention of the Legislature.[17] But such application must be one on which the Court has to decide judicially.[18] Where it is the duty of the Court to do a particular thing *suo motu* or where the thing to be done is purely of a ministerial character, the application will not be governed by this article.[19] In proceedings for a final decree an objection by the defendant that preliminary decree is a nullity, can be raised at

13. 5 All. 297 (DB) + 33 Cal. 881 (DB).
14. AIR 1942 Lah. 186 + ILR 1943 Lah. 667 (DB).
15. AIR 1955 Raj. 153 = ILR (1953) 5 Raj. 387 + (1957) 1 Andh W R 253 + ILR (1955) 5 Raj. 474 + AIR 1952 Trav-Co. 78 = ILR 1951 Trav-Co. 486 (DB) + AIR 1959 Mys. 155 = ILR 1958 Mys. 450.
16. PLD 1959 Karachi 19 = PLD 1959 (1) W.P. Karachi 1085.
17. PLD 1960 Lah. 591 + PLD 1968 AJ&K 21 (FB) + PLD 1965 AJ&K 9 + PLD 1960 Lah. 591 + PLD 1970 Lah. 398 (DB) + AIR 1942 Lah. 186 (DB) + AIR 1920 Lah. 51 = 1 Lah. 187 + AIR 1937 All. 206 (DB) + ILR (1951) 1 Cal. 438 (DB) + AIR 1952 Cal. 689 = ILR (1953) 1 Cal. 106. (Obiter--Do.) + AIR 1952 Punj. 423 = ILR 1952 Punj. 524 (ILR (1949) 1 Cal. 1. *Dissented from* Case law discussed) + AIR 1927 Rang. 263 = 5 Rang. 384.
18. AIR 1944 All. 217 = ILR 1944 All. 473.
19. AIR 1946 Oudh 210 + AIR 1954 All. 252 = 1954 Cri. L. Jour 512 + AIR 1953 Cal. 50 = ILR (1954) 1 Cal. 147 + AIR 1953 Mad. 213 = ILR 1953 Mad. 612 (DB) + AIR 1952 Pepsu 52 = 3 Pepsu L R 682 + AIR 1948 Cal. 363 + AIR 1939 Bom. 454 (DB) + AIR 1941 Cal. 411 (DB) + AIR 1936 P.C. 204 = 59 Mad. 910 = 63 Ind. App. 304 + AIR 1958 Mad. 317.

any time.[20] Similarly there is no limitation for an application under O. 21, R. 18 (1) asking for sending of papers to Collector for effecting a partition.[1]

Revision application. The Limitation Act does not provide for any period of limitation for an application for revision. The only Article which could be applicable was the residuary Article 181 which provides a limitation of three years for an application, but even that Article will not stand in the way of exercise of revisional power, for these powers can be exercised *suo motu*.[2]

Arbitration Act, application under. The residuary Article 181 applies not only to applications under the Code of Civil Procedure for which no limitation has been prescribed elsewhere but also to such applications under the Arbitration Act for which no period of limitation has been prescribed elsewhere; either in the Limitation Act or in the Arbitration Act itself.[3] Thus an application under section 20 of the Arbitration Act is governed by Article 181 of the Limitation Act which provides a period of 3 years commencing from the time when the right to apply accrues.[4] Similarly an application under S. 8, Arbitration Act is governed by this Article.[5] An application under S.33 of the Arbitration Act, 1940, is governed by Art. 181 of the Limitation Act and the period of limitation runs from the date when the right to apply for challenging the existence of the validity of an arbitration agreement first accrues.[6] It is, however, to be noted that Art.181 is not applicable to applications other than those falling under the Civil Procedure Code. Therefore it would not apply to proceedings under the Arbitration Act.[7]

Application to set aside an order. Where an order was made under Order 21, rule 50 (2) of the Code granting leave to execute a decree against any person on the ground that he was a partner. In an application made to set aside the order. It was held that the order did not amount to a decree and therefore, Article 164 of the Limitation Act was not applicable. It was governed by Article 181.[8]

Application for execution. Limitation time for filing execution application is governed by residuary Art. 181 providing three years time.[9] Where a case was covered by Art.182 which was omitted by L.R.O. 1972, it would not be governed by Art. 181. Therefore, decree-holder can apply for execution of his decree within maximum time limit of sixty years as required by amended Section 48 of CPC.[10]

Application under S.12 (2), CPC. The period of three years prescribed by residuary Art. 181 applies to application u/s. 12(2), CPC.[11]

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20. AIR 1938 All. 497.
1. AIR 1945 Bom. 338 = ILR 1945 Bom. 799 (FB).
2. PLD 1964 SC 97 = 16 DLR 155 = 1964 (1) PSCR 264 + PLD 1976 Kar. 891 + 1983 Dhaka L R 277 (DB).
3. PLD 1972 S.C. 123 + PLD 1968 Azad J & K 21 (FB) + PLD 1970 Lah. 398 (DB) + AIR 1962 H. P. 24.
4. 1981 CLC 1326 + PLD 1972 SC 123 + PLD 1968 Azad J & K 21 (FB) + AIR 1964 All. 269 (DB) + AIR 1957 All. 206 (DB) (PLD 1973 Lah. 131 does not lay down correct law).
5. PLD 1970 Lah. 398 (DB).
6. ILR (1951) 1 Cal. 438.
7. PLD 1973 Lah. 207 (DB).
8. PLJ 1979 SC 30 = PLD 1979 SC 18 = NLR 1979 Civ. 29.
9. NLR 1988 CLJ 117.
10. PLJ 1988 Pesh. 45 = NLR 1988 Civ. 240 = 1988 CLC 30.
11. NLR 1988 Civ. 496 + 1985 CLC 2929 = NLR 1985 Civ. 427.

2. Application under O. 34, R. 3 and 5, C.P.C. An application under O.34, Rr. 3 and 5, Civil P.C. is an application in the suit itself and not for execution.[12]

Application for final decree. There is no separate Article in the Limitation Act for an application for a final decree in mortgage suits under O. 34, R. 5, C.P.C. and such an application comes within the ambit of Art. 181.[13] Therefore an application for a final decree in a suit for sale or foreclosure is governed by this article.[14] Similarly this article will apply to an application in respect of a compromise decree, where such decree contemplates the passing of a final decree.[15]

Starting point of limitation. Time for an application for a final decree starts from the day fixed in the preliminary decree for payment of the mortgage money.[16] But where the preliminary decree does not specify any amount or time for payment, limitation does not run against the decree-holder for an application for preparation of the final decree.[17]

Suspension of limitation. When time has once begun to run it cannot be suspended by suit in which title of the mortgagor is questioned or there is pendency of proceedings to set aside *ex parte* preliminary decree.[18] But an injunction or stay would suspend the running of time which has begun to run.[19]

Amendment of preliminary decree. Where a preliminary decree has been amended on account of some error in respect of the amount declared to be due, the date of such amendment cannot furnish a fresh starting point.[20] But where the order of amendment is to the effect that a fresh application should be made, the order could not be treated as an interlocutory order but one dismissing the application and a fresh application filed beyond 3 years from the date of the order of the Court was barred.[1]

Successive applications. Where an application for final decree is properly disposed of or dismissed for default or for non-prosecution a second application

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12. AIR 1947 All. 830=ILR 1947 All. 40 (DB)+AIR 1952 Nag. 177+ILR 1945 All. 277+AIR 1914 P.C. 150=42 Ind. App. 88=42 Cal. 776+AIR 1917 All. 163=39 All. 641 (SB).
13. AIR 1963 Rajasthan 245 (DB).
14. AIR 1917 All. 163=39 All. 641 (SB)+AIR 1952 Nag. 177=ILR 1949 Nag. 674 (DB)+53 Cal. W N (IDR) 59 (DB)+1949 Bur L R (HC) 394+AIR 1919 Mad. 709=42 Mad. 52 (DB)+AIR 1916 Pat. 282=1 Pat. L Jour 364 (DB)+AIR 1917 Oudh 91=20 Oudh Cas. 205+AIR 1916 Cal. 541 (DB)+AIR 1938 Bom. 354=ILR 1938 Bom. 273+AIR 1935 Rang. 239=13 Rang. 325 (DB).
15. AIR 1917 Cal. 175 (DB)+AIR 1923 All. 29 (DB)+AIR 1917 All. 119=39 All. 532 (DB)+AIR 1914 Bom. 283=38 Bom. 32 (DB).
16. AIR 1946 All. 360=ILR 1946 All. 570 (DB)+AIR 1955 Nag. 276=ILR 1955 Nag. 821 (DB)+AIR 1945 All. 161=ILR 1945 All. 277+AIR 1942 Mad. 581=ILR 1942 Mad. 770+AIR 1923 All. 22 (DB)+AIR 1922 Mad. 65 (DB)+AIR 1919 Pat. 134=4 Pat. L Jour 523 (DB)+AIR 1923 Sind. 14=17 Sind L R 255 (DB)+AIR 1938 Oudh 112 (DB)+AIR 1914 Bom. 263=38 Bom. 32 (DB). (Instalment decree)+AIR 1918 Bom. 217=42 Bom. 309 (DB)+AIR 1923 All. 29 (DB).
17. AIR 1943 All. 321=ILR 1943 All. 684 (DB).
18. AIR 1944 Mad. 209=ILR 1944 Mad. 791 (DB)+AIR 1925 Mad. 334 (DB)+1936 Mad W N 146.
19. AIR 1925 Mad. 334 (DB).
20. AIR 1923 All. 22 (DB)+AIR 1955 Nag. 821 (DB)+AIR 1922 Nag. 217=18 Nag. L R 58.
1. AIR 1955 All. 664 (DB).

made out of time cannot be treated as a continuation of the former application.[2] But where the application for final decree is adjourned at the request of the defendant or is not judicially disposed of, a second application would be an application to continue the prior application.[3]

Appeal from preliminary decree,--effect--of. Where there has been an appeal from a preliminary decree and the appellate Court has not extended the time, the period for an application for a final decree runs from the date of the appellate decree whether the decree of the lower Court has been varied or affirmed.[4] But where the appeal from a preliminary decree is dismissed for want of prosecution, time would start from the date fixed in the decree of the lower Court.[5] Similarly where there is a decree in a suit for sale against separate sets of defendants for different amounts. One set of defendants appealed so far as the decree against them was concerned, the starting point for an application for final decree as against the non-appealing defendants is the date of the original decree.[6]

Default in payment of instalment application for final decree. Where the preliminary decree provides for payment of instalments with a default clause and the default is committed, final decree would be for the instalments which fell due within three years of the date of the application for final decree.[7]

3. Application for final decree in redemption suit. An application by a mortgagee for a final decree under O. 34, R. 8, Civil P.C. in a suit for redemption is governed by this article. The provision requires an application to be made by the mortgagee.[8] An application for final decree by the mortgagor would also be governed by Art. 181 as is made clear by amendment of O. 34 in 1929.[9] The mortgagor can make the deposit at any time before the passing of a final decree for foreclosure or sale on good cause shown and upon the terms to be fixed by the Court from time to time. For an application for passing a final decree by a mortgagor the period of limitation is three years from the date when he makes payment into Court.[10]

4. Application for personal decree in mortgage suit. An application under O. 34, R. 6, Civil P.C is governed by this article.[11] Even where the mortgage

2. AIR 1918 All. 285=40 All. 235 (DB)+AIR 1923 Bom. 420 (DB)+AIR 1922 Mad. 65 (DB)+AIR 1937 Sind. 273=31 Sind L R 180 (DB)+AIR 1924 Mad. 890 (DB).
3. AIR 1933 Cal. 816 (DB)+AIR 1925 Nag. 291=21 Nag. L R 47+AIR 1928 Mad. 971+AIR 1922 All. 446 (DB)+AIR 1919 Cal. 1082 (DB).
4. 1946 All. W. R (HC) 591+AIR 1957 Madh Pra 85=ILR 1957 Madh Pra 337+ILR 1957 Andh Pra 159+23 Pat. 635 (DB)+AIR 1947 Pat. 225=25 Pat. 432 (DB)+AIR 1926 P.C. 93=53 Ind. App. 197=6 Pat. 24+AIR 1922 Pat. 205+AIR 1927 PC 25=54 Ind. App. 52=8 Lah. 253 (*Affirming* AIR 1924 Lah. 582)+AIR 1917 All. 163=39 All. 651 (SB). (*Overruling* AIR 1915 All. 336).
5. 1946 All. W R (HC) 591 (Dismissal under O. 41, R. 11, Civil P.C.)+AIR 1922 Pat. 201=1 Pat. 435 (DB).
6. AIR 1921 All. 56=43 All. 320 (DB).
7. AIR 1955 All. 254 (DB).
8. AIR 1963 Orissa 61+AIR 1925 Oudh 255=28 Oudh Cas. 46+AIR 1927 All. 305.
9. AIR 1957 Mad. 189.
10. AIR 1963 Orissa 61+AIR 1946 Mad. 38+AIR 1957 Mad. 189.
11. AIR 1925 Cal. 834=52 Cal. 828 (FB)+AIR 1948 Mad. 33=ILR 1947 Mad. 731 (DB)+53 Cal. W. N. 631 (DB)+21 Ind. Cas. 530 (DB) (Mad.)+AIR 1918 All. 105=40 All. 551

decree is passed by a chartered High Court on its Original Side, an application for a personal decree is governed by this Article and not by Art.183.[12]

Starting point of limitation. Time for an application for personal decree runs from the date of confirmation of the sale held in execution of the mortgage decree.[13] Where an appeal against an order confirming a sale is dismissed, the period under this article runs from the date when the sale was confirmed by the appellate Court.[14] Where on an execution sale of the mortgaged property discharging the decree being declared void, for want of title in mortgagor, the mortgagee applies for a personal decree, time begins to run form the date when the sale is declared to be void.[15] But where there is a mortgage decree for sale against the mortgagor and in a suit for a declaration of title to the mortgage property by *M* the mortgagor and mortgagee are impleaded as defendants *M* is granted relief by the trial Court on appeals by the mortgagee being unsuccessful in an application for personal decree by the mortgagee, time runs from the date of the last appellate decree.[16] But where a mortgagee was found to have no title to mortgaged property after passing of final decree in a collateral proceeding and the preliminary final decree became ineffective the mortgagee's application for personal decree under S. 68, T.P. Act must be held be an application in a pending suit and therefore no question of limitation would arise.[17]

An infructuous application for a personal decree cannot furnish a starting point for a fresh application.[18]

5. Application for restitution. Art. 181 applies to applications for restitution.[19] Even an application for restitution under inherent powers of the Court was governed by Art. 181.[20]

Starting point of limitation. Starting point of limitation for an application for restitution is the date of decree, either by the trial Court or the Court of appeal, which entitles a party to apply for restitution and not from the date of the final

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(DB)+AIR 1933 Cal. 251=60 Cal. 19 (DB)+AIR 1928 Bom. 323 (DB)+AIR 1916 Nag. 1=13 Nag. L R 76 (DB)+AIR 1920 Upp Bur 21=3 Upp Bur Rul. 261.

12. AIR 1935 Reng. 187=12 Bang. 305 (DB).
13. AIR 1931 Cal. 166=58 Cal. 741 (DB)+AIR 1953 Pat. 35=31 Pat. 822+AIR 1951 Mys. 48=ILR 1951 Mys. 377 (DB)+AIR 1949 Nag. 319=ILR 1949 Nag. 122 (DB)+AIR 1946 Cal. 65+AIR 1933 Cal. 251=60 Cal. 19 (DB)+21 Ind. Cas. 530 (DB) (Mad)+28 All. 660 (DB).
14. AIR 1935 Mad. 640 (DB)+53 Cal W N 631 (DB)+AIR 1937 All. 285=ILR 1937 All. 481 (DB).
15. AIR 1926 Mad. 941.
16. AIR 1948 Mad. 33=ILR 1947 Mad. 731 (DB).
17. 53 Cal. W. N 631 (DB).
18. AIR 1918 All. 105=40 All. 551 (DB).
19. 1981 Dhaka LR (SC) 101+AIR 1944 Lah. 190 (DB)+AIR 1940 Cal. 260=ILR (1940) 1 Cal. 486+AIR 1958 Punj. 132=ILR 1958 Punj. 407 (FB)+AIR 1957 Hyd. 11=ILR 1956 Hyd. 704+AIR 1956 Nag. 129=ILR 1956 Nag. 305 (DB)+AIR 1954 Ajmer 52+AIR 1948 All. 400 (DB)+AIR 1947 Nag. 239=ILR 1947 Nag. 178 (DB)+AIR 1939 Cal. 349 (DB)+AIR 1941 All. 28+AIR 1939 All. 66=ILR 1959 All. 103 (DB)+AIR 1939 Lah. 78=ILR 1938 Lah. 571+AIR 1954 Mys. 117 (DB).
20. AIR 1948 Cal. 37+AIR 1947 Mad. 339.

decree or order of the final Court of appeal.[21] In other words time runs from the date when for the first time a decision is given entitling the party to apply for restitution.[22] Where a decree reversing a decree of a trial Court is confirmed in second appeal, limitation for an application for restitution under Art. 181 begins to run from the date of the decree of the lower appellate Court.[1]

'Ex parte' decree set aside. Where an *ex parte* decree is set aside after a sale in execution thereof and the suit is subsequently dismissed. Time for an application for restitution runs from the date of the order setting aside the *ex parte* decree.[2]

Mesne profits, application for. Where the application for restitution is for mesne profits, time does not begin to run until possession has been restored to the successful applicant.[3]

Pre-emption, application for. Where a plaintiff got a decree for pre-emption upon payment of a sum which was deposited by him accordingly and the decree was subsequently reversed. He applied for refund of the deposit. A portion of the deposit was withdrawn by the vendee before the appellate decree and another portion after the appellate decree. Limitation under Art.181 for an application for restitution of the former portion ran from the date of the appellate decree, and with respect to the amount withdrawn by vendee after the first appellate Court's decree, from the date of the withdrawal.[4]

Costs, application of. Where a suit for recovery of money due under a mortgage bond was dismissed with costs to defendant on ground of bar of limitation and the decree of dismissal was affirmed in first appeal. The plaintiff filed a second appeal and in the meanwhile the defendant realised the costs awarded to him. The High Court in second appeal set aside the decree and remanded the case to the lower appellate Court for disposing the case on other questions. The High Court however did not pass any specific order as regards costs of the trial Court or of the appellate Court but only directed that the proportional costs of the second appeal will abide the final result. After remand the lower appellate Court decreed the suit with a direction that the defendant should pay the costs of the second appeal as well as that of the lower Courts. The plaintiff applied by way of restitution for recovery of the costs which had been realised by the defendant, within three years from the decree of the lower appellate Court passed after remand but beyond three years from the order of remand by the High Court. It was held that assuming that the right to restitution was available to the plaintiff, the application for restitution filed within three years of the passing of the decree by the lower appellate Court was within time because the right to restitution would arise only when the Court passed the decree after

21. AIR 1964 Mysore 117 (DB) + AIR 1939 Lahore 73 + AIR 1918 Lahore 378 + AIR 1924 Lah. 166 + AIR 1931 Lah. 504.
22. AIR 1964 Mys. 117 (DB) + AIR 1946 Lah. 416 + AIR 1958 Punj. 132 = ILR 1958 Punj. 407 (FB) + AIR 1947 Mad. 339 + AIR 1933 Cal. 422 (DB) + AIR 1947 Cal. 188 (DB).
1. AIR 1947 All. 172 + AIR 1946 Lah. 416 + AIR 1934 All. 626 = 57 All. 26 (FB) + AIR 1941 All. 28 + AIR 1939 Cal. 349 (DB) + AIR 1932 All. 609 = 54 All. 770 (DB) + AIR 1928 Cal. 646 = 56 Cal. 61 (SB) + AIR 1939 Lah. 73 = ILR 1938 Lah. 571 (DB) + AIR 1964 Mys. 117 (DB).
2. AIR 1931 Lah. 504 (DB) + 28 Cal. 113 (DB).
3. AIR 1934 All. 626 = 57 All. 26 (FB) + 11 Cal. L. Jour 541 (DB) + AIR 1933 Lah. 876.
4. AIR 1941 All. 28.

adjudicating the liability for costs of the trial Court as well as the lower appellate Court.[5]

Wrongful attachment. In case of an application for compensation for wrongful attachment before judgment, time runs from the date when the attachment was first effected, and not from the dismissal of the suit, because it is the attachment that is the foundation of the grievance of the applicant.[6]

Successive applications. Under Art. 181 a second application for restitution made after the prescribed period cannot be treated as a continuation of, or kept alive by the earlier application.[7] But where a restitution application is stayed and consigned to the record room without final orders, the application must be deemed to remain pending and after the order of stay is discharged no question of any limitation under the article can arise.[8]

6. **Application to set aside sale.** If an execution sale is merely voidable then an application by the judgment-debtor even under S. 47 of the Code has to be filed under Art. 166 of the Limitation Act within 30 days from the date of the sale. By alleging fraud of the decree-holder which might have kept him out of knowledge of the sale, he may take advantage of the provisions of section 18 of the Limitation Act. But if the sale is void, the application for declaring it so or even for setting it aside--as a matter of abundant precaution can be filed within 3 years under Art. 181 of the Limitation Act.[9] Thus to set aside a sale for complete absence of sale proclamation limitation will be computed under Art. 181 but where there is publication of proclamation of sale in compliance with executing Court's direction under O. 21, R. 67(2) an application to set aside the sale under O. 21, R. 90 will not be governed by Art. 181 but by Art. 166 of the Limitation Act.[10]

7. **Application under S. 47, C.P.C.** Article 181 applies to applications under S. 47, C.P.C.[11] Thus an application by the judgment-debtor to have a sale in execution declared invalid and for appropriate relief is governed by Art. 181, and time runs from the date when the judgment-debtor is dispossessed.[12] An application by the judgment-debtor to set aside a sale on the ground that there was a failure to affix the sale proclamation in any part of the property proclaimed for sale, falls under S. 47 and not under O. 21, R. 90 and where it has been filed within three years of the sale it is not barred by limitation.[13] Similarly an application by the judgment-debtor for refund of the amount recovered from him

5. AIR 1964 Kerala 216+AIR 1940 Bom. 30.
6. AIR 1961 Madras 352.
7. AIR 1926 Lah. 685+AIR 1938 Lah. 456.
8. AIR 1938 All. 552 (DB).
9. AIR 1964 Mad. 424+AIR 1962 Pat. 72 (FB)+AIR 1961 Patna 508 (DB)+AIR 1956 S.C. 87.
10. AIR 1961 Andhra Pradesh 500+AIR 1956 Mad. 367+AIR 1954 Mad. 1024.
11. 1972 SCMR 236.
12. AIR 1964 Kerala 68 (FB)+AIR 1963 Kerala 258 (DB)+AIR 1965 Kerala 99+AIR 1959 Raj. 135=ILR (1959) 9 Raj. 494. (AIR 1954 S.C. 349 and AIR 1956 S.C. 87, *Foll.* AIR 1953 Raj. 51. held *overruled*)+AIR 1960 Punj. 341=ILR (1960) 2 Punj. 159 (FB) (AIR 1956 S.C. 87 and AIR 1938 Cal. 113. *Rel. on.*)+AIR 1952 Pat. 244+AIR 1952 Trav-Co. 136=ILR 1951 Trav-Co. 728 (DB).
13. AIR 1965 Kerala 99+AIR 1921 Mad. 583+AIR 1950 Mad. 367+AIR 1954 Mad. 1024.

in excess of the decretal amount is governed by this Article.[14] An objection that the property sold in execution was not liable to sale can be filed under S. 47 within three years of the date of delivery of possession as Art. 181 applies to it.[15] An application under S. 47, Civil P.C., when treated as a suit under S. 47 (2) is governed by the same period of limitation under Art. 181 which is applicable to the application itself.[16]

Wrong delivery of possession. An application by the judgment-debtor for a declaration that the proceeding for delivery of possession contrary to the terms of the decree was without jurisdiction is maintainable either under S. 47 or S. 151 Civil P.C., and is governed by Art.181.[17]

8. Application under S. 151, Civil Procedure Code. An application under S. 151 invoking the inherent powers of the Court has generally been held to be governed by Art. 181.[18] Where an *ex parte* order against the defendant, was passed without any notice of the date of hearing to them. It was not passed in accordance with the provisions of Order 9, Rule 6, C.P.C. and the application by the defendant to set aside the *ex parte* decree did not properly fall under Order 9, Rule 13 of the Code to which Article 164 of the Limitation Act was applicable. The application was competent under section 151 of the Code for which the period of limitation is three years as prescribed by the residuary Article 181.[19] Art. 181 is attracted to S. 8 of Arbitration for which no specific period of limitation has been provided.[20] When defendant makes an application under Order IX, rule 13, C.P.C. in connection with an *ex parte* decree, which is not passed under rule 6 of Order IX (on the first hearing), it would not be governed by Article 164. The application would be governed by residuary Article 181 and the period of limitation would be three years from the accrual of the right to apply.[1] Residuary Art. 181 providing three years' limitation time would apply to application for restoration of appeal in a case to which O. 41, R. 17 is not attracted but falls within the scope of inherent powers u/s. 151 C.P.C.[2]

Where the applicant had no notice of the date of hearing, the application would be covered by Article 181.[3]

Exercise of inherent powers for ends of justice. If the Court invokes its inherent jurisdiction under S. 151, Civil P.C. in the ends of justice, then irrespective of the fact whether the Court acts *suo motu* or on an application, limitation would not be taken into consideration.[4]

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14. AIR 1944 Pat. 254 = 23 Pat. 145 (DB) + AIR 1949 East Punj. 213 + 7 All. 371 (DB) + 30 All. 476 (DB) + 27 All. 485 (DB) + 20 Ind. Cas. 538 (Oudh) + AIR 1920 Bom. 208 = 44 Bom. 97 (DB).
15. AIR 1960 Madh Pra. 76.
16. ILR (1947) 1 Cal. 22 (DB).
17. AIR 1959 Ker. 401.
18. PLD 1961 Lah. 759 = PLR 1962 (1) W.P. 665 + AIR 1948 Cal. 37 + AIR 1947 Mad. 339 + AIR 1939 Lah. 73 + AIR 1959 Ker. 401 + ILR 1955 Madh B 23 + AIR 1953 Him Pra 102.
19. PLD 1990 SC 76 + PLD 1968 Lahore 792.
20. NLR 1980 UC 448 = PLD 1979 Kar. 635 = PLJ 1979 Kar. 166.
1. PLJ 1981 SC 146 = PLD 1981 SC 21.
2. NLR 1988 AC 389.
3. 1980 CLC 1984 = 1980 Law Notes 318.
4. AIR 1956 Orissa 165 (DB).

Dismissal for default--application for restoration. Where a suit is dismissed for non-appearance of plaintiff, the case does not fall under O. 9, R. 9 and the plaintiff is entitled to invoke the inherent jurisdiction of the High Court. An application for restoration in the circumstances, does not fall under Art.163 but under Art.181.[5] But where a suit was dismissed for default on a date not fixed for hearing, the order was unwarranted and void. Application under S. 151, Civil Procedure Code, for restoration would not be deemed to be barred by time. Where application for restoration discloses justifiable circumstances preventing plaintiff from attending Court, limitation would not run against applicant.[6]

9. Application for enforcement of surety bond. An application to enforce a surety bond against the surety who has failed to produce the attached property entrusted to his custody is not an application for execution of the decree and therefore such an application is governed by Art. 181 and not by Art. 182.[7]

Starting point of limitation. Where the liability of the surety under the surety bond is a contingent liability arising on the happening of a certain event, the starting point under Art. 181 is the date of happening of such event.[8]

10. Application for enforcement of default clause in instalment decree. Where a judgment-debtor does not pay the instalments as provided in the order of execution, and the decree-holder seeks to enforce the default clause, Art. 181 would apply. In such a case, if under the default clause the whole amount becomes payable in default of payment of any two instalments, limitation would start, as to the whole balance unpaid from the date of the latter or the two successive instalments unpaid, the decree-holder being entitled to execute the decree for the whole balance, if his application is within three years on that date.[9]

11. Application for revival of execution proceedings. Where a sale in execution of a mortgage decree in favour of a third party was set aside and execution application was dismissed for default and subsequently an order was made directing the decree-holder to refund purchase money. It was held that Art. 181 would apply to an application for restoration of execution and starting point of limitation would be the date of the order of refund.[10] Where execution is stayed on the filing of a suit for setting aside the decree, and the suit is dismissed, an application for revival of execution may be filed within three years of the dismissal of the suit.[11]

12. Application for refund of purchase money. An application by an auction-purchaser for the refund of purchase money under O. 21, R. 93, Civil P.C. is governed by this article.[12]

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5. PLD 1971 Quetta 77+PLD 1971 Ker. 182 (PLD 1968 Kar 59 *dissented from*).
6. PLD 1986 Quetta 121=PLJ 1986 Quetta 70=KLR 1986 CC 448=NLR 1986 CLJ 416.
7. 1943-2 Mad. L. Jour 444+AIR 1933 Mad. 722.
8. AIR 1949 Mad. 285=II.R 1949 Mad. 504 (DB).
9. AIR 1963 Rajasthan 145+AIR 1928 All. 629 (FB).
10. AIR 1961 Pat. 126 (DB).
11. AIR 1964 Assam 64+AIR 1965 Manipur 15.
12. 11 All. 372+AIR 1918 Mad. 353=40 Mad. 1009 (DB)+AIR 1923 Cal. 85=50 Cal. 115 (DB).

13. Application to bring on record legal representatives. An application to bring on record the legal representatives not covered by Art. 176 or Art. 177 is governed by this Article.[13] The period of limitation for bringing on record legal representatives of an applicant or non-applicant in an application under O. IX, R. 9 or for restoration of such application would be three years from the date of the death of the party and not ninety days as prescribed under Arts. 176 & 177, Limitation Act, 1908.[14] Where an execution application was dismissed due to the decree-holder's death, a subsequent application by the legal representatives of the decree-holder to be brought on record and to execute the decree must be brought within three years of the dismissal of execution under Art. 181.[15] Similarly where pending the disposal of an application to substitute *A* along with his brothers in the place of their father who died pending the suit instituted against him, *A* himself died and an application was made for the substitution of the heir of *A*, such an application was not one for substitution but was one for amendment of the original application for substitution, such an application was not governed by Art.177 but was governed by the residuary Art.181.[16] Limitation time of three years would apply to application for bringing on record legal representatives of deceased respondents in second appeal under S.100, CPC. Application moved after a lapse of 15 years without any explanation for delay and without any prayer for condonation would be dismissed as time-barred.[17]

Plaintiff's legal representatives. An application for substitution as plaintiffs in the final decree for foreclosure is an application under the Code of Civil Procedure and as such it should be filed within three years after the death of their father or at least within three years after they attained majority.[18] Where the suit is in representative capacity, there can be no dismissal of the suit on the death of the plaintiff. Therefore application of the legal representatives for being allowed to prosecute the suit within the period prescribed by Art.181, could be allowed.[19] Where it is found that the plaintiff died heirless and that the property has escheated to the Government the Court should allow the substitution, bringing the Government on record as plaintiff, not as a legal representative but as a person upon whom the interest of the plaintiff devolved under O. 22, Rule. 10, Civil P.C. This can be done within three years under the residuary Art. 181.[20]

Several legal representatives. Where there are several legal representatives of a deceased defendant, it is sufficient if all the legal representatives known after due diligent enquiry are joined within the period of limitation. Where some of the legal representatives have been brought on record on an application made within limitation, a subsequent application for bringing the other persons on record as legal representatives is not governed by the 90 days, rule but is governed by the limitation of three years, as provided for under Article 181, Limitation Act.[1]

13. AIR 1924 Lah. 316 + 1957 All. W R (HC) 563.
14. 1990 CLC 191.
15. AIR 1950 Mys. 18 = 55 Mys H C R 272 (DB).
16. AIR 1951 Cal. 518 (DB).
17. NLR 1989 AC 10.
18. AIR 1956 Orissa 165 (DB).
19. AIR 1965 Kerala 303.
20. AIR 1963 Allahabad 357.
1. AIR 1963 Andhra Pradesh 406 + AIR 1945 Nag. 52.

14. Application to rescind leave to sue. Limitation for an application to rescind leave to sue granted under clause 12 of the Letters Patent runs from the date when the leave is granted.[2]

15. Miscellaneous applications under Civil P.C.

Restoration of applications dismissed for default. In case of applications for setting aside of *ex parte* decrees other than those passed under O.9, R.6 (1) (a) the Law of Limitation shall be Art. 181 and not Art. 164.[3] This article applies to an application to restore an application to set aside an *ex parte* decree which has been dismissed for default.[4] Where an application under Order 9, Rule 9, C.P.C. was itself dismissed for default. Another application under Order 9, rule 9 was made for the restoration of the first application under Order 9, rule 9.[5] It was held that such second application would fall under S. 151, C.P.C. and would be governed by Art. 181.[6]

Restoration of suit. An application to restore a suit dismissed for default not falling under Order 9, Rule. 8, Civil P.C.[7] or an application to revive a suit which has been already dismissed is governed by this article.[8]

Resale of property application for. An application by a decree-holder for resale of property in execution upon default of the auction purchaser to pay the purchase money is governed by this article.[9]

Amendment of decree, application for. An application to set aside an order allowing an amendment of a decree falls under this Article and not Art. 164.[10]

Application for rehearing of dismissed appeal. For rehearing of a rent appeal, heard and decided *ex parte*, Article 181 of the Limitation Act would apply and not Article 169 which is applicable only where such decision results in a decree.[11] In the case of an application for rehearing of an appeal, decided *ex parte* (from an order refusing an interim injunction) limitation was governed by the residuary Article 181 and not Article 169, and an application for rehearing presented within three years of the *ex parte* order was in time.[12]

Objection petition against execution of decree. Objection petition against execution of decree filed by petitioner is governed by Art. 181 and the petition filed after about 5 years even from knowledge of passing of decree was clearly barred by time.[13]

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2. 13 Bom.404 (BD).
3. 1986 Law Notes 574 = PLD 1986 Pesh 81 (DB).
4. PLD 1981 A J & K 1(2) = 1981 CLC 54 + PLD 1971 Kar. 188 + 1981 CLC 1326 + PLD 1964 Baluchistan 18 + AIR 1920 Lah 199.
5. PLD 1971 Karachi 181 (DB) (PLR 1968 Kar. 59 *dissented from*).
6. PLD 1971 Quetta 77 + AIR 1935 Pesh 186 + AIR 1956 Hyd.139 = ILR 1956 Hyd.551 (DB).
7. AIR 1918 Oudh 311 + AIR 1934 Nag.234 = 31 Nag L R 53.
8. AIR 1940 Mad.566 (DB).
9. AIR 1933 Rang 264.
10. PLJ 1979 SC 30 = NLR 1979 Civ. 30 = PLD 1979 SC 18 + AIR 1933 Rang 264.
11. 1990 CLC 621.
12. PLJ 1979 SC 30 = PLD 1979 SC 18 = CLR 1979 Civ. 29.
13. 1990 MLD 386.

Declaration that execution sale did not effect judgment-debtor's interest, application for. This article governs an application by the judgment-debtor for a declaration that the execution sale did not affect his interest.[14]

Possession of leased property. Where the Court decrees that lease of property be granted to the decree-holder, an application for possession of leased property would be governed by this Article and limitation will start from the day when the lease certificate is drawn up and signed by the judge.[15] Where a suit for specific performance of contract for lease is decreed and an application for delivery of possession is made within 3 years from the date when the document was registered, Art. 181 and not Art.182 applies and the application is within time.[16]

Payment by mortgagor for redemption of mortgage. In a suit for redemption of a usufructuary mortgage, the mortgagor can even after the date of payment fixed by the preliminary decree pay the amount due, before the final decree. No application is necessary and hence there is no question of limitation.[17]

Application to set aside decree. An application by a defendant to whom leave to defend is not given, to set aside a decree in a summary suit under O. 37, R. 4, Civil P.C. not being provided for by any other Article is governed by Art. 181.[18]

An application for setting aside *ex parte* decree on plea of want of service after restoration of suit, would fall under Article 181 for which limitation is 3 years.[19] An application for setting aside of *ex parte* decree, not being a case of non-service of summons but of non-service of notice of an adjourned hearing, would be disposed of under O.XVII, R.2, C.P.C. and provisions of Art. 181 and not 164, Limitation Act, 1908 would be relevant. Period of limitation, therefore, would be three years for setting aside such *ex parte* decree.[20]

16. Application for final decree in partition and partnership cases. This article is inapplicable to an application for a final decree in a suit for dissolution of partnership and accounts,[1] or to an application for a final decree in a suit for partition.[2]

17. Mesne profits, application for ascertainment of. An application for determination of mesne profits is not governed by this article.[3] Where there is a preliminary decree in a partition suit directing ascertainment of mesne profits on an application in execution, the decree in so far as it directs application in

14. AIR 1944 Cal. 381.
15. AIR 1942 Pesh. 87.
16. AIR 1957 Pat. 701.
17. AIR 1946 Mad.38.
18. AIR 1958 Bom 10 = ILR 1957 Bom 520.
19. PLJ 1988 Lah 212 = 1988 CLC 806.
20. PLD 1985 Kar 691 = KLR 1986 CC 146.
1. AIR 1930 Mad 528 = 53 Mad 378 + AIR 1957 Andh Pra 40 + AIR 1957 Andh Pra 18 + AIR 1948 Cal 363.
2. 22 Cal 425 (DB) + AIR 1918 Mad 751 (DB) + AIR 1938 Oudh 229 = 14 Luck 223 (DB) + AIR 1933 Pesh 101 (DB) + AIR 1930 Nag 206 = 26 Nag L R 166 + 1906 Pun Re No.47, p 168.
3. AIR 1940 Mad 124 = ILR 1940 Mad 372 (DB) + AIR 1957 Andh Pra 18 + AIR 1949 Mad 134 (AIR 1940 Mad 124 (FB). *Foll.*) + AIR 1928 Bom 236 All 465 (DB) + AIR 1923 Bom 263 (DB) + AIR 1929 Pat 368 = 8 Pat 482 (DB) + AIR 1926 Pat 141 = 5 Pat 223 (DB) + AIR 1911 Cal 60 (DB).

execution is erroneous, the proper application is one under O. 20, R. 12 and there is no limitation for it.[4]

18. Certification of payment by decree-holder. The certification by a decree-holder under O. 21, R. 2, Civil P.C. of a payment, made out of Court by the judgment-debtor is not governed by this article. The mere fact that the document is called an application and is in the form of a petition cannot attract the application of this section.[5]

19. Application to amend decree. An application to amend a decree so as to bring it in conformity with the judgment, or on account of arithmetical or clerical errors, is not governed by this article or by any other article.[6]

20. Application to add parties. No limitation precludes a Court from acting under O.1, R.10 or O.41, R.20, Civil P.C. in adding a person as a necessary party to a suit or to an appeal.[7] Where a right to sue some other persons accrued during the pendency of the suit, the question is one of impleading the parties affected by doctrine of *lis pendens*. The limitation, if applicable, is governed by Art.181.[8] An application by a person to get himself added as a party to a suit under O.22, R.10, Civil P.C. is not also governed by this article.[9]

21. Application for sale certificate. This article does not apply to an application for grant of a certificate of sale under O.21, R.94, Civil P.C.[10]

22. Application under other Acts. After the incorporation of Article 158 and 178 in the First Schedule to the Limitation Act, which make specific provision for applications under the Arbitration Act, 1940, it is no longer possible to say that the Article contained in the Third Division of the First Schedule to the Limitation Act apply only to application under the Code of Civil Procedure because, all the other Articles contained in this Division apply to such applications. With the incorporation of Articles 158 and 178, that reason no longer holds-good, and, therefore the scope of Article 181, which is in the nature of a residuary Article, must necessarily be extended to all kinds of applications for which no specific period of limitation has been provided for either in the First Schedule to the Limitation Act or in any other Statute. To hold otherwise would lead to the anomalous result that for applications which have not been expressly provided for in the Third Division of the First Schedule to the Limitation Act there will be no period of limitation at all. This could not have been the intention of the Legislature.[11] It has been held that an application made under an Act other than the Civil P.C. to the Court to exercise its jurisdiction by putting in motion the machinery of the Code, would fall within this article.[12] Where respondents'

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4. AIR 1949 Mad 134.
5. AIR 1929 P.C. 19=56 Ind App 30=3 Luck 684 (*Affirming* AIR 1927 Oudh 7)+AIR 1952 All 715=ILR (1952) 2 All 772 (FB).
6. 7 All. 276 (DB)+11 Bom. 284 (DB)+11 All. 267 (FB) (Per Mahmood, J.)+21 Cal. 259 (DB)+10 Mad. 51 (DB)+11 Oudh Cas 208+1897 Pun. Re. No. 12, p. 49+7 Sind L R 53 (DB).
7. 12 Cal. 642 (DB)+AIR 1959 Pat. 258 (DB)+14 All 524 (DB)+13 All 78.
8. AIR 1942 Pat.185.
9. AIR 1914 Cal. 60 (DB).
10. 4 Mad. 172 (DB)+6 Bom. 586 (DB)+8 Bom. 377 (DB)+5 Ind. Cas. 263 (All.).
11. PLD 1972 Supreme Court 123. (*But see* PLD 1971 S.C. 8=23 DLR S.C. 81).
12. 31 Mad. 24 (DB)+ILR 1958 Andh Pra 822+AIR 1952 Punj. 423=ILR 1952 Punj. 524+AIR 1953 Cal. 562+AIR 1952 Trav-Co. 37=ILR 950 Trav-Co. LR 5 (DB)+AIR 1937 Mad. 31=ILR 1937 Mad. 495.

application under section 20 of the Arbitration Act was dismissed in default and an application for restoration of the application was also dismissed for non-prosecution. Subsequently another restoration, application was filed. It was held that Residuary Art. 181 was applicable to the case and not Art. 163.[13]

Arbitration (Protocol and Convention) Act. An application under section 5 of Act 1937 seeking enforcement of a foreign award was governed by residuary Art.120 and not Art. 181.[14]

23. Criminal Procedure Code, applicaltion under. An application under the Code of Criminal Procedure is not governed by this article.[15]

24. Starting point of limitation. Article 181 comes into play only after the right to apply has accrued to a party.[16] Thus Limitation for an application under S.8, Arbitration Act starts on the expiry of the fifteen days notice given under that section.[17] Where according to the terms of the compromise decree, whenever the plaintiff paid a sum of Rs.140 to the defendant, the plaintiff would be run in possession of the property in suit and till such payment by the plaintiff the defendant was to remain in possession of the property. More than twelve years after the compromise decree the plaintiff paid Rs.140 into Court and applied for execution of the decree seeking possession over the property. It was held that the plaintiff's right to make the payment was not hedged in by any period of limitation. His right to apply for execution only accrued after he had made payment. Prior to his making the payment the decree was an inexecutable decree and therefore limitation did not run against the plaintiff in respect of such a decree from either the date of the decree or within any reasonable time of the making of that decree or even on some day within twelve years of the decree.[18] Where *A* and *B* entered into an arbitration agreement with respect to the subject-matter of a contract which was for the supply of fuel by *A* to *B* during the period of one year ending on 20-2-52. A difference arose between them in respect of this supply at the latest on 28-6-51 when *B* rescinded the contract, forfeited the security furnished by A and informed him that *B* would receive the supplies from elsewhere in future. On 3-11-1951 *A* asked *B* to refer the dispute between them to arbitration according to the arbitration clause of the contract, but *B* refused to do so on 23-11-1951. After remaining quiet for some time *A* filed an application under S. 20, Arbitration Act on 3-8-1954. It was held that *A* became entitled to proceedings under S. 20 on the contract on 28-6-1951 and so, that was the date on which the cause of action accrued to him and not on 23-11-1951.[19]

Ignorance of applicant. Ignorance of the applicant of the accrual of the right in his favour will not postpone the starting point of limitation.[20]

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13. 1981 CLC 1326.
14. NLR 1981 UC 175.
15. 10 All. 350 + AIR 1954 Hyd 53 = ILR 1953 Hyd 534 = 1954 Cri. L Jour 444 + AIR 1916 Mad. 1110 = 39 Mad. 750 = 13 Cri L. Jour 209 + AIR 1924 Lah. 75 = 4 Lah. 49 = 24 Cri L Jour 713 + AIR 1930 Oudh 401 = 31 Cri L Jour 1012.
16. PLD 1970 Lah. 398 (DB) + AIR 1962 Allahabad 431 (DB).
17. PLD 1970 Lah. 398 (DB).
18. AIR 1962 Allahabad 431 (DB).
19. AIR 1957 All. 206 (DB).
20. AIR 1941 All. 28.

Insolvency proceedings. Limitation for an application for possession questioning the validity of auction-purchaser's title under S. 4, Provincial Insolvency Act, made by the Official Receiver will not run before the adjudication of the insolvent.[1]

Application to obtain possession. An application by a party to the suit to recover possession of properties which had been taken delivery of under a void execution sale would be in time under Art. 181, if it was filed within three years of his dispossession. It is not until the purchaser acting under colour of sale interferes with his possession that the person whose properties have been sold is really aggrieved, and what gives him the right to apply under Art. 181 is such interference or dispossession and not the sale.[2]

Restitution, application for. Where one *M* brought a suit for possession of land against the defendant and obtained a decree on 31st August, 1939. She obtained possession of the land in execution on 27th November, 1939. The defendant appealed to the District Judge, who set aside the decree of the trial Court and remanded the case for retrial on 15th February, 1940. The trial Court, after the remand, dismissed the suit on 28th March, 1940. *M's* appeal to the District Judge was dismissed on 9th July, 1940 and her second appeal to the High Court was dismissed on 27th May, 1941. The defendant applied for restitution and the delivery of possession of the land back to him on 19th January, 1944. It was held that immediately on the passing of the order by the District Judge on 15th February, 1940, setting aside the decree passed in *M's* favour the defendant became entitled to restitution. In any case the right accrued to the defendant on 28th March, 1940, when the suit was dismissed by the trial Court and the decree previously passed in *M's* favour ceased to exist. The application was therefore time barred.[3] Where a suit for recovery of money due under a mortgage bond was dismissed with costs to defendant on ground of bar of limitation and the decree of dismissal was affirmed in first appeal. The plaintiff filed a second appeal and in the meanwhile the defendant realised the costs awarded to him. The High Court in second appeal set aside the decree and remanded the case to the lower appellate Court for disposing the case on the other questions. The High Court however did not pass any specific order as regards costs of the trial Court or of the appellate Court but only directed that the proportional costs of the second appeal will abide the final result. After remand the lower appellate Court decreed the suit with a direction that the defendant should pay the costs of the second appeal as well as that of the lower Courts. The plaintiff applied by way of restitution for recovery of the costs which had been realised by the defendant, within three years from the decree of the lower appellate Court passed after remand but beyond three years from the order of remand by the High Court. It was held that assuming that the right to restitute was available to the plaintiff the application for restitution filed within three years of the passing of the decree by the lower appellate Court was within time because the right to restitution would arise only when the Court passes the decree after adjudicating the liability for costs of the trial Court as well as the lower appellate Court.[4]

1. AIR 1947 Nag. 76 = II R 1946 Nag. 937.
2. AIR 1956 S.C. 87 = 1955-2 S.C.R. 938.
3. AIR 1946 Lahore 416.
4. AIR 1964 Kerala 216 : AIR 1940 Bom. 30.

Pre-emption suit. Where a non-notified co-sharer tenant of an occupancy holding applied to pre-empt the transfer of a portion of such holding made to a stranger purchaser, and the question arose as to when limitation had begun to run against him. It was held that the limitation of 3 years to which a non-notified co-sharer tenant is entitled is to run from the date of registration of the deed of transfer, no other starting point of limitation having been fixed by the Act in respect of such a co-sharer tenant's application.[5]

25. Enlargement of time. Minority is not sufficient reason for enlargement of time. Where a minors next friend obtains a preliminary mortgage decree, an application by the minor, on attaining majority for a final decree after the period prescribed by this article will be barred.[6]

182. Omitted by L.R.O. 1972.

183.	To enforce a judgement, decree or order of any [7][High Court] in the exercise of its ordinary original civil jurisdiction, or an order of [8][the Supreme Court].	[9][Six years]	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing

5. PLD 1965 Dacca 101 (DB).
6. AIR 1932 Cal. 508 (DB).
7. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960). S. 3 and 2nd Sch., for "Court established by Royal Charter" (w.e.f. 14-10-1955).
8. Subs. by A.O., 1961, Art. 2 and Sch., for "Court established by Royal Charter" (w.e.f. 23-3-1956).
9. Substituted by L.R.O. 1972.

signed by the person liable to pay such principal or interest, or his agent,to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor payment or acknowledgment or the latest of such revivors, payment or acknowledgment, as the case may be.

Synopsis

1. Scope.
2. Application by notice of motion.
3. "Enforce."
4. "In the exercise...jurisdiction."
5. Order of the Supreme Court.
6. Revivor.
7. Starting point of limitation.

1. Scope. The article is not in any way controlled by S. 48, Civil P.C.[10] S.48, C.P.C. lays down a maximum period of six years as limitation after expiry of which it is not open to a decree-holder to make fresh application for execution of the decree.[11] Sections 6, 7 and 8 do not govern this article which is self-contained.[12]

No application necessary. Where no application is necessary for doing an act, there is no question of limitation involved. Thus as in a suit on a mortgage brought by the mortgagee in the Original Side of the High Court nothing remains to be done by the mortgagee decree-holder after the final decree for sale of the mortgaged property, except the ministerial act of conducting the sale and distributing the sale proceeds according to the directions already given by the Court in the decree or order of sale. No application by the decree-holder is required after the final decree for sale and therefore this article is not attracted.[13]

Amendment is prospective. The amendment of 1972 curtailing the period of limitation from twelve years to six years is not retrospective and execution applications filed in the Courts for execution of the decree passed prior to the

10. 6 Bom. 258 (DB) + 20 Cal. 551 (DB) + 7 Mad. 540 (DB).
11. 1990 MLD 899.
12. AIR 1930 Pat. 141 (DB).
13. AIR 1955 Cal. 484.

amendment, will continue to be governed by the period provided at the time the decrees were passed.[14] The substantive right to enforce decree accrues after decree is passed and not on filing of suit. Even where suit was filed before amendment of Art. 183 of the Limitation Act but final decree was passed after that amendment, period of limitation will be as provided by the amendment.[15]

Exclusion of time spent in compromise proceedings. Six years time for filing of execution application should be counted after excluding time spent in the course of compromise proceedings.[16]

2. Application by notice of motion. The filing of the notice of motion in the proper office of the Court for signature and seal is an application for the purpose of limitation.[17] Similarly the service of the notice on motion on the opposite side is an application for the purposes of limitation.[18] Where the notice of motion was issued and served on the same day on the opposite party; it was held, that the application must be deemed to have been made on the date of the issue of the notice of motion even though the affidavit supporting the application might have been sworn to only later.[19] But where a party obtains an order that his application is to be treated as made on the date of presentation, the application will be deemed to be made on that particular date and not on the date of service of notice of motion.[20]

Issue of notice of motion. The issue of notice of motion calling a party to attend the Judge in Chambers was held not to save limitation.[1]

Filing of tabular statement. Where a tabular statement under O.21, R.11, Civil P.C. was filed in Court within time, it was held that it amounted to the making of the application.[2]

3. "Enforce." The article does not speak of the right to the benefits provided for in the decree, but of the right to put the decree into service for the purpose of extracting three benefits.[3] The expression "to enforce" is wider than "to execute" and should be interpreted as equivalent to "to give effect to".[4] Thus an application under O.45, R.15, Civil P.C.[5] or an application by the decree-holder after a mortgage-decree praying that he may be at liberty to add a person as party-defendant to the suit and that therefore he may be at liberty to proceed to sell properties pursuant to the decree, will be one "to enforce a judgment".[6] An application to the Court passing the decree for an order that the execution may

14. 1985 CLC 679 + PLJ 1981 Kar. 284 = 1981 CLC 372 + 1981 Law Notes 816.
15. PLJ 1989 Kar. 19 = NLR 1989 Civ. 211.
16. NLR 1984 Civ. 523 (SC).
17. AIR 1924 Bom. 36 = 47 Bom. 764 (DB).
18. AIR 1953 Cal. 886 = 60 Cal. 1106.
19. 17 Mad. L. Jour 215 (DB).
20. AIR 1940 Cal. 373.
1. 20 Cal. 899 (SB).
2. AIR 1929 Cal. 193.
3. AIR 1958 Cal. 1 (DB).
4. PLJ 1979 Kar. 242 = 1979 CLC 16 + AIR 1940 Cal. 260 (DB) + AIR 1956 All. 32 + AIR 1956 Nag. 129 (DB) + AIR 1928 All. 293 (DB).
5. PLJ 1979 Kar. 242 = 1979 CLC 16 + AIR 1942 Pesh. 14.
6. 38 Cal. 913 (DB).

proceed against the legal representatives of the deceased judgment-debtor in the Court to which the decree is transferred for execution is one to enforce a judgment or decree.[7] But an application for a personal decree under O.34, R.6 of the Civil P.C.[8] or an application for an order for transmission of execution to another Court cannot save limitation.[9]

An application against the sons for execution of a Privy Council decree against the father for costs is governed by this article.[10] An application for restitution as a result of an order of His Majesty-in-Council is one to enforce the Order-in-Council.[11] Thus an application for refund of costs deposited by the appellant whose appeal was allowed by the Privy Council, filed against the surety under S.145, Civil P.C. was held to be one 'to enforce' the order of His Majesty-in-Council.[12]

Transmission of execution. An application for an order for transmission of execution to another Court cannot save limitation.[13]

4. "In the exercise...jurisdiction". The words "in exercise of its ordinary original civil jurisdiction" in this article refer to the ordinary original civil jurisdiction conferred on it by 24 and 25 Vict C 104 and by the Letters Patent and not to the extraordinary original jurisdiction conferred by clause 13 nor to the special original jurisdiction conferred by S.24, Civil P.C.[14] Therefore this article does not cover a decree made by the High Court in a suit transferred to itself under S.24, Civil P.C. or under clause 13 of the Letters Patent.[15]

Letters Patent appeal. Letters patent appeals arising out of judgments in suits filed on the ordinary Original Side of the Court are judgments passed in the exercise of this Court's ordinary original civil jurisdiction.[16]

Insolvency Act. A judgment ordered to be entered up under S.86, Insolvency Act, is a judgment passed by the High Court in the exercise of its ordinary original civil jurisdiction.[17]

Companies Act. An order passed under S.186 of the Companies Act (1913) was held to be an order passed in the exercise of it ordinary original jurisdiction and is governed by this article.[18]

5. Order of the Supreme Court. Where an order of Supreme Court modifies, alters or confirms the decree of the High Court, whether passed in its original or appellate jurisdiction, enforcement of that order is governed by this

7. AIR 1940 Cal. 171 = I.L.R(1939) 2 Cal. 173.
8. AIR 1925 Cal. 834 = 52 Cal. 828 (FB) + AIR 1935 Rang. 187 = 13 Rang. 305 (DB).
9. AIR 1939 Lah. 110 = I.L.R 1939 Lah. 319.
10. AIR 1932 Pat. 261 = 11 Pat. 445 (DB).
11. AIR 1928 All. 293 = 50 All. 767 (DB) + AIR 1922 All. 238 = 44 All. 555 (DB).
12. AIR 1956 All. 32.
13. AIR 1939 Lah. 110 = I.L.R 1939 Lah. 319.
14. AIR 1951 Cal. 170 = I.L.R (1949) 2 Cal. 271.
15. AIR 1951 Cal. 170 = I.L.R (1949) 2 Cal. 271.
16. PLD 1981 Kar. 52 = PLJ 1981 Kar 138 + PLD 1975 Kar. 944 (PLD 1970 Kar. 360 not correctly decided).
17. 13 Bom. 520 = 16 Ind. App. 156 (PC).
18. AIR 1962 S.C. 403 + AIR 1951 All. 362 = I.L.R (1953) 1 All. 159 (DB).

article.[19] Even where the Supreme Court merely confirms the decree of the Court below it is the paramount decision in the suit and an application to enforce it is one to execute the said order and not the decree which it confirms.[20] Where *A*, *B* and *C* obtained shares in rateable distribution on the basis that they held money decrees. The Privy Council held that *A* was not entitled to a money decree but only to a charge decree, and it conferred upon *B* the right to apply for refund of assets wrongly paid to *A*. Application for refund filed within 3 years of the order of Privy Council but beyond 12 years from the date of *B's* decree was within time either under Art.181 or this article.[21]

Preliminary decree affirmed. If a preliminary mortgage decree is affirmed on appeal by the Privy Council, the time for enforcing the final decree is twelve years from the date of the order of the Privy Council.[22]

Appeal dismissed for want of prosecution. Where the Supreme Court dismisses an appeal for want of prosecution or the appeal is withdrawn there is no final order and this article does not apply.[1]

Judicial Committee of Khairpur State. Orders of the Judicial Committee of Khairpur State made prior to 13th October, 1955 should be given effect to for all purposes as orders made by the Supreme Court of Pakistan in exercise of the Federal Court Enlargement of Jurisdiction Act, 1949. This being the situation, Article 183 applies to them.[2]

6. Revive. The proviso dealing with revival applies only when application is made more than six years after the decree. Where it is made within six years, Art.183 does not bar its execution.[3] In order to constitute a "revivor" of the decree, there must be expressly or by implication, a determination that the decree is still capable of execution, and that the decree-holder is entitled to enforce it. An order for execution implies such a determination.[4] Issuing of process (writ of attachment) by execution Court, constitutes revivor of cause of action and such date is the basic date for computing period of limitation under Art.183.[5] Thus where *A*, a mortgagee, obtained a mortgage decree in her favour against *B*, the mortgagor, on 20-4-1936. Later on *C*, a prior mortgagee, brought a suit on mortgage of the same properties against *A* and *A*. In this suit a consent decree was passed on 20-12-1949. In that consent decree it was expressly provided by consent, first, that *A's* account taken in respect of moneys due to her by the Registrar in her own suit, should be treated as her account in that suit and, secondly, it was expressly consented to and provided for that if such money due to her was not paid then the mortgaged properties were to be sold and after payment

19. AIR 1964 All. 326 + 8 Cal. 218 (FB).
20. AIR 1956 Nag. 129 = II.R 1956 Nag. 305 (DB).
21. AIR 1947 Mad. 339.
22. AIR 1939 Cal. 601 = II.R (1939) 1 Cal. 477 (DB).
1. AIR 1914 P.C. 65 = 36 All. 284 = 41 Ind. App. 104.
2. PLD 1970 Karachi 212 (DB).
3. AIR 1943 Bom. 238.
4. AIR 1946 Bom. 27 = II.R 1946 Bom. 234. (The order must be valid) + AIR 1956 All. 32 + AIR 1956 Raj. 1 = II.R (1956) 6 Raj. 23 (DB) + AIR 1955 Cal. 484 + AIR 1939 Bom. 51 = II.R 1939 Bom. 27 (DB) + AIR 1940 Pat. 596 = 19 Pat. 909 (DB) + AIR 1938 Pat. 372 (DB).
5. 1980 CLC 1327.

to *C* the balance, if any, should be applied in the payment of the amount due to *A*. It was held that this consent decree constituted a revivor because it involved the determination that *A's* decree was capable of execution and that *A* had a right to enforce it against *B's* and obtain her claim from the surplus sale proceeds.[6] But if a determination that the decree is subsisting and the decree-holder has a right to enforce it is made more than 12 years after the passing of the decree or of the last revivor there can be no revivor even though the procedure prescribed by Rr.16 and 22 of O.21, Civil P.C has been followed.[7] Where a decree was passed on 13-11-1935, and the application for executing the same was presented on 13-1-54 which was beyond the period of 12 years, limitation under Art.183. It was however alleged by the decree-holder that the judgment-debtor had made a payment of Rs.191.50 on 23-9-41. It was held that if the payment as alleged was proved, the execution was within time, unless it was shown by the judgment-debtor that the payment was entered fraudulently by the decree-holder himself paying the amount in the name of the judgment-debtor by playing fraud upon the Court.[8]

Notice to judgment-debtor. The mere issue or service of a notice under O.21, R.22, is not sufficient to constitute revivor. A further order by the Court is necessary.[9] Therefore an order for execution made after notice required by O.21, R.22 has the effect of reviving the decree within the meaning of this article.[10] Where the judgment-debtor is a minor represented by his father and the minor does not on attaining majority get the record corrected and an order in execution was made after notice to judgment-debtor through his father and the property was attached. The order operated as a revivor.[11] Where the objection of the judgment-debtor regarding limitation is overruled, there is a revivor.[12] An order to bring on record the legal representatives of deceased decree-holder and allowing them to execute the decree constitutes a revivor.[13] It is however to be noted that where there is no provision for the issue of any notice to the judgment-debtor before an order for execution can be made, there cannot be a revivor.[14]

Orders not amounting to revivor. A proceeding for obtaining leave under O.21, R.50, Civil P.C. or the grant of leave;[15] or an order of dismissal of an execution case for want of prosecution;[16] or the dismissal of an application to set aside the decree, filed pending execution;[17] or an order issuing a writ of arrest against the judgment-debtor after notice under O.21, R.37 (1), Civil P.C. is not revivor of the decree.[18]

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6. AIR 1955 Cal.484.
7. AIR 1956 Raj.1 = ILR (1955) 6 Raj.23 (DB).
8. AIR 1958 Raj 189 = ILR (1958) 8 Raj 374 (DB).
9. AIR 1940 Pat 596 = 19 Pat 909 (DB).
10. 26 All 364 (DB) + 15 Cal W N 560 + 7 Mad 549 (DB) + 36 Cal 543 (DB) + AIR 1937 Pat 321 = 16 Pat 316 (DB) + AIR 1938 Pat 372 (DB).
11. AIR 1945 Mad 325.
12. AIR 1916 Cal 488 = 43 Cal 903 (FB).
13. AIR 1952 Mad 124 (DB).
14. AIR 1940 Pat 596 = 19 Pat 909 (DB) + AIR 1956 All 32 + AIR 1945 Mad 325.
15. AIR 1940 Pat 596 = 19 Pat 909 (DB) + AIR 1954 Bom 208 = ILR 1954 Bom 377 (DB) + AIR 1951 Pat 339 = 28 Pat 935 (DB).
16. AIR 1925 Cal 668 (DB).
17. AIR 1928 Cal. 686 = 55 Cal. 578 (DB).
18. AIR 1945 Pat. 182 = 23 Pat. 923 (DB).

Transmission of decree. An application for transmission of a decree from the High Court to the District Court is not by itself a revivor of the decree.[19] Even an order transferring the decree to another Court does not give a new starting point of limitation *qua* the order of transmission.[20]

Assignment of decree. An order recognising the assignment of a decree and allowing the assignee to execute it constitutes a revivor.[1] Even where the order is subsequently vacated, it will give a fresh start to limitation.[2] But where the order recognising the assignment contains a qualification as to limitation, it will not operate as a revivor.[3]

Joint judgment-debtor. A revivor of a decree against one joint judgment-debtor will not keep it alive against the other joint judgment-debtors.[4]

Revivor against one of decree-holders. Where a mortgage-decree determines the rights of prior and puisne mortgagee's execution, applications by the prior mortgagee will not amount to a revivor of the right of the puisne mortgagee.[5]

Order of Registrar to issue execution. Where the Registrar of the High Court passed orders that execution should issue, it was held that there was no "revivor".[6]

7. Starting point of limitation. Where the nature of the decree is such that it is immediately executable, the starting point of limitation under this article will be the date of passing the decree and not when a certified copy of the decree as required by Ch.17, R.10 of the Original Side Rules of the High Court is obtained.[7] The point of time which is material for the purposes of this Article is the present right to enforce the judgment, decree or order. If for any reason the right to enforce the decree arises on a date subsequent to the decree then limitation begins to run from that date.[8] It follows that under this Article for execution of a decree the period of limitation is 6 years from the date when a present right to enforce the decree arises, but where some part of the principal money secured thereby or some interest on such money has been paid, the period of 6 years shall be computed from the date of such payment. Under sub-rule (1) of O.21, R.2 the decree-holder has to certify the payments to the Court. There is nothing specifically stated there about certifying the dates of such payment. These dates when disputed can be ascertained by the Court from the materials before it.[9]

Final and preliminary decree. For an application for execution of decree, limitation begins to run from date of final decree and not from date of preliminary decree. Trial of suit even after passing of preliminary decree continues till a final

19. AIR 1927 P.C. 73 = 54 Cal. 500 = 54 Ind. App 129.
20. AIR 1929 Mad. 252 = 52 Mad. 590 (DB) + AIR 1916 Cal. 488 = 45 Cal. 903 (FB) + AIR 1937 Rang. 477 = 1937 Rang. L. R 287 (DB).
1. AIR 1929 Mad. 252 = 52 Mad. 590 (DB).
2. AIR 1939 Bom. 51 = II.R 1939 Bom. 27 (DB).
3. AIR 1939 Bom. 51 = II.R 1939 Bom. 27 (DB).
4. AIR 1940 Pat. 596 = 19 Pat. 909 (DB) + AIR 1956 All. 32 + AIR 1952 Mad. 124 (DB) + AIR 1918 Mad. 513 = 40 Mad. 1127 (DB).
5. AIR 1925 Cal. 213 (DB).
6. AIR 1916 Cal. 488 = 43 Cal. 903 (FB) + AIR 1936 Pat. 398 = 15 Pat. 102 (DB).
7. AIR 1958 Cal. 1 (DB) (*Reversing* 59 Cal. W N 1011, on appeal.).
8. AIR 1954 Bom. 208 = II.R 1954 Bom. 377.
9. AIR 1965 Calcutta 473 (DB) (AIR 1918 Cal. 977 *overruled*) + AIR 1929 P.C. 19.

decree is passed. Any matter arising during passing of preliminary decree and final decree, would be considered to be antecedent to final decree.[10]

THE SECOND AND THIRD SCHEDULE--(*Repealed*).

10. PLD 1986 Kar. 79 = PLJ 1986 Kar. 262 = NLR 1986 Civ. 169.

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