

Article procedure
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Article 136 governs the execution of the decree or order of Civil Court other than a decree for mandatory injunction.

The executing Court must execute the decree according to its terms except when there is the statutory limitation to execute it. In *Giridharilal v.*

Thakurdas, (AIR 1964 Ori. 170), it has been held that the initial onus is upon the decree-holder to show that the execution is within time. Where the application for execution is prima facie not barred by limitation it is for the judgment-debtor to show that the execution is time-barred.

The modes in which the Court can give relief in execution are set forth in Order XXI of the Civil Procedure Code. The period of limitation provided by the Art. 136 is ordinarily an application for execution contemplated by Order XXI, Rule 11 of Civil Procedure Code.

An application under Order XXI, Rule 34 or Rule 50 of the Civil Procedure Code is also covered by the Article 136. In *Uma Shankar v. Kanodia Brothers*, (AIR 1966 All. 499), it has been held that an application under Order Rule 50(2) of the Civil Procedure Code for leave to execute a decree against a partnership firm as against a partner has been held to be ancillary to the application for execution and has to be filed within the period prescribed under the Art.

136. In *Manwa v. Maulana*, (AIR 1981 All.

143), a decree for mandatory injunction and for possession was passed in which two months time was given to the defendant to remove the debris failing which the plaintiff was entitled to get the debris removed by process

of the Court and was entitled to get possession of the land. The decree was passed on the 25th April, 1961. It has been held that the decree became enforceable on 25th June, 1961. As the execution case was filed on the 12th May, 1973, it is also held that decree for possession was executable as it was filed within 12 years of the date when the decree for possession became enforceable, but decree for mandatory injunction could not be executed because it has not been filed within three years of 25th June, 1961 under Art.

135 of the Limitation Act. In *Datta v. Digambar*, (AIR 1968 Bom. 361), it has been held that the Art. 136 will not apply to an application for execution of award given by a special Court under a special Act because it applies to execution of decree or order of Civil Courts either under Civil Procedure Code or under any special status under which order is deemed to be decreed by virtue of same provision requiring the execution as decree.

Under the Art. 136 of the Limitation Act, 1963, the period of limitation for the execution of any decree or order of any Civil Court other than a decree granting a mandatory injunction is 12 years. Art. 136 have set a new deadline beyond which no application for the execution of the decree can be made. Time required for obtaining a certified copy of the decree cannot be excluded for computing limitation.

The maximum period of limitation for the execution of a decree or order is 12 years from the date when the decree or order became enforceable, which is usually the date of the decree or order. The expression “enforceable” has been used to cover a decree or order which is not enforceable at the time it is made but becomes enforceable subsequently. In *Chandra Mouli v.*

K. B. N. Singh, (AIR 1976 Pat. 208), it has been held that the decree comes into existence as soon as the judgment is pronounced and not on the day when it is sealed and signed, because under Order XX, Rule 7, the decree shall bear date, on which the judgment was pronounced. The second part of the third column of Article 136 provides that where the decree or subsequent order directs any payment of money or for the delivery of any property to be made at a certain date or at requiring periods, then the limitation would commence from the date when the default in making the payment or delivery in respect of which the execution is sought for, takes place.

Therefore, this part covers in terms all cases where either the decree originally or by any subsequent order directs the payment of the decretal amount or delivery of any property at a future date or by instalment. The words “ certain date” used in the third column of the Art. 136 referred to a date which at the date of the decree or order is certain. Therefore, a date which can become certain only at the future time will not be a “ certain date” within the meaning of the Article 136. The words “ certain date” are of wider amplitude than the word ‘ specified’ and would consequently mean an ascertained or ascertainable date. In view of the proviso to the third column of Art.

136 of the Limitation Act, 1963, the execution of the decree for permanent injunction is not subject to any period of limitation. For executing the decree for permanent injunction an application for execution has to be filed in the executing Court and the Court cannot enforce it suo motu. In I. Ahmed v. K. Bibi, (AIR 1985 Ori.

102), it has been held that for execution of a decree other than a decree for mandatory injunction, 12 years is the period of limitation which commences from the date when the decree becomes enforceable, but an exception has been made in respect of the decree for perpetual injunction for which there is no period of limitation and it can be enforced at any time. In *LRs of Mega Ram v. Kàrà Ram*, (AIR 1993 Raj. 208), it has been held that so far as the decree for prohibitory injunction is concerned, namely injunction from making encroachment, limitation can commence from the date of fresh encroachment but there is no limitation period for executing such a decree. Article 136 is the comprehensive Article to cover the execution of any decree or order of any Civil Court other than a decree granting mandatory injunction. So, there is no dispute that for executing a decree passed by a superior Court of a reciprocating territory (Foreign Country) in the District Court in India, Article 136 of the Limitation Act will be attracted.