

The dismissed under rule 2, order xvii



The Article 122 is confined and restricted to (i) suits; (ii) appeals; (iii) application for review; (iv) application for revision and such dismissal must be either for (a) default of appearance; or (b) want of prosecution; or (c) failure to pay for costs of services; or (d) failure to furnish security for costs.

The Article 122 is applicable to such cases as the following: (1) It applies to dismissal of suit for appearance under Order IX Rule 9 of the Civil Procedure Code. (2) It attracts the application for restoration of the probate application known as probate suit dismissed for default. (3) It governs the application for setting aside the order of dismissal for non-prosecution. (4) It applies the application under Rule 4, Article IX when a suit is so dismissed under Rule 2 or Order IX. (5) It attracts an application for setting aside the dismissal under Rule 3 of Order XXV when a suit was dismissed on failure of the plaintiff to furnish such security for costs.

(6) It applies to an application for restoration when the suit dismissed under Rule 2, Order XVII of the Civil Procedure Code. (7) It applies to an application when the suit was dismissed for nonprosecution when he fails to take steps even if ordered to do so by Court. (8) The Article 122 applies where an appeal is dismissed under the Civil Procedure Code and not under the Rules of the Court. (9) The Art. 122 of the Limitation Act specifically provides for setting aside the dismissal of an appeal for failure to pay security for costs and the Art. 122 will be attracted. (10) Even when the appeal is dismissed for failure of the appellant to deposit costs for service of notice upon the respondent under Rule 18 of Order XLI of the Civil Procedure Code, Rule 19 of the Order XLI is attracted and the appellant may apply for readmission of the appeal.

To such an application also Article 122 is attracted. Article 122 is not applicable for the following situations: (1) It does not apply to an application for restoration of an application filed under Rule 9 Order IX of the Civil Procedure Code. (2) When a suit is dismissed under Section 151 of the Civil Procedure Code, this Article is not attracted. (3) This Article has no application where the order of dismissal is ultra vires. The limitation period of Art. 122 is thirty days from the date of dismissal but not the knowledge of the date of dismissal.

The Section 5 of the Limitation Act which empowers to extend the limitation power applies to all applications other than those provided under the provision of Order XXI of the Civil Procedure Code. So Section 5 will be attracted to an application within the purview of Art. 122 of the Limitation Act.