

## **CONFIDENTIAL**

**Not to be released for publication in the press before presentation to the Assembly**

### **PROVINCIAL ASSEMBLY OF THE PUNJAB REPORT OF THE STANDING COMMITTEE ON LAW REGARDING THE CODE OF CIVIL PROCEDURE (PUNJAB AMENDMENT) BILL 2018 (BILL NO.7 OF 2018)**

The Code of Civil Procedure (Punjab Amendment) Bill 2018 (Bill No.7 of 2018) was referred to the Standing Committee on Law on 31 January 2018. The Committee considered the Bill in its meetings held on 15 February and 5 March 2018.

2. The following were present:—

- |    |   |          |
|----|---|----------|
| 1. | Malik Muhammad Waris Kallu, MPA (PP-42)<br>(attended on 5 March 2018) | Chairman |
| 2. | Raja Abdul Hanif, MPA (PP-14)<br>(attended on 15 February 2018)       | Member   |
| 3. | Mr Munawar Ahmad Gill, MA (PP-127)<br>(attended on 15 February 2018)  | Member   |
| 4. | Rana Mehmood-ul-Hassan, MPA (PP-196)<br>(attended on 5 March 2018)    | Member   |
| 5. | Mian Khurram Jahangir Wattoo, MPA (PP-193)                            | Member   |

3. Mr Salah-ud-Din, Director, Law and Parliamentary Affairs Department represented the Law and Parliamentary Affairs Department. Mr Faiz-ul-Basit, Additional Secretary (Committees), Provincial Assembly of the Punjab functioned as Secretary to the Committee.

4. Mr Salah-ud-Din, Director, Law and Parliamentary Affairs Department apprised the Committee about the aims and objects of the Bill. He stated that it was necessary further to amend the Code of Civil Procedure, 1908 (V of 1908) for purposes of updating certain provisions of the Code. He further stated that the Law and Justice Commission of Pakistan had carried out regular and systematic review of the laws of the land with a view to improve and update them to bring in line with the modern requirements. For the purpose, Law and Justice Commission of Pakistan had recommended certain amendments in the Code of Civil Procedure 1908, including increase in the cost and compensation and omission of the provisions relating to Small Cause Courts. Moreover, the pecuniary upper limit was required to be fixed for the purposes of second appeal. He requested the Committee that the Bill, as introduced, may be recommended to be passed by the Assembly.

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5. The Committee after hearing the Members, having view point of the Administrative i.e. Law and Parliamentary Affairs Department and discussing various points, unanimously decided to recommend that the Bill may be passed by the Assembly subject to the following amendments:-

**AMENDMENTS IN THE BILL**

**CLAUSE 11, 14, AND 16**

in the marginal heading, the words "Amendment in" be substituted by the words "Substitution of".

6. A copy of the Bill as introduced in the Assembly is at Annexure-A and a copy of the Bill as recommended by the Committee is at Annexure-B.

Lahore  
5 March 2018

(MALIK MUHAMMAD WARIS KALLU)  
*Chairman*  
*Standing Committee on Law*

Lahore  
5 March 2018

  
(RAI MUMTAZ HUSSAIN BABAR)  
*Secretary*

ANNEXURE – A

(BILL AS INTRODUCED IN THE ASSEMBLY)  
**PROVINCIAL ASSEMBLY OF THE PUNJAB**

**Bill No. 7 of 2018**

**THE CODE OF CIVIL PROCEDURE (PUNJAB AMENDMENT) BILL 2018**

A  
BILL

*further to amend the Code of Civil Procedure, 1908.*

It is necessary further to amend the Code of Civil Procedure, 1908 (*V of 1908*) for purposes of updating certain provisions of the Code.

Be it enacted by Provincial Assembly of the Punjab as follows:

**1. Short title and commencement.-** (1) This Act may be cited as the Code of Civil Procedure (Punjab Amendment) Act 2018.

(2) It shall come into force at once.

**2. Amendment in section 3 of Act V of 1908.-** In the Code of Civil Procedure, 1908 (*V of 1908*), for brevity referred to as the Act, in section 3, for the words "Court of Small Causes", the words "Court of Small Claims and Minor Offences" shall be substituted.

**3. Omission of section 7 of Act V of 1908.-** In the Act, section 7 shall be omitted.

**4. Amendment in section 9 of Act V of 1908.-** In the Act, in section 9, after the words "impliedly barred", the words "or for which a general or a special law is in force" shall be inserted."

**5. Amendment in section 12 of Act V of 1908.-** In the Act, in section 12, after subsection (2), the following new subsection (3) shall be inserted:

"(3) For purposes of the disposal of an application under subsection (2), the Court may, in the interest of expeditious disposal, apply such fair procedure as the circumstances of the case warrant, and shall, unless, for reasons to be recorded it directs otherwise, order any fact to be proved or disproved by affidavit."

**6. Amendment in section 24 of Act V of 1908.-** In the Act, in section 24, subsection (4) shall be omitted.

**7. Amendment in section 30 of Act V of 1908.-** In the Act, in section 30, for clause (c), the following shall be substituted:

"(c) order any fact to be proved or disproved by affidavit."

**8. Substitution of section 33 of Act V of 1908.-** In the Act, for section 33, the following shall be substituted:

**"33. Judgment and decree.-** The Court, after the case has been heard, shall pronounce judgment maximum within fifteen days and on such judgment a decree shall follow simultaneously."

**9. Amendment in section 35 of Act V of 1908.-** In the Act, in section 35, for subsection (1), the following shall be substituted:

"(1) Subject to such conditions and limitations, as may be prescribed, and to the provisions of law for the time

being in force, the costs of an incident to all suits and other proceedings in the suit including execution proceedings, shall follow the event, and the Court shall have full power to determine by whom or out of which property and to what extent such costs are to be paid, and to give all necessary directions for the purpose aforesaid.

(1a) The fact that the Court has no jurisdiction to try the suit shall be no bar to exercising the powers under subsection (1).".

**10. Amendment in section 35-A of Act V of 1908.-** In the Act, in section 35-A, in subsection (2):

- (a) for the words "twenty five thousand", the words "one hundred thousand" shall be substituted;
- (b) first proviso shall be omitted; and
- (c) in the second proviso, the expression "further," shall be omitted.

**11. Amendment in section 44-A of Act V of 1908.-** In the Act, in section 44-A, the following shall be substituted:

**"44-A. Execution of decrees passed by Courts in the reciprocating territory.-** (1) Where a certified copy of a decree of any of the Superior Courts of the reciprocating territory has been filed in a District Court, the decree may be executed in Pakistan as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

**Explanation 1.** "Reciprocating territory" means such country or territory as the Federal Government may, from time to time, by notification in the official Gazette, declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

**Explanation 2.** "Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and does not include an arbitration award, even if such award is enforceable as a decree or judgment."

**12. Amendment in section 91 of Act V of 1908.**- (1) In the Act, in section 91, in subsection (1), for the expression "having obtained the consent in writing of the Advocate General", the expression "with the leave of the Court" shall be substituted.

**13. Amendment in section 92 of Act V of 1908.**- (1) In the Act, in section 92:  
 (a) in subsection (1), for the expression "and having obtained the consent in writing of the Advocate General", the expression "with the leave of the Court" shall be substituted; and  
 (b) for subsection (2), the following shall be substituted:  
 (2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to, except in conformity with the provisions of that subsection.

**14. Amendment in section 95 of Act V of 1908.**- In the Act, for section 95, the following shall be substituted:

**"95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.**- (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction is granted under the last preceding section, it appears to the Court that:

- (a) such arrest, attachment or injunction was applied for insufficient grounds; or
- (b) there was no reasonable or probable ground for making the application -

the Court may, on its own motion or on the application of the aggrieved party, award such punitive compensation as it deems reasonable to the aggrieved party for the expense and injury caused to him.

(2) In addition to the compensation awardable under subsection (1), the Court may also make an order directing the party at fault to deposit such amount in the public exchequer as the Court deems just, as penalty for abusing the process of the law and wasting the time of the Court.

(3) An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction."

**15. Amendment in section 97 of Act V of 1908.**- In the Act, in section 97, the words "passed after the commencement of this Code" shall be omitted.

**16. Amendment in section 102 of Act V of 1908.**- In the Act, for section 102, the following shall be substituted:

**"102. No second appeal in certain cases.**- No second appeal shall lie in any suit when the amount or value of the subject matter of the original suit does not exceed rupees twenty five million."

**17. Amendment in section 104 of Act V of 1908.**- In the Act, in section 104, after clause (ff), the following new clause (fff) shall be inserted:

"(fff) an order under section 91 or section 92 refusing leave to institute a suit;"

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**18. Amendment in section 114 of Act V of 1908.**- In the Act, in section 114, for subsection (1), the following shall be substituted:

"(1) Subject as aforesaid, any person considering himself aggrieved:

(a) by a decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred;  
or

(b) by a decree or order from which no appeal is allowed by this Code -

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

**19. Amendment in section 115 of Act V of 1908.**- In the Act, in section 115:

(a) in subsection (1), for the second proviso, the following shall be substituted:

"Provided further that the subordinate court shall provide copies of the documents to a person within three days of the decision, and the High Court shall dispose of such application within six months,"; and

(b) after subsection (4), the following new subsection (5) shall be inserted:

"(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District Court under section 104."

**20. Amendment in section 151 of Act V of 1908.**- In the Act, in section 151, after the word "Court" occurring for the first time, the expression ", to be exercised after recording reasons in writing," shall be inserted.

#### **STATEMENT OF OBJECTS AND REASONS**

The Law and Justice Commission of Pakistan carries out regular and systematic review of the laws of the land with the view to improving the text and updating them to bring them in line with the modern requirements. For the purpose, Law and Justice Commission of Pakistan has recommended certain amendments in the Code of Civil procedure 1908, including increase in the cost and compensation and omission of the provisions relating to Small Cause Courts. Moreover, the pecuniary upper limit is required to be fixed for purposes of the second appeal; hence this Bill.

**MINISTER INCHARGE**

Lahore:  
31 January 2018

**RAI MUMTAZ HUSSAIN BABAR**  
Secretary

**ANNEXURE - B**  
**(BILL AS RECOMMENDED BY THE**  
**STANDING COMMITTEE ON LAW)**

A  
BILL

*further to amend the Code of Civil Procedure, 1908.*

It is necessary further to amend the Code of Civil Procedure, 1908 (V of 1908) for purposes of updating certain provisions of the Code.

Be it enacted by Provincial Assembly of the Punjab as follows:

**1. Short title and commencement.-** (1) This Act may be cited as the Code of Civil Procedure (Punjab Amendment) Act 2018.

(2) It shall come into force at once.

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**3. Omission of section 7 of Act V of 1908.-** In the Act, section 7 shall be omitted.

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**5. Amendment in section 12 of Act V of 1908.-** In the Act, in section 12, after subsection (2), the following new subsection (3) shall be inserted:

"(3) For purposes of the disposal of an application under subsection (2), the Court may, in the interest of expeditious disposal, apply such fair procedure as the circumstances of the case warrant, and shall, unless, for reasons to be recorded it directs otherwise, order any fact to be proved or disproved by affidavit."

**6. Amendment in section 24 of Act V of 1908.-** In the Act, in section 24, subsection (4) shall be omitted.

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"(c) order any fact to be proved or disproved by affidavit."

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**"33. Judgment and decree.-** The Court, after the case has been heard, shall pronounce judgment maximum within fifteen days and on such judgment a decree shall follow simultaneously."

**9. Amendment in section 35 of Act V of 1908.-** In the Act, in section 35, for subsection (1), the following shall be substituted:

"(1) Subject to such conditions and limitations, as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to all suits and other

proceedings in the suit including execution proceedings, shall follow the event, and the Court shall have full power to determine by whom or out of which property and to what extent such costs are to be paid, and to give all necessary directions for the purpose aforesaid.

(1a) The fact that the Court has no jurisdiction to try the suit shall be no bar to exercising the powers under subsection (1).".

**10. Amendment in section 35-A of Act V of 1908.**- In the Act, in section 35-A, in subsection (2):

- (a) for the words "twenty five thousand", the words "one hundred thousand" shall be substituted;
- (b) first proviso shall be omitted; and
- (c) in the second proviso, the expression ",further," shall be omitted.

**11. Substitution of section 44-A of Act V of 1908.**- In the Act, in section 44-A, the following shall be substituted:

**"44-A. Execution of decrees passed by Courts in the reciprocating territory.**- (1) Where a certified copy of a decree of any of the Superior Courts of the reciprocating territory has been filed in a District Court, the decree may be executed in Pakistan as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

**Explanation 1.** "Reciprocating territory" means such country or territory as the Federal Government may, from time to time, by notification in the official Gazette, declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

**Explanation 2.** "Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and does not include an arbitration award, even if such award is enforceable as a decree or judgment."

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- (a) in subsection (1), for the expression "and having obtained the consent in writing of the Advocate General", the expression "with the leave of the Court" shall be substituted; and
  - (b) for subsection (2), the following shall be substituted:
    - (2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to, except in conformity with the provisions of that subsection.
- 14. Substitution of section 95 of Act V of 1908.**- In the Act, for section 95, the following shall be substituted:
- "95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.**- (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction is granted under the last preceding section, it appears to the Court that:
- (a) such arrest, attachment or injunction was applied for insufficient grounds; or
  - (b) there was no reasonable or probable ground for making the application -
- the Court may, on its own motion or on the application of the aggrieved party, award such punitive compensation as it deems reasonable to the aggrieved party for the expense and injury caused to him.
- (2) In addition to the compensation awardable under subsection (1), the Court may also make an order directing the party at fault to deposit such amount in the public exchequer as the Court deems just, as penalty for abusing the process of the law and wasting the time of the Court.
- (3) An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction."
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- 17. Amendment in section 104 of Act V of 1908.**- In the Act, in section 104, after clause (ff), the following new clause (fff) shall be inserted:
- "(fff) an order under section 91 or section 92 refusing leave to institute a suit;"
- 18. Amendment in section 114 of Act V of 1908.**- In the Act, in section 114, for subsection (1), the following shall be substituted:
- "(1) Subject as aforesaid, any person considering himself aggrieved:

- (a) by a decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Code -

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

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- (a) in subsection (1), for the second proviso, the following shall be substituted:

"Provided further that the subordinate court shall provide copies of the documents to a person within three days of the decision, and the High Court shall dispose of such application within six months,"; and

- (b) after subsection (4), the following new subsection (5) shall be inserted:

"(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District Court under section 104."

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