

SMALL CLAIMS AND MINOR OFFENCES COURTS ORDINANCE, 2002

ORDINANCE XXVI OF 2002

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ORDINANCE

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to consolidate and enact the law relating to small claims and minor offences

WHEREAS it is expedient and necessary to consolidate and enact the law relating to small claims and minors offences and matters incidental thereto or connected therewith for providing inexpensive and expeditious disposal of such claims and offences;

AND WHEREAS, the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf; the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.-(1) This Ordinance may be called the Small Claims and Minor Offences Courts Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint in this behalf.

2. Definition.-(1) In this Ordinance, unless there is anything repugnant in the subject or context,--

(a) "amicable settlement" includes settlement through arbitration process, other than arbitration under the Arbitration Act, 1940 (X of 1940), mediation, conciliation or any other lawful means mutually agreed upon by the parties;

(b) "award" means findings of a Salis;

(c) "Court" means the Small Claims and Minor Offences Court established under section 4;

- (d) "Government" means the Provincial Government;
- (e) "prescribed" means prescribed by rules;
- (f) "rules" means rules made under section 42;
- (g) "Salis" means the person acting as conciliator, mediator or arbitrator.

(2) Any expression not specifically mentioned or defined in this Ordinance shall have the same meaning as defined in the Code of Civil Procedure, 1908 (Act V of 1908), and shall have effect accordingly.

3. Ordinance to override other laws. The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Establishment of Courts.-(1) The Government, in consultation with the High Court, may establish one or more Small Claims and Minor Offences Courts in each district or at such other place or places as it may deem necessary.

(2) The Court shall be presided over by a Civil Judge-cum-Judicial Magistrate.

(3) The local limits of jurisdiction of the Court shall be such as the High Court may by notification in the official Gazette, determine and define from time to time.

5. Jurisdiction.-(1) The Court shall have exclusive jurisdiction to:

(a) try all suits and claims arising therefrom, specified in Part I of the Schedule to this Ordinance, the subject-matter of which does not exceed one hundred thousand rupees in value for the purposes of jurisdiction:

Provided that the High Court may, by notification in the Official Gazette, vary such value from time to time; and

(b) try offences specified in Part II of the Schedule to this Ordinance.

6. Procedure in civil trials. Proceedings under this Ordinance relating to claims or suit shall be conducted in the manner hereinafter provided, namely:-

- (i) Every claim or suit before the Court shall be instituted by presentation of a plaint duly verified on oath or solemn affirmation;
- (ii) the plaint shall contain all material facts relating to the claim or dispute, a schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of witnesses and a brief summary of the facts to which they would depose;

- (iii) where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in the Court either in original or copy thereof alongwith the plaint;
- (iv) where a plaintiff relies on any other document, not in his possession or power as evidence in support of his claim, he shall enter such document in a list to be appended to the plaint, giving reasons of relevancy to the claim in the plaint;
- (v) the plaint shall be accompanied by as many copies thereof including the schedule and the lists of documents referred to in clause (4) as there are defendants in the suit, for service upon the defendants, and
- (vi) the plaint shall be accompanied by' one time process fee of twenty-five rupees.

7. Rejection of plaint.-(1) The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law.

(2) Where a plaint is rejected, the Judge shall record an order to that effect with reason for such order.

(3) The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

8. Process fee. The plaintiff shall, alongwith the plaint, pay one time process fee of twenty-five rupees for service of summons upon the defendants and postal stamps of the value of registered post acknowledgement due and where the Court orders for substituted service, deposit the charges of such substituted service, within three days of making such order failing which the suit may be dismissed.

9. Summons.-(1) The Court shall within two days of the presentation of the plaint, send to the defendant summons for final determination of the suit, through process-server and by registered post, acknowledgement due, together with the copies of the plaint, schedule of witnesses, documents or list of documents relied upon.

(2) Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family of the defendant who is residing with him.

(3) Every summons and its accompaniments under subsection (1) shall be served within fifteen days.

(4) Where the Court has reasons to believe that the defendant is avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of summons by-

- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant resides or is known to have last resided or carries or is known to have carried on business or personally works or is known to have worked for gain; or
- (b) any electronic device of communication which may include telegram, phonogram, telex, fax and e-mail, or
- (c) urgent mail service or public courier services, or
- (d) beat of drum in the locality where the defendant resides; or
- (e) publication in press, or
- (f) any other manner or mode as it may deem fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

(5) Substituted service by order of the Court shall be as effectual as if it had been made on the defendant personally.

(6) In case of substituted service, the Court shall fix such time for the appearance of the defendant, as the case may require, which shall not exceed fifteen days.

(7) The summons sent under subsection (1) shall contain direction to the effect that the defendant on his appearance on the date fixed shall file his written statement as provided by subsection (1) of section 11.

10. Appearance through Advocate or recognised agent.-(1) No Advocate shall act for any person in the Court, unless he has been appointed for the purpose by such person in writing signed by such person or by his recognized agent or by some other person authorised by or under a power of attorney to make such appointment.

(2) Any appearance, application or action in or to the Court, required or authorised by law to be made or done by a party may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent or by an Advocate on his behalf.

(3) Any process served on the recognised agent of a party or an advocate shall be as effectual as if the same has been served on the party in person, unless the Court otherwise directs.

(4) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

11. Written statement.-(1) The defendant shall on the date fixed, appear before the Court and file his written Statement duly verified on oath or solemn affirmation and attach therewith a list of his witnesses as also a summary of the evidence that each witness is expected to give:

Provided that the Court may, on sufficient cause being shown, permit to file written statement which shall not exceed fifteen days.

(2) Where a defendant relies upon a document in his possession or power, he shall produce it in original or a copy thereof in the Court alongwith the written statement.

(3) When the defendant relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents

in a list to be appended to the written statement, giving reasons of relevancy to the defence in the written statement.

(4) Copy of the written statement together with schedule of witnesses, documents and list of documents relied upon shall be given to the plaintiff, his agent or Advocate present in the Court.

(5) Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

12. Appearance of parties and effect of non-appearance, etc.-(1) Where on the day fixed for the defendant to file written statement, it is found that the summons have been served but the defendant has failed to file written statement without sufficient cause, the Court may proceed ex parte and pass decree:

Provided that if the Court is satisfied that the defendant was prevented by any sufficient cause, it may set aside the decree subject to and upon such terms as to costs, payment into Court or otherwise as it deems fit:

Provided further that no order shall be made under this subsection unless notice of the application has been served on the opposite-party.

(2) Where the Court has adjourned hearing of the suit ex parte, and the defendant on or before such hearing, appears and assigns good cause for his previous non-appearance, the Court may, upon such terms as it directs as to costs or otherwise, hear him in answer to the suit as if he had appeared on the day fixed for appearance.

(3) Where neither party appears when the suit is called for hearing, the Court may make an order that the suit be dismissed.

(4) Where the defendant appears and the plaintiff does not appear when the suit is called for hearing, the Court shall make an order that the suit be dismissed unless the defendant admits the claim, or part thereof in which case the Court shall

pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit to the extent of the part not admitted.

13. Final disposal of suit.-(1) Where it appears at the first hearing of the suit that the parties are not at a variance on any question of law or fact or that the dispute is of trivial nature, the Court, may, after recording brief statements of the parties or their counsel, dispose of the suit forthwith.

(2) If the suit is not disposed of under subsection (1), the Court shall ascertain upon which material propositions of fact or law, the parties are at variance, and shall proceed to dispose of the case in the manner provided hereafter.

14. Amicable settlement.-(1) Where at any stage of the proceedings, it appears to the Court either on application of any party or otherwise, that there exists a possibility of amicable settlement between the parties, the Court may, subject to consent of parties, through Salis or any other person, conciliate, arbitrate, mediate or resolve through, any other means, the claim or offence, as the case may be,

Provided that the Court shall not proceed for amicable settlement of offences which are non-compoundable or, for reasons to be recorded in writing, where it considers such settlement to be either against the public policy or interest of the State.

(2) If a settlement is reached between the parties to the claim or offence, a statement of compromise shall be prepared and the Court shall pass a decree accordingly.

(3) If a settlement is reached between the parties to the offence, the offence shall be deemed to have been compounded in terms of the compromise and the Court shall pass order accordingly.

15. List of persons for amicable settlement.-(1) The Chief Justice of High Court shall, in consultation with the District Judge, the President. Bar Association of the District or Sub-Division concerned, prepare a list of persons to act as Salis for effecting amicable settlement, which shall be maintained in the Court.

(2) The list of persons under subsection (1) may include retired Judges and lawyers.

(3) The parties may also nominate Salis other than the persons in the list maintained by the Court, and the Court may refer the suit or complaint to such person.

16. Appearance of parties for settlement.-(1) On receipt of reference the Salis shall make efforts for amicable settlement of dispute or complaint and submit his report with the time fixed by the Court.

(2) The Salis shall call the parties through registered post, telegram, fax, telephone or any other appropriate mode to a venue and on a day and time specified by him.

(3) The parties shall appear in person or through their representatives before the Salis and shall state their claim or defence in writing, supply copies of their pleadings or complaint and all other necessary documents as required by the Salis.

17. Responsibilities of the Salis. The Salis may-

(a) before proceeding in the matter, disclose to the Court any circumstance that may likely create an impression of a bias or which may prevent him from acting promptly, whereupon the Court shall direct the parties to nominate another Salis;

(b) facilitate negotiations between the parties and steer the direction of discussion with the aim of finding a mutually acceptable solution; and

(c) assist the parties in reaching an agreement.

18. Settlement of suit or complaint.-(1) If a settlement of a suit or complaint is reached between the parties, the Salis shall prepare a deed of settlement containing terms of such settlement, signed by the parties and submit it to the Court on the day fixed by the Court together with a certificate that the settlement between the parties was voluntary.

(2) The Salis shall make an award and submit it in the Court on or before the date fixed.

19. Objections on award.-(1) The Court shall, before passing a decree based on award, call objections of the parties to it within fifteen days of the receipt of award and settle such objections within fifteen days thereof.

(2) No separate proceedings shall lie in any other Court to challenge the validity of, the award on the plea of fraud misrepresentation on involuntary nature of the settlement of any other ground whatsoever.

(3) Where a person challenges the validity of the decree on the plea of fraud, misrepresentation or want of jurisdiction, he shall make an application to the Court within thirty days of passing the decree and no separate suit shall lie for it.

20. Payment of fees. The Court shall determine the amount of fees, if any, to be paid by the party or parties to Salis, against a valid receipt.

21. Non-commencement of settlement proceedings. If the parties fail to appear before the Salis or pay fees, as determined by the Court, the Salis may not proceed for settlement and inform the Court accordingly.

22. Failure of settlement. If no settlement is reached between the parties, the Salis shall record the statement of the fact, signed by the parties and submit it to the Court on or before the date fixed.

23. Prohibition of appearing in proceedings or as witness. The Salis conducting proceedings for amicable settlement shall not act in any capacity for any of the parties in connection with the matter in the suit or complaint in other proceedings nor shall he be called as a witness in such proceedings.

24. Prohibition of making record. Any information, statement, document and anything disclosed to the Salis during settlement proceedings shall be kept as confidential and no document including any transcript, formal record or audio-visual recording shall be made of the proceedings, except with the approval of the Salis and consent of the parties.

25. Prohibition of using information. No communication made in the settlement proceedings including information disclosed and views expressed shall be used in any other proceedings, whatsoever.

26. Commencement of trial in suit or claim. If the dispute or claim is not referred for settlement or no settlement is reached under subsection (1) of section 14 within forty-five days of the reference or such extended time as may be granted by the Court, on showing good cause the Court shall proceed to record evidence.

27. Evidence.-(1) In civil matters, the production of witnesses shall be the responsibility of the parties, except official witnesses whose appearance shall be determined by the Court in the interest of justice:

Provided that on the application of any party, the Court may also summon a witness.

(2) The evidence of the witness in attendance shall be taken orally in open Court by the Judge.

(3) The Court may-

- (a) record a concise statement of evidence of a witness where no appeal lies; and
- (b) record the evidence of a witness where an appeal lies in the case or the Court deems it necessary in the interest of justice, which shall be read over to the witness and signed by him.

28. Power to order any point to be proved by affidavit.-(1) The Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

29. Power to order attendance of deponent for cross-examination.-(1) Upon an application, evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

30. Matters to which affidavits shall be confined.-(1) An affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except interlocutory applications, on which statement of his belief may be admitted provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative nature, or copies of or extracts from documents, shall, unless the Court otherwise directs, be paid by the party filing the same.

31. Examination or re-examination of witness.-(1) The Court may, at any stage of the proceedings and under exceptional circumstances, call a witness for examination or re-examine a witness already examined, if so required for the ends of justice.

(2) The Court may refuse to summon a witness or enforce the summons already issued against the witness when in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable, or such application is moved in bad faith to protract the proceedings or to fill up any lacuna in the case of either party.

32. Conclusion of trial.-(1) The Court shall conclude the trial within sixty days by taking day-to-day hearing, unless prevented by good cause in which case, the case shall be disposed of within the next thirty days.

(2) On completion of evidence, the Court shall fix a date not exceeding seven days for hearing of arguments of parties.

(3) The Court shall, after the case has been heard, pronounce judgment in open Court within three days.

(4) The Court shall deliver to the parties, copies of judgment and decree on the day of pronouncement of judgment.

(5) Where a party is not present on the day for pronouncement of judgment a copy of judgment and decree shall be sent to the party under registered post, acknowledgment due, which shall be conclusive proof of the knowledge of judgment.

33. Costs. If in any suit or claim, the Court while pronouncing judgment comes to the conclusion that the claim or defence is false or vexatious, it may make an order for payment of costs as determined by the Court, not exceeding one-tenth of the value of subject-matter of the suit.

34. Procedure in criminal trial.-(1) In criminal proceedings, the Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1898 (Act V of 1898), and Qanun-e-Shahadat, 1984 (President's Order No. 10 of 1984).

(2) The Court shall have and exercise the power of a Judicial Magistrate of the First Class under the Code of Criminal Procedure, 1898 (Act V of 1898).

35. Execution of decree.-(1) A decree passed by the Court shall be executed by the Court itself or by another Court upon transfer for reasons to be recorded by the Court

passing the decree, and the transferee Court shall execute it as if the decree was passed by itself.

(2) All objections against execution of decree shall be determined by the Court executing the decree.

(3) The decree shall be executed a part of proceedings in the suit and no separate application shall lie for it.

(4) The Court shall continue the execution proceedings, except when stayed by the appellate Court.

(5) The cost in execution of decree shall be determined and paid as directed by the Court.

36. Inherent powers of Court. Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court in respect of resolving disputes mentioned in Part I of the Schedule.

37. Power of the Court. Subject to this Ordinance, the Court shall, for the purpose of any case under this Ordinance; have powers of a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling production or discovery of documents;
- (c) local inspection; and
- (d) issuing commission for examination of witnesses or documents.

38. Appeal in suits.-(1) An appeal shall lie to the Court of District Judge within thirty days of the passing of decree of final order by the Court.

(2) No appeal shall lie against the decree of the Court based on award, except on one or more of the following grounds, namely:-

- (a) that the Salis, has misconduct himself or the proceedings;
- (b) that an award has been made after the issue of an order by the Court superseding the Salis or after the proceedings of award have become invalid by the order of the Court; and
- (c) that a decree based on award has been illegally procured.

(3) No appeal shall lie from decree passed by the Court with consent of the parties.

(4) No second appeal shall lie against decree, judgment or order made under this Ordinance.

39. Appeal in criminal proceedings. An appeal in criminal proceedings shall lie to the Court of Sessions within thirty days of conviction:

Provided that an appeal against acquittal shall lie in accordance with the procedure prescribed under the Code of Criminal Procedure, 1898 (Act V of 1898).

40. Amendment in the Schedule. The High Court may amend the Schedule, from time to time, in the interest of justice.

41. Power to make rules. The High Court may, from time to time, after previous publication, make rules regulating the procedure of the Court.

42. Repeal and savings.-(1) On coming into force of this Ordinance, the Provincial Small Cause Courts Act, 1887 (IX of 1887), shall stand repealed.

(2) The repeal under subsection (1) shall not-

- (a) affect the previous operation of the law or anything duly done or suffered under the law;
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law;
- (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty forfeiture or punishment; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the law had not been repealed; and
- (e) affect any proceedings pending before any Court instituted before the commencement of this Ordinance and all suits, applications and proceedings connected with those proceedings or arising therefrom shall continue to be heard and disposed of by the Court, including the appellate Court, where they are pending immediately before the commencement of this Ordinance as if the law had not been repealed.

SCHEDULE

[See section 5]

PART.-I

1. Suit for recovery of money due on contract in writing, receipt or any other documents.
2. Claim for damages on account of contract in writing.

3. Suit for the specific performance or rescission of a contract in writing
4. Suit for recovery of movable property or, value thereof.
5. Suit for separate possession of joint immovable property through partition or otherwise
6. Suit for compensation.
7. Suit for redemption of mortgage property.
8. Suit for enforcement of easement rights. '
9. Suit for rendition of accounts of joint property.
10. Suit to restrain waste and remove nuisance
11. Disputes under the Canal and Drainage Laws.
12. Mesne profits of property.
13. Suit for compensation for wrongful taking or damaging movable or immovable property.
14. Suit for damages by cattle trespass. ,
15. Suit for damages and compensation arising out of traffic accidents
16. Any other relief not falling under the Schedule but agreed to by the parties to be settled under this Ordinance.

PART.-II

All offences in the Pakistan Penal Code (Act XLV of 1860), punishable with imprisonment not exceeding three years or with fine or with both.