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PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 16th October, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-66/2019/9661.— The Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 4th October, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 10th October, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2019. (KHYBER PAKHTUNKHWA ACT NO. XL OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 16th October, 2019).

AN
ACT

further to amend the Code of Civil Procedure, 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908 (Act V of 1908) for bringing procedural reforms in order to provide inexpensive and expeditious justice:

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2019.

(2) It shall extend to the Khyber Pakhtunkhwa Province.

(3) It shall come into force at once.

2. Insertion of new section 1A in Act No. V of 1908.---In the Code of Civil Procedure, 1908 (Act V of 1908), hereinafter referred to as the said Act, after section 1, the following new section shall be inserted, namely:

“1A. Primary Objectives of the Code.---The primary objective of this Code is to enable the Courts to-

- (a) deal with the cases justly and fairly;
- (b) encourage parties to alternate dispute resolution procedure if it considers appropriate;
- (c) save expense and time both of courts and litigants; and
- (d) enforce compliance with provisions of this Code.”

3. Substitution of section 3 of Act No. V of 1908.--- In the said Act, for section 3, the following shall be substituted, namely:

“3. Subordination of courts.---For the purpose of this Code, the hierarchy and subordination of Civil Courts shall be the same as prescribed in the West Pakistan Civil Courts Ordinance, 1962 (W.P. Ordinance No. II of 1962).”

4. Substitution of section 6 of Act No. V of 1908.--- In the said Act, for section 6, the following shall be substituted, namely:

“6. Pecuniary jurisdiction.--- Save in so far as is provided for the Peshawar High Court exercising original civil jurisdiction in Khyber Pakhtunkhwa, all civil suits shall be filed in the following manner, namely:

- (a) where the amount or value of the subject matter of the suit is below rupees fifty million, the suit shall be filed in the court of Civil Judge, as may be prescribed by the High Court; and
- (b) where the amount or value of the subject matter of the suit is above rupees fifty million, the suit shall be filed in the court of District Judge, as may be prescribed by the High Courts.”.

5. Omission of section 7 of Act No. V of 1908.--- In the said Act, section 7 shall be deleted.

6. Substitution of section 26 of Act No. V of 1908.--- In the said Act, for section 26, the following shall be substituted, namely:

“26. Institution of suits through plaint or otherwise.---(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) On presentation of the plaint, it shall be the duty of the Court to prima facie, satisfy itself of jurisdiction, cause of action and limitation:

Provided that if the Court does not satisfy itself, it shall be bound to record reasons for doing so.

(3) The plaintiff shall, at the time, file as many copies of the plaint and accompanying documents as there are defendants to the suit to be sent along with the summons and two extra copies of the entire set for the purpose of record.

(4) It shall be duty of the Court to maintain electronic records of proceedings in suits in the manner, as may be prescribed.

Explanation:- For the purpose of this sub-section suits include any proceedings in applications, appeals, review, revision or anything incidental thereto.”.

7. **Insertion of new sections 26A, 26B, 26C and 26D in the Act No. V of 1908.---** In the said Act, after section 26 as so amended, the following new sections shall be inserted, namely:

“26A. Written statement and proposed issues by the defendant.---(1) The defendant shall file written statement not later than thirty days from the date of service to him:

Provided that if the defendant fails to file written statement on the date fixed, the Court may grant an opportunity to file the same not later than fifteen days subject to payment of adjournment costs:

Provided further that if the defendant fails to file after the opportunity given under the first provision, a final opportunity may be given by the Court to file written statement not later than fifteen days subject to payment of adjournment costs after which the defendant shall lose the right of defence and the Court shall close the right to defend the case:

Provided also that the written statement may be allowed to be filed by the Court upon payment of costs to be determined by it, if the defendant through an application supported by an affidavit satisfies the Court that he had just and sufficient cause and the Court record reasons for it.

(2) The defendant shall file proposed issues along with the written statement:

Provided that if no issues are proposed by the defendant, the Court shall permit the defendant to file proposed issues not later than seven days upon payment of costs, to be determined by the Court.

(3) The defendant shall provide additional copies of written statement and of the documents annexed therewith for each of the parties and the Court.

26B. Proposed issues by the plaintiff.---The plaintiff shall file proposed issues not later than seven days from the date of receiving the written statement:

Provided that in case the plaintiff fails to file the proposed issues, the Court shall permit the plaintiff to file proposed issues not later than seven days upon payment of cost to be determined by the Court.

26C. Framing of issues, filling of list of witnesses and recording of evidence.---

(1) Not later than ninety days of the institution of a suit, the Court after considering the pleadings and issues proposed by parties to the suit, shall determine the material propositions of facts and laws, which the parties are at variance and frame issues.

(2) For the purposes of sub-section (1), the Court in its discretion, as it may deem fit, may proceed to frame issues without hearing.

(3) In case issues are framed without hearing, any party, not later than seven days of the framing of issues, may file an application seeking modification of the issues, which application shall be decided within fifteen days.

(4) After framing the issues, the Court shall order the parties to file list of witnesses not later than fifteen days.

(5) If any party fails to comply with the orders of the Court in sub-section (4), a final opportunity may be given by the Court to file list of witnesses not later than fifteen days subject to payment of adjournment costs.

(6) Immediately upon framing of issues and filing of the list of witnesses, the Court shall direct the recording of evidence through Commission in the prescribed manner.

(7) For the purpose of sub-section (6) of this section, the Court shall appoint a Commission from a list of approved panel of such Commission, comprising advocates and retired judges, maintained by the Court in the prescribed manner, on such fee and terms and conditions as determined by the Court.

(8) The parties shall file affidavits as evidence of their respective witnesses, before the Commission which shall be construed to be examination-in-chief.

(9) On the affidavits in evidence, the witnesses shall be subjected to cross examination and if necessary, just and expedient, shall be subjected to re-examination followed by cross-examination or re-examination.

(10) The Commission shall record the evidence and proceedings thereof in written and audio and video recording.

(11) Not later than ninety days of the order under sub-section (6), the Commission shall finalize the recording of the evidence and submit a report in this regard to the Court along with the complete written, audio and video record of the proceeding under sub-section (10).

(12) The High Court shall frame rules for the purposes of recording of evidence through Commission, inter alia, empowering the Commission to regulate the Commission's proceedings including but not limited to allowing or disallowing questions, documents, choosing sides, extension of Commission and passing such ancillary or other orders which are necessary to carry out the functions of the Commission.

26D. Hearing of final arguments.---(1) The Court shall, after submission or closing of evidence, as the case may be, fix a date not later than fifteen days, for hearing of final arguments by parties.

(2) The Court may require the parties to file their written arguments in addition to oral arguments."

8. Amendment of section 27 of Act No. V of 1908.--- In the said Act, in section 27, after the word "claim", the words "not later than fifteen days" shall be inserted.

9. Insertion of new section 27A in the Act No. V of 1908.--- In the said Act, after section 27 as so amended, the following new section shall be inserted, namely:

"27A. Process of summons to be simultaneous.---(1) Summons shall be sent simultaneously unless otherwise ordered by the Court, to the defendant, by registered post acknowledgment due and another copy of the summons by courier service signed and sealed in the prescribed manner, or as the Court may determine, by urgent mail service of Pakistan Post, at the cost of plaintiff.

(2) The acknowledgement, purported to be signed by the defendant, of the receipt of the registered communication or an endorsement by a courier messenger or postal employee that the defendant refused to take delivery of the summons shall be deemed by the Court issuing the summons to be prima facie proof of the service of summons.

(3) Simultaneously, the Court shall order service by-

- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;
- (b) any modern device including electronic device of communication which may include mobile, telephone, telegram phonogram, telex, fax, radio, television etc. in a prescribed manner;
- (c) urgent mail service or public courier services;
- (d) beat of drum in the locality where the defendant resides;
- (e) announcement through, mosque, temple, community centre etc.;
- (f) publication in the press in the prescribed manner; or
- (g) any other manner or mode as it may think fit;

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

(4) If the defendant fails to appear, the Court may direct service again by any of the modes mentioned in sub-section (3) to appear on a date not later than seven days.

(5) Location of bailiff or process-server serving the summons shall be monitored by modern devices, in a prescribed manner, and a photograph shall be taken of the defendant or the premises or the person accepting summons on behalf of the defendant and be made part of the record as a proof of delivery.”.

10. Amendment of section 33 in Act No. V of 1908.---In the said Act, in section 33, after the word “judgment”, the words “within ninety days of the final hearing” shall be inserted.

11. Insertion of new section 75A in Act No. V of 1908.---In the said Act, after section 75, the following new section shall be inserted, namely:

“75A. **Spot checks.**---(1) In order to further the primary objective mentioned in section 1A, in any proceedings in a suit, the Presiding Officer of the Court in its discretion may, on his own or at the application of any of the parties, at any stage may carry out spot checks including inspection of documents and premises in order to ascertain issues of partition, demarcation, possession, state of construction and anything incidental and ancillary thereto.”

Explanation-I:- For the purposes of this sub-section, spot checks may be carried out after passing of decree to ensure Court orders are implemented as decreed.

Explanation-II:- For the purposes of this sub-section spot checks conducted by Presiding Officer of a Court shall not be construed to be an inspection through the appointment of Commission.

(2) The Court may call for the evidence of any person or documents at the spot.

Explanation:- For the purpose of this sub-section, person includes parties to the suit, individuals present at the spot or any individual the Court may deem proper to give evidence in the matter in issue.

(3) After conducting spot checks an interim order recording the findings of the spot inspection shall be prepared and signed by the Presiding Officer of the Court:

Provided that the interim order shall state the date, time, purpose of visit, evidence recorded and interim finding.

(4) The Presiding Officer, in his discretion shall be entitled to pass an order or judgment upon the basis of interim order mentioned in sub-section (3) of this section, provided the same is confronted to all the parties, who are given a reasonable opportunity to file objections to the same.”.

12. Substitution of section 96 of Act No. V of 1908.---In the said Act, for section 96, the following shall be substituted, namely:

“96. Appeal from final judgment or decree.---Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court not later than thirty days from every final judgment passed by any Court exercising original jurisdiction on any question of law or fact erroneously determined by the original court and the High Court shall decide the appeal within ninety days.”.

13. Deletion of sections 100, 101, 102 and 103 of Act No. V of 1908.---In the said Act, sections 100, 101, 102 and 103 shall be deleted.

14. Amendment of section 106 of Act No. V of 1908.--- In the said Act, for section 106, the following shall be substituted, namely:

“106. What Courts to hear appeals.--- Appeals against order passed under this Code shall lie to the Court, directly from its subordinate court exercising original jurisdiction adjudicating the suit, in the prescribed manner.”.

15. **Amendment of section 111 of Act No. V of 1908.**---In the said Act, in section 111, clause (b) shall be deleted.

16. **Amendment of section 114 of Act No. V of 1908.**---In the said Act, in section 114,

(a) in clause (b), the word "or", occurring at the end, shall be deleted; and

(b) for clause (c) the following shall be substituted, namely:

"(c) 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."

17. **Substitution of section 115 of Act No. V of 1908.**---In the said Act, for section 115, the following shall be substituted, namely:-

"115. Revision.---Any party aggrieved by an order under section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case may be, may, within thirty days of the said order, file a revision to the High Court on an obvious misapprehension of law or in respect of a defect in jurisdiction."

18. **Amendment of section 128 of Act No. V of 1908.**---In the said Act, in section 128, after sub-section (2) the following new sub-section (3) shall be added, namely:

"(3) The High Court shall make rules, not inconsistent with the provisions of this Code, for case management and scheduling, conferences binding the parties to follow the schedules and timelines prescribed therein."

19. **Substitution of section 141 of Act No. V of 1908.**---In the said Act, for section 141, the following shall be substituted, namely:

"141. Proceedings regarding application for injunctions and other miscellaneous application and issues.---(1) The procedure provided in this Code with regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

(2) All suits, in which interlocutory applications have been filed, shall have duplicate sets, one of which shall be placed in the Court hearing the main suit and other shall be placed in the Court hearing interlocutory applications.

(3) At all material times, the respective offices of the two Courts mentioned in sub-section (1) of this section, shall keep both the files in the two Courts, updated and tallied with each other in duplicate and identically including the respective orders and diary sheets.

(4) Both the courts hearing the main case and the interlocutory applications respectively shall proceed collaterally according to the timelines prescribed in this Code and rules or by any order of the Court.

Explanation:- It is clarified that the pendency of any interlocutory application shall be no ground to stay or delay the proceedings before the Court hearing the main case.

(5) All applications for addition, deletion and substitution of parties, amendments to pleadings, modification or alteration of issues, rejection of plaint, and stay of suits shall be heard and adjudicated by the Court hearing the main case, while all other applications shall be construed to be interlocutory applications warranting to be filed and decided by the Court hearing the interlocutory applications.

(6) The filing of any application including an application for the rejection of the plaint or a dismissal of suits shall be no ground to dispense with or waive the requirement of filing a written statement within the timelines prescribed in this Code.

(7) This section shall have effect notwithstanding any other provision in this Code or any other law for the time being in force.”

20. Amendment of section 151 of Act No. V of 1908.---In the said Act, in section 151, after word “Court” occurring for the first time, the words “to be exercised after recording reasons” shall be inserted.

21. Insertion of new section of Act No. V of 1908.---In the said Act, after section 158, the following new section shall be added, namely:

~159. Savings of proceedings.---All proceedings instituted prior to the enactment of the Code of Civil Procedure (Amendment) Act, 2019 shall be deemed to proceed and dealt in accordance with the provisions of the Code of Civil Procedure Act, 1908 (Act No. V of 1908), which existed prior to the said amendment Act.

Explanation:- In this section, the expression “proceedings” includes suits, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto.”

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa