

[AS PASSED BY THE SENATE]

Bill

*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) in its application to the Islamabad Capital Territory in the manner and for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.—(1) This Act shall be called the Code of Civil Procedure (Amendment) Act, 2023.

(2) It shall come into force at once.

2. Substitution of section 6, Act V of 1908.—In the Code of Civil Procedure, 1908 (Act V of 1908), hereinafter referred to as the said Act, for section 6, the following shall be substituted, namely:-

“6. Pecuniary jurisdiction.—Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.”.

3. Amendment of section 26, Act V of 1908.—In the said Act, for section 26, the following shall be substituted, namely:-

“26. Institution of suit.—Every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed.”.

4. Omission of sections 26A, 26B, 26C and 26D, Act V of 1908.- In the said Act, sections 26A, 26B, 26C and 26D shall be omitted.

5. Amendment of section 27, Act V of 1908.- In the said Act, in section 27, the words "not later than fifteen days" shall be omitted.

6. Omission of section 27A, Act V of 1908.- In the said Act, section 27A shall be omitted.

7. Amendment of section 33, Act V of 1908.- In the said Act, in section 33, the words "within ninety days of the final hearing" shall be omitted.

8. Omission of section 75A, Act V of 1908.- In the said Act, section 75A shall be omitted.

9. Substitution of section 96, Act V of 1908.- In the said Act, for section 96, the following shall be substituted, namely:-

"96. Appeal from original decree.- (1) 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 from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex-parte*.

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

**10. Substitution of omitted sections 100, 101, 102 and 103, Act V of 1908.-** In the said Act, for omitted sections 100, 101, 102 and 103, the following shall be substituted, namely:-

**"100. Second appeal.-** (1) Save where otherwise expressly provided in the body of this Code or in any other law, for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to that High Court, on any of the following grounds, namely:-

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

**101. Second appeal on no other grounds.-** No second appeal shall lie except on the grounds mentioned in section 100.

**102. No second appeal in certain cases.-** No second appeal shall lie in any suit except when the amount or value of the subject matter of the original suit does not exceed the amount or value as may be prescribed.

**103. Power of High Court to determine issues of fact.-** In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for disposal of the appeal which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100."

**11. Substitution of section 106, Act V of 1908.-** In the said Act, for section 106, the following shall be substituted, namely:-

**"106. What Courts to hear appeals.-** Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court."

**12. Amendment of section 111, Act V of 1908.-** In the said Act, in section 111, after clause (a), for the omitted clause (b), the following shall be substituted, namely:-

"(b) from any decree from which, under section 102, no second appeal lies."

**13. Substitution of section 114, Act V of 1908.-** In the said Act, for section 114, the following shall be substituted, namely:-

**"114. Review.-** (1) Subject as aforesaid, any person considering himself aggrieved by a degree or order from which-

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

(b) no appeal is allowed by this Code,

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

**14. Substitution of section 115, Act V of 1908.-** In the said Act, for section 115, the following shall be substituted, namely:-

**"115. Revision.-** (1) A High Court may call for the record of any case which has been decided by any Court subordinate to that High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law; or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court:

Provided further that such application shall be made within ninety days of the decision of the subordinate Court which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.

(2) A District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to that District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If an application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under sub-section (2) by the District Court.”.

15. **Substitution of section 141, Act V of 1908.-** In the said Act, for section 141, the following shall be substituted, namely:-

**"141. Miscellaneous proceedings.-** 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."

16. **Amendment of section 159, Act No. V of 1908.-** In the said Act, for section 159, the following shall be substituted, namely:-


**"159. Savings of proceedings.-** All proceedings instituted prior to the commencement of the Code of Civil Procedure (Amendment) Act, 2023 (Act of 2023) shall be deemed to be the proceedings of, and dealt in accordance with, the provisions of this Code which existed prior to the aforesaid commencement.

*Explanation.-* In this section, the expression "proceedings" includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto."

#### STATEMENT OF OBJECTS AND REASONS

The Code of Civil Procedure (Amendment) Act, 2020 (Act No.VII) which was enacted on 21<sup>st</sup> February, 2020 and is applicable to the extent of Islamabad Capital Territory, Islamabad. A number of reservations had been raised by members of the Islamabad Bar Association, Islamabad Bar Council and District Judiciary regarding implementation of the 2020 Act. A consequential effect of amendments in the civil procedure is that the judges, lawyers and litigants are suffering as they are now required to litigate at two different courts. Each civil judge is hearing a main suit filed before his Court and simultaneously hearing injunction applications of other Courts. This practice had exacerbated the backlog of pending cases. Parties are forced to travel between Courts which are adding to their time and costs as well as their counsels. Deletion of right of revision under section 115 of the Code of Civil Procedure, 1908 had contributed to excessive litigation before High Court under its constitutional jurisdiction further adding to cost and misery of parties falling prey to unintended consequences. In essence, the 2020 Act had defeated the purpose of quick access to justice, inexpensive, speedy and fair trial.

The Bill has been designed to achieve the aforesaid objectives.

  
(Minister-in-charge)