

ORDER XLV-A

EXECUTION OF ORDER OF FEDERAL COURT

1. (1) Whoever desires to obtain execution of an order of the Federal Court made under sub-section (2) of Section 209 of Government of India Act, 1935, shall apply by petition, accompanied by a certified copy of the order sought to be executed, to the High Court from which the appeal to the Federal Court was preferred.

(2) The High Court shall transmit the order of the Federal Court to the Court which passed the first decree appealed from or to such other Court as the High Court may deem fit and may give such directions as may be required for the execution of the same. The Court to which the said order is transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

2. The provisions of Rule 16 of Order XLV shall apply *mutatis mutandis* to the execution of decrees or orders for cost passed by the Federal Court in appeals from the High Court.

ORDER XLVI

REFERENCE

1. Reference of question to High Court.--Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties draw up a statement of the facts of the case and the point on

1. Subs. by P.O. 1961 (1 of 1961), Art. 2 and Sch. (the 23rd March, 1956), for "His Majesty-in-Council".

which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. Court may pass decree contingent upon decision of High Court.--The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. Judgment of High Court to be transmitted, and case disposed of accordingly.--The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Costs of reference to High Court.--The cost (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. Power to alter, etc., decree of Court making reference.--Where a case is referred to the High Court under Rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6. Power to refer to High Court questions as to jurisdiction in small causes.--(1) Where at any time before Judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.--(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable failed

to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court make for any record or information for the purpose of this rule.

High Court Amendments. Sindh Add the following as Rule 8: "Rule 88 of Order XLI shall apply, so far as may be, to proceedings under this Order".

ORDER XLVII

REVIEW

[See Section 114]

1. Application for review of judgment.--(1) Any person considering himself aggrieved--

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to

the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

COMMENTS

Scope of review. A judgment can be reviewed in civil proceedings on the grounds similar to those mentioned in Order XLVII, Rule 1 of CPC. [PLJ 2011 SC (A/J&K) 17]

Limitation. Period of limitation as provided by Art. 173, Limitation Act for review of judgment except in the cases provided for by Arts. 161 & 162 is ninety days, from the date of the decree or order. It is fifteen days of judgment by a Court of Small Causes (Art. 161) and twenty days of judgment by a High Court in the exercise of its original jurisdiction. [Art. 162 Non-availing the remedy available under the law against the basic order and instead prosecuting the review application in the same Court would not entitle the petitioner to the benefit u/S. 14, Limitation Act. [PLD 2000 S.C 63]. Person availing one of the permissible remedy against ex parte decree is precluded to file review petition. [2000 SCMR 296].

Application for review of judgment. Revisional Court was justified to reverse judgment of the trial Court. Trial Court had erred in law to assume jurisdiction and passed consent decree after 31.7.1986. Consent decree cannot be bestowed the jurisdiction by trial Court. Decree passed by trial Court on compromise in absence of any mandatory requirements of *talb* was contrary to law hence void which was validly set aside by revisional Court and affirmed by High Court. [PLJ 2010 SC 1021]

Section 5, Limitation Act. Section 5 of Limitation Act is applicable to application seeking condonation of delay in review application. [1991 SCMR 1399].

Time consumed in review. It is axiomatic and an elementary principle that once limitation starts running nothing can stop it. [PLD 1968 S.C. 213; 1988 SCMR 179]. Exclusion of time spent in prosecuting the review can be sought under Ss. 5 and 14, Limitation Act but there is no occasion to hold that the time itself would start running from the date of decision of the review application. [1994 MLD 2442].

Review petition. Scope of review is otherwise very limited, it may be exercised in the event of discovery of new matter which was not within the knowledge of the petitioner or could not be produced by him at the time of making order or if there is any mistake apparent on the face of record. [PLJ 2011 Peshawar 335] Review can be filed for rectification of any mistake or error apparent on face of record. [PLJ 2014 Kar. 202]

2. To whom applications for review may be made.--An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as if referred to in Rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the

Judge who passed the decree or made the order has ordered notice to issue under Rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. Form of application for review.--The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. Application where rejected.--(1) Where it appears to the Court that there is no sufficient ground for a review, it shall reject the application--

(2) Application where granted. Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that--

- (a) no such application shall be granted without previous notice to the opposite-party, to enable him to appear and be heard in support of the decree order, a review of which is applied for; and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decrees or order was passed or made, without strict proof of such allegation.

COMMENTS

Notice. Where review sought in respect of an order dismissing an appeal in a summary manner, no notice is necessary to the respondent. Where a Court comes to a conclusion that the order passed by it is without jurisdiction or suffered from illegality on the face of the record, it has inherent powers incidental to the dispensation of justice to recall that order. [1990 CLC 220].

5. Application for review in Court consisting of two or more Judges.--Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

COMMENTS

Scope. Two conditions contemplated by R. 5, which, unless satisfied, review petition cannot be heard by any Judge or Judges of the High Court who had not

participated in judgment, decree or order sought to be reviewed. Review petition is to be heard by same Bench in absence of any disability or disqualification of any Judge to hear petition. [PLD 1999 Kar. 87].

6. Application where rejected.--(1) Where the application for a review is heard by more than one Judges and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable.--(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was--

- (a) in contravention of the provisions of Rule 2,
- (b) in contravention of the provisions of Rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for re-hearing.--When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. [Bar of certain applications.--(1) No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.

(2) Nothing in this Order shall apply to any judgment pronounced or order made by the Superior Court.]

High Court Amendments, Sindh. Add the following as Rule 10: "10. Rule 28 of Order XLI shall apply, so far as may be, to proceedings under this Order."

ORDER XLVIII

MISCELLANEOUS

1. **Process to be served at expense of party issuing.**—(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) **Costs of service.** The Court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

COMMENTS

Review jurisdiction. Ground of an error apparent of the face of the record. Review jurisdiction is exercisable by the Court on grounds akin to those mentioned in Order 47, Rule 1 of CPC in civil proceedings and in criminal proceedings on the ground of an error apparent on the face of the record. [PLJ 2010 SC 442]

2. **Orders and notices how served.**—All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. **Use of forms in appendices.** The forms given in the appendices, with such variation as the circumstance of each case may require, shall be used for the purposes therein mentioned.