

## FEES IN THE HIGH COURT<sup>1</sup>

3. Levy of fees in High Courts on their original sides. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the <sup>2</sup>[High Courts]

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14 <sup>3</sup>[....] 20 and 21 of the Second Schedule to this Act annexed;

<sup>4</sup>[\*\*\*\*\*]

shall be collected in manner hereinafter appearing.

4. Fees on documents filed, etc. in High Courts in their extraordinary jurisdiction. No document of any of the kinds specified in the first or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the. <sup>5</sup>[\*\*\*\*\*] High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction, or in the exercise of its jurisdiction as regards appeals from the <sup>6</sup>[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more judges of the said Court, or of a Division Court;

as Courts of reference and revision, or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

1. Omitted by Central Laws (Statute Reform) Ordinance, 1960.

2. Substituted *ibid.*, (w.e.f. 14th October, 1955).

3. No "16" repealed by the Amending Act, 1891 (12 of 1891).

4. Omitted by G.G.O. 4 of 1949, sch.

5. The word "said" omitted by the Central Laws (Statute Reform) Ordinance XXI of 1960.

6. Subs. S 2 of the Courts (Amendment) Act, 1922 for "judgment of two."

## COMMENTS

**Duty of the Court.** It is duty of the Court to determine the Court-fee to be supplied and fix a date within which the deficiency is to be made out. [1993 SCMR 1113].  
**Duty of Ministerial Officer of the court** to check suit or appeal in all respects before putting up same before Judge for admission or otherwise. [PLJ 2003 Kar. 75].

**Government functionary.** The mere fact that petitioners are Government functionaries and they require sufficient time to go through certain formalities for obtaining sanction of head-office, does not provide for a different treatment in matter of making up of deficiency because in the matter of Court-fee government and citizens have to be treated alike. [PLJ 1996 Lah. 957].

**Appeal before High Court.** Mistake/omission of the appellant regarding non-payment of proper Court-fee on the memo., of appeal was neither deliberate nor contumacious act on the part of appellant, an opportunity was, therefore, to be afforded to the party for payment of deficient Court-fee, before dismissal of appeal on that account. High Court, in circumstances, allowed ten days' time to the appellant from the date of present judgment to make payment of proper Court-fee on the memo., of appeal. [2005 CLC 1969].

**Value of suit changed by Court.** Where the valuation of the suit fixed by the plaintiff has been changed by trial Court valuation for appeal would be the same as fixed by the Trial Court. [1999 MLD 985].

**5. Procedure in case of difference as to necessity of amount of fee.** When any difference arises between the officer whose duty it is to see that any fee is paid under this Chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the <sup>7</sup>[...] High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

<sup>8</sup>(2) [xxx]

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

## COMMENTS

**Direction of Taxation Officer.** Taxing officer directing appellant to pay Court-fee on the value of the subject-matter of appeal within thirty days. Appellant

7. The word "said" omitted by the Central Laws (Statute Reform) Ordinance, 1960 S. 2 and 2nd Schedule (with effect from 14th October 1955).

8. Paragraph 2 omitted *ibid.*, (w.e.f. 14th October 1955).

challenged the order in the High Court and then before the Supreme Court. But of no avail. Court-fee deposited in the meanwhile but at a belated stage. Appellant having failed to comply with the order of Taxing Officer within stipulating time appeal liable to be rejected. [1991 CLC 1655].

### Chapter III

## FEES IN OTHER COURTS AND IN PUBLIC OFFICES

**6. Fees on documents, filed etc. in Mufasal Courts or in public offices.** Except in the Courts hereinafter mentioned, no document of any of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

### COMMENTS

**Duty of the Court.** Duty of ministerial officer of the Court to check suit or appeal in all respects before putting up same before Judge for admission or otherwise. [PLJ 2003 Kar. 175].

**Deficiency of Court fees.** No suit can be dismissed on account of efficiency in the payment of Court fee unless atleast one opportunity is given to the plaintiff to make it up after its calculation by the Court. [PLD 2007 AJ&K 1].

**7. Computation of fees payable in certain suits for money.** The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

### EXEMPTION FROM COURT-FEE

**Province of Punjab.** Section 2 of Punjab Ordinance X of 1983 provides <sup>1</sup>[notwithstanding anything to the contrary contained in the Court Fees Act, 1870, (VII of 1870) or any other law for the time being in force or in any Rule, Notification or Order, no Court-fee shall be chargeable by any Court or payable in respect of:-

- (a) any criminal case; and
- (b) any case of civil nature the value of the subject-matter whereof or the relief claimed wherein does not exceed twenty-five thousand rupees.

**Explanation.** The aforesaid abolition of Court-fee shall be applicable at all stages of the case and in respect of all Courts including revenue Courts.]

[S. 7]

**Province of Sindh.** <sup>2</sup>Notwithstanding anything contained in the Court Fees Act, 1870 (Act VII of 1870), no Court-fee shall be payable in criminal case and, a case of civil nature the value of which does not exceed <sup>3</sup>(fifty thousand rupees).

**Province of N.W.F.P.** Notwithstanding anything contained in the Court Fees Act, 1870 (VII of 1870), no Court-fee shall, except as provided in S. 2-A be payable in:--

- (a) any criminal case; and
- (b) any case of civil nature the value of the subject-matter whereof, or relief claimed wherein, does not exceed <sup>5</sup>(twenty-five thousand rupees).

(i) **For money.** In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities or of other sums payable periodically) according to the amount claimed:

(ii) **For maintenance and annuities.** In suits for maintenance and annuities or other sums payable periodically according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

(iii) **For movable property having a market value.** In suits for movable property other than money, where the subject-matter has a market value according to such value at the date of presenting the plaint:

(iv) **In suits:**

(a) **For movable property of no market value:** for movable property where the subject-matter has no market value, as, for instance, in the case of documents relating to title,

#### AMENDMENTS MADE IN CL. 7(IV)

**Province of Punjab.** In clause (iv), the comma at the end shall be replaced by a colon and thereafter the following proviso shall be added:

["Provided that nothing in this clause shall apply to suits mentioned in clause (iv-A)"]

After the existing clause (iv), the following new clause shall be added:-

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2. Sindh Ord. XIII of 1978, S. 2.
  3. Subs. by Sindh Act IV of 1990, S. 7.
  4. N.W.F.P. Ord. XIV of 1978, S.2.
  5. N.W.F.P. Court-fees (Abolition) (Amendment) Ord. 1980.

(iv-A) For a declaratory decree regarding immovable property on the basis of alleged sale etc. In suits for a declaratory decree with or without consequential relief as to right in or title to immovable property based on alleged sale, gift, exchange or mortgage—According to the value of the property:]<sup>1</sup>

Province of Baluchistan. Notwithstanding anything contained in clause (i), in suits for a declaratory decree with or without consequential relief as to right in, or title to immovable property based on alleged sale, gift, exchange or mortgage thereof according to the value of the property.<sup>2</sup>

Province of Sindh. Notwithstanding anything contained in clause (iv), in suits for a declaratory decree with or without consequential relief as to right in, or title to immovable property based on alleged sale, gift, exchange or mortgage thereof according to the value of the property.<sup>3</sup>

(b) To enforce a right to share in joint family property. To enforce the right to share in any property on the ground that it is joint family property,

(c) For a declaratory decree and consequential relief. To obtain a declaratory decree or order, where consequential relief is prayed,

(d) For an injunction. To obtain an injunction,

(e) For easements. For a right to some benefit (not herein otherwise provided for) to arise out of land, and

(f) For accounts. For accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all suits the plaintiff shall state the amount at which he values relief sought.

### COMMENTS

Value of Court fee for purpose of jurisdiction in matter of appeal. If the suit was for money including suit for damages or compensation or arrears of maintenance of annuities as of other sums payable periodically, the amount of fee is payable according to value of subject matter. [PLJ 2013 Lahore 107]

Jurisdiction. Jurisdiction of Court cannot be ousted by undue overvaluation of claims made in a suit as it amounts to fraud upon law. Court should not allow a plaintiff

<sup>1</sup> Added by Punjab Finance Act 1973.

<sup>2</sup> Added by Baluchistan Ordinance IX 1981, S. 3.

<sup>3</sup> Added by Sindh Act. XIII of 1974, S. 3, Sindh Act, XV of 1975, S. 2.

to evade the law relating to the matters of jurisdiction. Where it is found that plaintiff has deliberately exaggerated his claim in order to bring his suit in a Court which otherwise would not have jurisdiction, the plaint should be returned for representation before Court of appropriate jurisdiction. [PLJ 2006 Kar. 309].

**Pre-emption suits.** Value for the purpose of Court fees would be ten times of the revenue so payable. Land forming a definite share of estate and assessed to land revenue of Rs. 20. Jurisdictional value of same would be thirty times of said land revenue. [2000 YLR 2404]. Valuation of the original suit as determined under Section 3 Suit Valuation Act for purposes of jurisdiction would be the determining factor and not market value and sale price of subject-matter of suits. [1995 MLD 737].

**Fixation of notional value for purpose of Court-fee and jurisdiction for possession of agricultural land is not proper.** It should be valued u/S. 3. [PLD 1995 SC 393].

**Court-fees.** Plaintiff has been authorized by this Section to value of the suit and pay Court-fee thereon as framed by him and the same is not open to the Court to object that the suit has not been properly framed. In case of arbitrary valuation or if the valuation is fictitious the Court has power to interfere. [PLD 2001 Kar. 1].

**Valuation assessed changed by Court.** When the valuation assessed in the plaint has been changed by the trial Court valuation for appeal would be the one fixed by the Court. [1999 MLD 985].

**Market value.** Terms "market value" and "value of the property" as used in Section 7(v) and 7 (iv-a) is different. Value is referable to document/transaction where the document is on record with its valuation, that valuation will be value of the property. Within meaning of S. 7(iv-a) of the Court Fee Act. [PLD 2001 Lah. 3].

**Benami Transaction.** Factum of sale by itself being not disputed in controversy relating to benami transaction and dispute virtually remaining confined to determine the nominal and real owner of property, provision of S. 7 (iv-a), Court Fees Act 1870, was not attracted. Plaintiff would be at liberty to state, in terms of S. 7(iv-c), Court Fees Act, 1870, the amount at which he values the relief sought. [1995 MLD 316].

**Court-fee for possession of immovable property.** Court-fee for the suit for possession of immovable property, deriving title or on the basis of impugned document in which the plaintiff is executing party has to be calculated on the market value of the land in view of S. 7(v-a) Court Fees Act as amended. It has to be determined on the basis of prevailing market value of the land at the time of filing the suit. [1998 CLC 27].

**Valuation for appellate forum.** Valuation of the suit would be the same which has been disclosed in the plaint for the purpose of the jurisdiction of the Court. [1990 CLC 1891].

**Suit for declaration.** Plaintiff's claim not based on alleged mortgage and instead he was seeking declaration to the effect that his right of ownership in regard to land is not affected by a document relied upon by defendant. Suit of plaintiff, does not attract provisions of S. 7(iv-a), Court Fees Act, but falls within purview of S. 7(iv-c).

plaintiff to state amount at which he values the relief sought. [1995 MLD 1023]. For the purpose of declaration and injunction the Court-fee is not required to be paid ad valorem on the market value of the subject property and the plaintiff can determine his valuation about Court-fee and jurisdiction. [1988 CLC 27]. Suit for declaration to the effect that the plaintiff be declared as legal and lawful owner of suit land on the basis of impugned document, e.g., gift sale or exchange, etc. ad valorem Court-fee is required. [2000 YLR 1564]. Suit for declaration regarding mutation is covered by Section 7(iv-c) of the Court Fees Act, 1870 and the plaint which is valued at Rs. 200 held in accordance with law. [2007 CLC 36].

**Suit for rendition of account.** Plaintiff according to S. 7(iv-f) is entitled to fix notional value for purpose of Court-fee which, according to S. 8 of Suits Valuation Act, 1887 would also be the value for jurisdiction. When a final decree is passed only then the Court can require plaintiff to pay difference between Court Fees actually paid and fee which would have been payable on the amount decreed. [2000 CLC 1598].

**Suit for declaration and injunction.** Court-fee is not required to be paid ad valorem on market value of subject property. Plaintiff could determine his own valuation about Court-fee and jurisdiction. [1998 CLC 27].

#### Clause (iv-b)

**Suit for partition.** When suit for partition is filed same cannot be valued for the purpose of Court. Merely because defendant is an occupation of front portion of property purporting to be of higher value would not give him right to more benefits than what was possessed by plaintiff. Concept of owelty is not applicable to such cases. [2006 CLC 401]. Fee for more than Rs. 10 which is fixed according to Article 17(vi) Schedule II of the Court Fees Act, 1870 as that at stage share of plaintiff in the property is not separated and valued but subsequently when share of plaintiff is specified and its value is fixed then it would fetch *ad-valorem* Court fee according to valued share of plaintiff. Share of plaintiff in the property having been valued Rs. 6,00,000, it is duty of the plaintiff to value his appeal at Rs.6,00,000 and to fixed Court fees *ad-valorem* according to Article 1 Schedule I of Court Fees Act, 1870. [2007 CLC 532].

Provisions of 7(iv) has given discretion to the plaintiff to value his suit as he deems appropriate. Words used in concluding part of S. 7(iv)(c) of Court Fees Act, 1870 are "according to the amount at which the relief is valued in the plaint" and "the plaintiff shall state the amount at which he values the reliefs sought". Object of entrusting the plaintiff with such an absolute discretion in cases covered by S. (iv) appears to be that it was difficult for the lawmakers to provide basis for valuing the suit covered under S. 7 with any precision. Once the plaintiff puts his own valuation to a suit covered under S. 7(iv)(c), the jurisdiction of the Court where suit is to be tried is determined and in such cases defendant does not have the option to seek interference of the Court for re-determination of the value in order to seek change in the 'forum before which suit is to be tried as the Court cannot question plaintiff's valuation, however, arbitrary it may be. Where, however, the plaintiff puts value for the purposes of declaration and also for the purpose of other reliefs it is the cumulative value of all the reliefs which determines the jurisdiction of the Court before which the suit is to be filed. [PLJ 2006 Kar. 309].

**Aggregate computation.** Section 7(iv)(c) only speaks about seeking relief of declaration and consequential relief, it does not speak of the nature of declaration or of the consequential relief, which a plaintiff has to seek in a suit. Nature of relief entirely depends upon the grievance, which the plaintiff brings to the Court and is discernible from the contents of the plaint. All such reliefs, which flow from the contents of the plaint are legally permissible and can be sought by a plaintiff. No restrictions can be imposed on the nature of declarations, which a plaintiff can seek as long as they are lawful and arise from the contents of plaint. [PLJ 2006 Kar. 309].

**Value of Court-fee.** Plaintiff is entitled to ask for any relief to which he is entitled under the law which relates to his claim either to any legal character or to a right in a property. In order to seek declaration or consequential relief it is not necessary that such reliefs must find mention in S. 7(iv)(c), Court Fees Act. Plaintiffs are therefore justified in seeking declaratory reliefs with regard to dissolution of the firm or for declaration with regard to their claim of forgery of documents. [PLJ 2006 Kar. 309].

**Suit for declaration.** Where specific relief claimed in a declaratory suit is either surplus-age or consequential relief same would flow from original relief of declaration claimed in plaint and suit would thus fall under Schedule-II Art. 17(iii) of Court Fees Act, 1870, but if consequential relief is not outcome of original declaratory relief then suit would fall out of ambit of aforesaid provision of law. [2000 MLD 1611]. Suit for declaration that mutation and sale deed emanating from such mutation be declared illegal and void, plaintiff entitled to put his own valuation. As this part of the relief is fully covered by Section 7(iv)(c) of the Court Fees Act, 1870. However, the declaration of title sought being on the basis of sale the suit has to be valued in accordance with Section 7(iv)(a) of the said Act according to the value of the said property purchased by the plaintiff through the said sale deeds. Relief of possession of purchased land would be valued in accordance with S. 7(v) of Court Fees Act, 1870 as amended by Punjab Finance Act, 1973. [2009 YLR 1797].

**Suit for declaration for title only.** In case, the relief of possession flows from the main relief of declaration of title and the case squarely falls under S. 42 of the Specific Relief Act, and S. 7, clause (iv-c) of the Court Fees Act, the plaintiff may be allowed to amend his plaint. [1994 CLC 1437].

**Suit for declaration on the bases of benami transaction.** In a suit for declaration on the basis of Benami Transaction the plaintiff would be at liberty to state, in terms of Section 7(iv-c) the amount at which he values the relief sought. [1995 MLD 316].

**Suit for declaration and cancellation of document.** Declaration sought u/S. 42 and cancellation u/S. 39, plaintiff liable to pay ad valorem Court fees u/S. 7(iv)(c). [2002 CLC 1549].

**(v) For possession of lands, houses and gardens.** In suits for the possession of lands, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be:-

(a) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled ten times the revenue so payable;