

12. Decision of questions as to valuation. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of Section 10, paragraph (ii), shall apply.

COMMENTS

Valuation. Question of decision by Appellate Court. Operative part of order of trial Court creating confusion as to amount on which court-fee to be period held: default in payment of Court-fee being not wilful, Appellate Court justified in ordering same to be made good during pendency of appeal. [PLJ 1983 Pesh. 17].

Rejection of Memo of Appeal. All questions relating to Court-fee are to be dealt with by the trial Court or the Court hearing appeal, revision or reference. Executing Court has to execute the decree as the same has been passed. Execution decree cannot be refused by the Executing Court on the ground that the plaint or the suit in which the decree has been passed was deficiently stamped. Executing Court is bound to execute the decree as passed by trial Court and affirmed by High Court. [2000 YLR 2696].

Power of the Executing Court. Executing Court has no power to refuse execution. On the score that plaint was deficiently stamped. [2000 YLR 2696].

Land Acquisition Act. Appeal against award, no Court-fee payable on the amount of statutory compensation. [2000 YLR 1123].

1. Subs. by Sindh Act, 1939, dated 26th April, 1939.

Deficiency not made good. Deficiently stamp revision returned, presented within a limitation. Supply of deficiency would relate back to the date of presentation. [NLR 1992 Rev. 127]. Deficiency not made good within time allowed. No application made for extension of time. Dismissal of suit justified. [PLJ 1981 SC 806].

13. Refund of fee paid on memorandum of appeal. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure (Act V of 1908) is ordered to be received or if a suit is remanded in appeal, on any of the grounds mentioned in Rule 23, Order XLI of the first Schedule to the said Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

COMMENTS

Refund of Court-fees. If suit was remanded in appeal for a second decision by lower Court, the Appellate Court would grant to appellant a certificate authorizing him to receive back from Collector the full amount of fee paid on memorandum of appeal. Applicant is entitled for refund of full amount of Court-fee paid on memorandum of appeal. [PLJ 2007 Lah. 759].

There is conflict of opinion in views of Karachi and Lahore High Courts. Contention that in impugned judgment, High Court has erred in following view of Karachi High Court which itself had veered round to view of Lahore High Court in its subsequent judgment under Articles 2-A and 37(d) of Constitution, state is obligated to further ends of social justice by ensuring inexpensive and expeditious justice to require a party to pay Court-fee in a proceeding where parties have compromised out of Court and decided to withdraw proceedings, manifestly defeats above mandate of constitution. Conclusion reached by High Court cannot be sustained. Appeal accepted and refund of Court-fee ordered. [PLJ 1993 SC 141].

Refund of Court-fee would be ordered, where plaint is rejected by trial Court on any of the grounds contained in Civil Procedure Code, 1908 and when appeal is accepted and matter is remanded on the grounds enumerated in R. 23 O. XLI, C.P.C. [1995 CLC 111]. Besides S. 13 of Court Fees Act, Court-fee can also be refunded under S. 151 CPC. [PLJ 1994 Lah. 535]. Plaintiff withdrawing suit before framing of issues, he is entitled to refund. [NLR 1996 U.C. 126].

Revision petition having been withdrawn and having not been heard at all on merits, High Court directed the refund of Court-fees accordingly. [2005 CLC 688]. Application for withdrawal of plaint accepted, party entitles to claim the refund of Court fee. [2008 CLC 494]. Application for the withdrawal of suit after issuance of summons to defendant and passing of stay order therein. Refund of Court fee allowed. [2008 MLD 546].

Suit dismissed as not maintainable on merits of the case. Appellate Court deciding the suit maintainable, remanding the case, Appellant entitled to refund of Court-fee paid on memorandum of appeal. [2002 CLC 165].

Suit for possession u/S. 8, Specific Relief Act. Valuation in terms of S. 8 Suit Valuation Act, 1887 is the same for a suit for possession u/S. 7(v) Court Fees Act, 1970. However, Court-fees payable on suit for possession u/S. 9 Specific Relief Act is one half the amount as prescribed in serial No. 2, first schedule to the Court-fees Act. [PLD 2002 Kar. 511].

Suit for possession of land house and garden. Court-fee to be paid on the basis of subject-matter and market value of the land. [2002 MLD 800; PLD 1985 SC 393 ref].

Suits withdrawn. Suit withdraw without framing of issue. Plaintiff entitled to refund of Court-fees paid on plaint. [NLR 1996 UC 126]. Revision withdrawn and heard on merits, Court fees directed to be refunded. [2005 CLC 688].

Refund of Court-fees in Appeal. Appeal succeeded on a point of law and no determination of right of the parties having been made, he is entitled to certificate and same granted for the refund of the amount of Court-fees fixed on the memorandum of appeal. [2003 MLD 1788]. Appeal withdrawn not decided on merits, appellate entitled to refund of Court-fees. [PLD 1993 SC 76]. Appeal not heard on merits by dismiss on the ground of limitation return of Court-fee directed. [2002 CLC 1428]. Appeal withdrawn on the score of compromise, appellant entitled to refund of Court-fees. [2004 CLC 430].

Dismissed as withdrawn without taking any substantial proceeding Court-fee to be refunded. [2006 YLR 1410].

Suit for partition. When suit for partition is filed same cannot be valued for the purpose of Court 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. [2007 CLC 532]. Plaintiff out of possession of property jointly owned by parties inherited by them. Plaintiff can be asked to pay Court-fee once value of his share is determined. [2002 YLR 956].

Conduct of applicant. Conduct of applicant is a relevant factor to allow to refund of Court-fee. Where the applicant challenged mutation sanctioned in 1919 by filing suit in 1980. Considerable and unexplained delay in moving application for refund of Court-fee. Application not covered by S. 13 of Court Fees Act nor under S. 151 C.P.C. [PLJ 1994 Lah. 535].

AMENDMENT

Province of N.W.F.P.

After Section 13 insert the following Section 13-A.

13-A. If the Court of the Judicial Commissioner on an application presented to it for the exercise of its jurisdiction under S. 34 of the N.W.F.P. Court Regulation, 1931 sets aside or modifies a decree or order of the Court below, or remands the case for a fresh decision, the Court of the Judicial Commissioner may grant to the applicant a certificate authorising him to receive back from the Collector the full amount of fee or such part thereof as the Court having regard to the circumstances of the case may think fit. [Inserted by NWFP Act, I of 1947 S. 2(17.1.1947)]

14. Refund of fee on application for review of judgment. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Refund where Court reverses or modifies its former decision on ground of mistake. Where an application for a review of judgment is admitted, and where on the rehearing, the Court reverses or modifies its former decision on ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No.1 clause (b) or clause(d).

But nothing in the former part of this Section shall entitle the applicant to such a certificate where the reversal or modification is, due, wholly or in part, to fresh, evidence which might have been produce at the original hearing.

COMMENTS

Suit by co-sharers. Co-shareship being automatic, each co sharer is deemed to be in possession of each and every inch of property, no other co sharer can claim adverse possession for however long his physical possession might be. *Plaint and Memorandum of appeal do not require to be affixed ad valorem Court-fee. [1996 CLC 1624].*

16. [Repealed by Schedule V of the Code of Civil Procedure (Act V of 1908)]

17. Multifarious suits. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaintiffs or memoranda of appeal, in suits embracing separately each if such subjects, would be liable under this Act.

Nothing in the former part of this Section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908, Section 9.

COMMENTS

Scope. Maximum Court-fee payable. Plaintiffs jointly maintaining one suit. **Ends of social justice.** Question posed in reference for determination. Full Bench of High Court was affixing of maximum Court-fee in a suit having different plaintiffs with distinct subjects. Chargeable. Reference to Arts. 2-a and 37(d) of the Constitution was also pertinent, as by virtue of the same. State was obliged to promote ends of social justice by providing inexpensive and expeditious justice to every citizen of country. All questions proposed in reference were answered in affirmative by full bench accordingly. [PLJ 2007 Kar. 155].

Aggregate value of only such reliefs is to be taken into account which are distinct and final in nature. Where relief is not distinct from other and appears to be only superfluous or not arising out of the suit, the same cannot be joined together to determine value for purposes of jurisdiction. Only such reliefs, decision on which results in final resolution of a controversy, are to be valued for the purposes of valuation of a suit and not the reliefs which are purely of interim nature and are sought till the disposal of the final controversy in suit. Relief of receivership, which though arising in the suit, being purely of interim nature, cannot be made basis for the purposes of valuing a suit. [PLJ 2006 Kar. 309].

In a suit of a multifarious nature falling under Section 17 of the Act, Court-fee would be payable at the aggregate of the fee separately chargeable on the separate cause of action. [1993 SCMR 683]. Suit which embraces two or more distinct causes of action and when a suit is filed combining multifarious causes of action then each claim on the basis of causes of action is to be valued separately and requisite Court-fee is to be paid on the suit under the provisions of S. 17 of the Court Fees Act. [2002 CLC 1170].

Where the plaintiff has paid the maximum Court fee, suit is not insufficiently stamped but is properly valued. [2002 CLD 712].

Retention of Court fees by Banking Court. Appeal not heard on the ground of limitation. Request for return of Court fee affixed on appeal granted. [2002 CLD 1424].

18. Written examinations of complainants. Where the first or only examination of a person who complains of the offense of wrongful confinement, or of wrongful restraint, or of any offense other than an offense for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been

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levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure 1898 (Act V of 1898) the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

AMENDMENT

Province of Punjab.

For the words 'eight annas', the words 'one rupee' substituted vide Punjab Act VII of 1922.

19. Exemption of certain documents. Nothing contained in this Act shall render the following documents chargeable with any fee--

- (i) Power of attorney to institute or defend a suit when executed by any officer, warrant officer, non-commissioned officer or private of the Pakistan Army not in civil employment.
- (ii) Rep. by the Amending Act, 1891 (XII of 1891).
- (iii) Written statements called for by the Court after the first hearing of a suit.
- (iv) [Rep. by the Cantonments Act 1889 (XII of 1889)]
- (v) Rep. by G.G.O. 4 of 1949, Schedule]
- (vi) [Rep. *ibid*]
- (vii) [Rep. *ibid.*]
- (viii) Probate of a will, letters of administration and save as regards debts and securities, a certificate under Sind Regulation VIII of 1827, where the amount or value of the property in respect of which the probate or letters of certificate shall be granted does not exceed one thousand rupees.
- (ix) Application or petition to a Collector or other officer making a settlement of land revenue or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement.

- (x) Application relating to a supply for irrigation of water belonging to Government.
- (xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.
- (xii) Application for service of notice of relinquishment of land or of enhancement of rent.
- (xiii) Written authority to an agent to distrain.
- (xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- (xv) Bail bonds in criminal cases; recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- (xvi) *[Omitted by G.G.O. 4 of 1949, Schedule.]*
- (xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- (xviii) Complaint of public servant (as defined in the Pakistan Penal Code) a municipal officer, or an officer or servant of a Railway Company.
- (xix) Application for permission to cut timber in Government forest, or otherwise relating to such forest.
- (xx) Application for the payment of money due by Government to the applicant.
- (xxi) Petition of appeal against any municipal tax.
- (xxii) Application for compensation under any law for the time being in force relating to the acquisition of property of public purposes.
- (xxiii) *[Omitted by G.G.O 4 of 1949, Schedule]*
- (xxiv) Petitions under the Christian Marriage Act, 1872, Sections 45 and 48.