

Omission of Sub-rule (1) of Rule 4, Order XX of the Code of Civil  
Procedure, 1908

Report No. 94

( - )

## **OMISSION OF SUB-RULE (1) OF RULE 4, ORDER XX, of the Code of Civil Procedure 1908.**

Order XX of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), lays down the rules applicable in respect of judgments and decrees made by the Courts.

Sub-rule (1) of rule 4 of Order XX of the Code of Civil Procedure, 1908 (Act V of 1908), provides for the guidelines regarding judgments of a Court of Small Causes. Sub-rule (1) of rule 4 ibid is reproduced hereunder for reference:-

**“4. Judgments of Small Cause Courts.-** (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.”

In this connection, it is pointed out that the Small Claims and Minor Offences Courts Ordinance, 2002 (XXVI of 2000), hereinafter referred to as the said Ordinance, has been made and promulgated on the 19<sup>th</sup> June, 2002. However, as regards the commencement of the said Ordinance, sub-section (3) of section 1 thereof provides as under:-

“ (3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint in this behalf.”

Now, the said Ordinance has come into force with effect from the 15<sup>th</sup> July, 2004, *vide* the Federal Government's Notification No. S.R.O 601 (I)/2004, dated the 15<sup>th</sup> July, 2004. Accordingly, the Small Claims and Minor Offences Courts have been established under section 4 of the said Ordinance.

However, after coming into force of the said Ordinance, the Provincial Small Cause Courts Act, 1887 (IX of 1887), stands repealed under sub-section (1) of section 42 of the said Ordinance. Sub-section (1) of section 42 ibid is reproduced as under:-

“ 42. **Repeal and savings.-** (1) On coming into force of this Ordinance, the Provincial Small Cause Courts Act, 1887 (IX of 1887), shall stand repealed.”

Thus, after the repeal of the Provincial Small Cause Courts Act, 1887 (IX of 1887), the Courts of Small Causes stand abolished.

Furthermore, section 3 of the said Ordinance, provides that the same shall have overriding effect over other laws. Section 3 ibid is reproduced as follows:-

“3. **Ordinance to override other laws.-** The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.”

**Conclusion:**

In view of the foregoing, it is pointed out that in sub-rule (1) of rule 4 of Order XX of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the reference to the Court of Small Causes has become obsolete and unnecessary after coming into force of the said Ordinance.

**Recommendation:**

It is one of the functions of the Law and Justice Commission of Pakistan under clause (v) of section 6 of the Law and Justice Commission of Pakistan Ordinance, 1979 (XIV of 1979), to make recommendation for repealing obsolete or unnecessary provisions in the laws. In view of the foregoing, it is suggested that the Commission may make recommendation to the Federal Government that sub-rule (1) of rule 4 of Order XX of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), is an obsolete and unnecessary provision.

**Legislative proposal:**

It is, therefore, suggested that in rule 4 of Order XX of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908),-

- (i) sub-rule (1) and the marginal heading thereto shall be omitted; and
- (ii) in sub-rule (2) and in the marginal heading thereto, the word “other” shall be omitted.

**Comparative table:**

Existing Provision	Amended Provision
<p><b>4. Judgments of Small Cause Courts.-</b> (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.</p> <p>(2) <b>Judgments of other Courts.-</b> Judgments of <b>other</b> Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.</p>	<p><b>4. (1)</b> [Omitted.]</p> <p>(2) <b>Judgments of Courts.-</b> Judgments of Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.</p>

### **Commission's deliberations**

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered Rule 4 of the Order XX of the Code of Civil Procedure 1908 and found its sub-rule (1) referring judgment of the Court of Small Causes as redundant in view of the repeal of the Provincial Small Cause Courts Act 1887. The Commission therefore, recommended the repeal of sub-rule (1) of Rule 4 of Order XX of the Code of Civil Procedure and renumbering of its sub-rule (2) as sub-rule (1) of Rule 4 of the said Order.