

Amendment in the First Schedule of the Limitation Act 1908
and Section 115 of the Code of Civil Procedure 1908

Report 82

AMENDMENT IN THE FIRST SCHEDULE OF THE LIMITATION ACT 1908 AND SECTION 115 OF THE CODE OF CIVIL PROCEDURE 1908

The Secretariat of the Law and Justice Commission received a letter from the Registrar, Lahore High Court through which he communicated the suggestions of the Hon'ble Chief Justice for amending the Limitation Act 1908 and the Code of Civil Procedure 1908. Text of the letter is as under:

I am directed to refer to the subject noted above and to state that Section 115 of the Code of Civil Procedure 1908 was amended in 1992 to provide a limitation of 90 days for filing a revision petition. As the CPC is a general law, section 5 of the Limitation Act applied to the revision petition's for condonation of delay.

In this context reference may appropriately be made to the judgment of the Hon'ble Supreme Court of Pakistan reported in 2001 SCMR 286 (Allah Dino Vs. Mohammad Shah) wherein it has been held that in view of Section 29 (2) of the Limitation Act 1908 the provisions of Section 5 of the Limitation Act for condonation of delay do not apply to revision petitions under Section 115 CPC. The implication of this pronouncement is that the CPC is a special law. It appears that it was not brought to the notice of the Hon'ble Supreme Court that as held in AIR 1952 Madras 186, CPC is a general law and Section 29 (2) of the Limitation Act does not apply to it. Further Section 115 of the CPC was amended in 1962. Simultaneously by an amendment Article 162-A was inserted in the Limitation act to provide that Limitation for filing a revision petition will be 90 days. The amendment in the CPC was subsequently withdrawn in 1963. However, the amendment in the Limitation Act continued to remain on the statute book. A bill for omitting this amendment was tabled in 1965. The reason given by Mr. S.M. Zafar, the then Law Minister for the bill on the floor of the House was that if an illegal order is passed somehow by the court below which needs to be set aside, there should be no period of limitation and as and when it comes to the notice of the High Court it should be able to correct that error.

In the wake of the Supreme Court ruling condonation for delay in filing a revision cannot be sought. This is causing serious hardship to the public.

To rectify the situation the Hon'ble Chief Justice has been pleased to refer the case to Law and Justice Commission of Pakistan which may recommend either;

(i) suo motu review of the aforesaid judgment by the Hon'ble Supreme Court; or

(ii) amendment of the Limitation Act 1908 to provide a limitation of 90 days for filing of a revision petition and for omission of the provision of limitation for filing revision petition from Section 115; or

(iii) omission of the provision of limitation from section 115 CPC.

It may be relevant to give a gist of the judgment (2001 SCMR 286) referred by the Hon'ble Chief Justice and related provision of laws for easy comprehension of issues. Brief facts and finding of the Supreme Court is as under:

The petitioners sought leave to appeal against dismissal order passed by the High Court Sindh is a revision petition whereby the petitioners successfully sought conversion of an incompetent appeal barred by 54 days into a Civil Revision under Section 115 CPC with the prayer that the delay occasioned in filing same be condoned under section 5 of Limitation Act. The contention was repelled on the ground that section 5 of the Limitation Act is not applicable under section 29(2) of the limitation Act on a revision under section 115 which prescribes its own period of limitation i.e. 90 days. The learned single judge relying on the contention of the respondent dismissed the Civil Revision being time barred. The issue came before the Supreme Court in appeal wherein it was held:

We have given our anxious thought to the proposition under examination. There is no cavil with the arguments that if Statute governing the proceedings does not prescribe period of limitation the proceedings instituted there under shall be controlled by the Limitation Act as a whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115 CPC, then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29 (2) of the Limitation Act. Thus we fail to notice any flaw in the impugned judgment relating to interpretation of section 5 of the Limitation Act, qua section 115 (2) CPC, therefore no interference is called for leave to appeal refused.

Before proceeding further it is pertinent to discuss the existing laws and provision of laws which are:

Section 29 (2) of the Limitation Act which provide that:

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provision of section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law.

(a)...

and section 3 of the Limitation Act says:

subject to the provisions contained in section 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made after the period

of limitation prescribed therefore by the First Schedule shall be dismissed although limitation has not been set up as a defence.

The benefit of section 5 of the Limitation Act for condonation of delay is applicable only in cases of limitation specified in the First Schedule or under an enactment where the enactment itself provide concession of section 5, which reads as under:

Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application *to which this section may be made applicable by or under any enactment for the time being in force* may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the court that he had sufficient, cause for not preferring the appeal or making the application within such period.

Explanation...

The clause of section 115, of the CPC, which provides for revision jurisdiction of the High Court and prescribes period of limitation for filing such revision is given below:

Provided 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 three months.

Apparently the object of prescribing period of limitation was to check bonafides of the applicants and to avoid belated applications aimed at prolonging frivolous litigation. In the year 1962, an attempt was made to prescribe a specific period of limitation to file revision under section 115 of CPC, and accordingly, vide Ordinance XLIII of 1962, Limitation Act 1908 was amended, and in section 5 of the Act 1908, after the word, "application", the words "a revision or" were added. A further amendment was made by adding Article 162-A, in the First Schedule providing a limitation of ninety days for filing of revision under section 115 of the Code of Civil Procedure 1908. Consequently, the Limitation Act was amended and in section 5 of the Act the word "revision" had been inserted but Article 162-A was not added.

In absence of amendment in the First Schedule of the Limitation Act, condonation of delay in cases of revision under section 115 of CPC cannot be allowed as decided by the Supreme Court in case of Allah Dino V Mohammad Shah (2001 SCMR 286). In order to make section 5 of the Limitation Act applicable in cases of delay in filing petition under section 115 CPC, Schedule First of the Limitation and proviso second of section 115 CPC need to be amended.

It is therefore proposed that option (ii), (iii) proposed by the Hon'ble Chief Justice be considered and relevant laws be amended/reformed as under to remove the lacuna.

1. In the First Schedule of the Limitation Act 1908 after Article 162, a new Article 162-A may be added as under:

Article	Description of application	Period of limitation	Time from which period begins to run.
162-A	For a revision under Section of 115 of the Code of Civil Procedure	Ninety days	The date of decision sought to be Revised.

2. Second proviso of section 115 CPC may be amended to delete the period of limitation therefrom as under:

Provided further that the Subordinate court shall provide copies of the documents mentioned above within three days thereof, and the High Court shall dispose of such application within three months. The proposed amendment is clarified in the comparative table below:

Comparative Table

Existing provision CPC	Amended
Section 115... provided 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 three months.	Section 115... Provided further that the Subordinate court shall provide copies of the documents mentioned above within three days thereof, and the High Court shall dispose of such application within three months.

A
Bill

further to amend the Limitation Act, 1908

Whereas it is expedient further amend the Limitation Act, 1908 for the purpose hereinafter appearing;

It is hereby enacted as follows:

1. Short title and Commencement.- (1) This Act may be called the Limitation (Amendment) Act, 2003.

(2) It shall come into force at once.

2. Amendment of the First Schedule, Act IX of 1908.- In the Limitation Act, 1908 (Act IX of 1908), in the First Schedule, after the entries relating to Article 162, the following new Article and entries relating thereto, shall be inserted, namely:-

162-A.- For the revision of decision under section 115 of the Code of Civil Procedure.	Ninety days	The date of decision sought to be revised.
--	-------------	--

A
Bill

Further to amend the Code of Civil Procedure, 1908

Whereas it is expedient to further amend the Code of Civil Procedure 1908, for the purpose hereinafter appearing;

It is hereby enacted as follows.

1. Short title and Commencement.- (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2003.

(2) It shall come into force at once.

2. Amendment of Section 115, Act No. V of 1908.- In the Code of Civil Procedure, 1908 (Act No. V of 1908), in section 115, for second proviso the following shall be substituted, namely:-

“Provided further that the subordinate court shall provide copies of the documents mentioned above within three days thereof, and the High Court shall dispose of such application within three months”.

Commission’s Deliberation’s

The Amendment in the First Schedule of the Limitation Act 1908 and Section 115 of the Code of Civil Procedure 1908 was discussed in the meeting of Law and Justice Commission of Pakistan held on 14th February, 2004. The Secretary explained the background to the draft working paper. The Chief Justice, Lahore High Court stated that the proposal pertains to a recent ruling of the Supreme Court to the effect that Section 5 of the Limitation Act (condonation of delay) will not apply to limitation period, fixed in section 115 of CPC, as the CPC is a special law, hence Section 29(2) of the Limitation Act does not apply to it. He opined that in appropriate cases, the power of condonation needs to be made available to courts. After deliberations, it was resolved that the draft proposal be circulated to the High Courts for seeking their comments.

Accordingly, the draft paper was circulated to the 4 provincial High Courts, for comments. In response, the Lahore High Court responded that it fully supports the proposal, as the same was initiated by it. The Peshawar High Court, after thoroughly examining the proposal, opined that it also finds the proposed amendment quite reasonable. The High Court of Sindh informed that a specific decision of the Hon’ble Supreme Court on the legal point in a Suo Moto Revision may better resolve the issue. The response of High Court of Baluchistan is still awaited.

Commission's deliberation on 10.06.2006

The working paper was considered by the Commission in its meeting held on 10.6.2006 and the following are the deliberations:-

The Commission considered Section 115 of the CPC with reference to application of Section 5 of the Limitation Act 1908 in filing of revisions. The Secretary explained to the Commission that Section 115 of the Code was amended in 1992 to provide a period of 90 days for filing of revision petition and a provision was added prescribing limitation of 90 days for filing of revision by a new Article 162A in the Limitation Act 1908. The Supreme Court however, in 2001 SCMR 286 held that in view of Section 29 (2) of the Limitation Act 1908 the provisions of Section 5 of the Limitation Act are not applicable in cases of delay in filing revision petitions under section 115 CPC as the CPC is a special law. Prior to this judgment in Air 1952 Mad 186 it has been held that the CPC is a general law and section 29 (2) of the Limitation Act do not apply to it. The Chairman observed that the judgment of the Supreme Court has become public property which cannot be recalled at this moment. After deliberations the Commission approved that in Section 115 of the Code an amendment may be made extending the application of Section 5 of the Limitation Act 1908 to the revision filed under Section 115 of the Code as made applicable in Order IX rule 13 of the CPC to meet the eventuality.