

Amendment in Section 102 of the Code of Civil Procedure, 1908

Report No. 93

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Amendment in Section 102 of the Code of Civil Procedure, 1908

Section 102 of the Code of Civil Procedure 1908 as amended by Act No. VIII of 2004 provides that no second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes. Section 102 of the Code reads as follows:-

“Section 102. No second appeal in certain cases.- No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes and in any other suit when the amount or value of the subject-matter of the original suit does not exceed the amount or value as the Provincial Government may by law determine.”.

The Courts of Small Causes were established under the Provincial Small Cause Courts Act 1887 (IX of 1887). The Provincial Small Cause Courts Act 1887 (IX of 1887) has been repealed by Section 42 of the Small Claims and Minor Offences Courts Ordinance 2002 and the Courts of Small Causes have been abolished and in their place the Small Claims and Minor Offences Courts have been established within all the four provinces. In view of the above change in the law and establishment of Courts of Small Claims under the said Ordinance and abolishment of Courts of Small Causes on repeal of the Provincial Small Causes Courts Act 1887, section 102 of the Code requires to be amended accordingly otherwise a second appeal will lie in any suit of the nature cognizable by Courts of Small Claims and Minor Offences.

In the light of above an amendment in the Code of Civil Procedure 1908 is proposed in the following:-

“In the Code of Civil Procedure 1908, in Section 102, for the word “Causes” the word “Claims” shall be substituted.”.

The comparative table of existing section 102 and the proposed amendment alongwith the proposed amendment Bill are placed below.

Comparative Table

Existing Provision	Amended Provision
Section 102. No second appeal in certain cases.- No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes and in any other suit when the amount or value of the subject-matter of the original suit does not exceed the amount or value as the Provincial Government may by law determine	Section 102. No second appeal in certain cases.- No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes and in any other suit when the amount or value of the subject-matter of the original suit does not exceed the amount or value as the Provincial Government may by law determine

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Bill

further to amend the Code of Civil Procedure 1908 (Act V of 1908).

WHEREAS it is expedient to amend the Code of Civil Procedure 1908 for the purposes 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) Bill, 2007.

(2) It shall come into force at once.

2. Amendment of Section 102 Act V of 1908.- In the Civil Procedure Code (Act V of 1908) in Section 102, for the word “Causes” the word “Claims” shall be substituted”.

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 the proposal to amend the provisions of the section 102 of the Code of Civil Procedure containing mention of the Court of Small Causes which provision has become redundant on the repeal of Provincial Small Cause Courts Act 1887, by Section 42 of the Small Claims and Minor Offences Courts Ordinance 2002. It therefore requires mention of the present law. The Commission approved the substitution of the word “claims” for the words “causes” to make the Section 102 CPC operative for the purpose of new law currently in force.