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## **Appeal and Revision in Arbitration Matters under the Pakistani Legal Regime**

### **Abstract**

The Appeal is a gateway of intervention of higher courts to pinpoint errors committed by the subordinate courts.<sup>1</sup> The Pakistani legal regime does not recognise the right of appeal against the order of an arbitrator. However, there is the availability of the right of appeal to the matters enlisted in section 39 of the Arbitration Act 1940 against the order passed by the court. Against the non-appeal orders, the remedy of the revision can be availed under section 115 of the Code of Civil Procedure 1908 (CPC). To this end, this piece is an endeavour to highlight the scope and extent of appeals including first and second appeals as well as revision and their availability in arbitration matters. The piece by qualitative analyses successfully scrutinises the limitations that shorten the scope of appeal and revision. The paper also finds that the provisions of CPC do not affect the Right of appeal enshrined under section 39.<sup>2</sup>

KEYWORDS: Appealable Orders, Non-appealable Orders, Revision, Appeal

### **1. Introduction**

Pakistani courts pass various orders regarding issues related to arbitration. The party that is not satisfied by the order passed by the court has invoked the remedy of appeal or revision against the order passed by the subordinate court. With the help of the Pakistani court judgment, this article inspects the concept, scope, and extent of revision and appeal with the purpose to draw a comparison between both and pinpointing the limitations during the availability of both in arbitration matters. This piece discusses the concept of first and second appeal and highlights the cases in which only the first appeal can be entertained and where the right of the second appeal cannot be invoked. This piece inspects the concept of appeal under 39 of the Arbitration Act 1940 (hereinafter 1940 Act) is not affected by the provisions of the CPC. This piece also elucidates that in the case where no appeal can be filed; the remedy of the revision can be invoked that has very limited scope. In the end, this piece provides a reasonable conclusion.

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<sup>1</sup> *Province of Baluchistan v. Sardar Muhammad Usman Khan*, PLD 1987 Quetta 33.

<sup>2</sup> *District Council Haripur v. Zaheer Ullah Khan*, PLD 1994 Peshawar 228. For CPC, see sections 2(2), 104 and 115 and Order XXXIX, rules. 1, 2, Order XLIII rule 1.

## 2. Appeal and Revision against the Trial Court Orders

Appeal and Revision is a remedy available against the order passed by the learned Trial Courts. When a party is unsatisfied with the decision of the subordinate court, he can file an appeal or a revision to the superior court. Appealable orders are enshrined in Section 39 of the 1940 Act. However, the order against whom the appeal cannot be made, a remedy of revision is available to satisfy justice and equity. This segment of the article provides a critical brief and reasonable concept of appeal and revision and will draw a sound comparison between both.

### 2.1 Appeal to Superior Court and its Limitations

The appeal is a remedy available to the aggrieved party against the order of a learned trial court. The soundness of the trial court's order is examined by the honourable higher court.<sup>3</sup> When an appeal is instituted against the subordinate court's decision, the superior court hears the whole matter.<sup>4</sup> That is why the appeal is called a "continuation of the suit."<sup>5</sup> The appellate court can be any superior court against the order of the civil court, the district court will be called an Appellate Court and such appellate court is authorized to pass any kind of order, judgment, or decree that a subordinate court can issue.<sup>6</sup> The appellate court is a competent forum that has the power to set aside the order of the subordinate court. It can also revise the order of the trial court.<sup>7</sup>

The order or decree passed by the subordinate court that is subjected to appeal is called the original decree. When the appeal is disposed of then the original decree merges into the decree

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<sup>3</sup> *Juma Khan v. Mst. Gul Ferocha*, PLD 1972 Peshawar 1; *Din Muhammad v. Hidayat Hussain*, PLD 1968 Lahore 207.

<sup>4</sup> *F. A. Khan v. The Government of Pakistan*, PLD 1964 SC 520; *Muhammad Ayyub and another v. Muhammad Yaqoob and another*, PLD 1975 Lahore 445.

<sup>5</sup> *Wajid Ali v. Sajid Ali*, 1985 SCMR 401; *F. A. Khan v. The Government of Pakistan*, PLD 1964 SC 520; *Sherin and others v. Fazal Muhammad and others*, 1995 SCMR 584; *Muzaffar Ali v. Muhammad Shafi*, PLD 1981 SC 94; *Alaf Din v. Mst. Parveen Akhtar*, PLD 1970 SC 75; *The Province of East Pakistan v. Muhammad Hossain Mia*, PLD 1965 SC 1; *Khalid Saigol v. The State*, PLD 1962 SC 495; *Muhammad Salim and others v. Lahore Development Authority and others*, 1993 MLD 2312; *Mst. Anwar Mai v. Ghulam Qadir Shah and others*, 1986 CLC 1457; *Trading Corporation of Pakistan Ltd. v. General Industrial Machines, Handelsgesellschaft Mbh, Frankfurt*, 1986 CLC 1999; *Karachi Metropolitan Corporation v. Associated Constructors Ltd.*, 1984 CLC 1077; *Suleman Haji and another v. The State and others*, PLD 1983 Quetta 84; *Mst. Nazir Begum and other v. Mst. Qamarunnissa and others*, 1982 CLC 2271; *Standard Printing Press v. Sindh Employees' Social Security Institution*, PLD 1978 Karachi 945; *Juma Khan v. Mst. Gul Ferocha*, PLD 1972 Peshawar 1; *Roshan Din v. S. M. Badruddin*, PLD 1969 Karachi 546; *Flour Mills Employees' Union v. Karachi Steam Roller Flour Mills Co. Ltd.*, PLD 1964 Karachi 587; *Shahmir Transport Company Limited v. Member (Colonies and Transport) Board of Revenue, West Pakistan and others*, PLD 1964 Lahore 710.

<sup>6</sup> *Sherin and others v. Fazal Muhammad and others*, 1995 SCMR 584; *Mst. Anwar Mai v. Ghulam Qadir Shah and others*, 1986 CLC 1457.

<sup>7</sup> *Tahir Ali and others v. Chief Judge, Karachi Small Causes Court and another*, PLD 1963 SC 147; *Province of Baluchistan v. Sardar Muhammad Usman Khan*, PLD 1987 Quetta 33; *Haji Suleman v. Eastern Rice Syndicate Karachi and others*, PLD 1976 Karachi 263; *Din Muhammad v. Hidayat Hussain*, PLD 1968 Lahore 207.

passed by the appellate court<sup>8</sup> and the original decree will remain binding unless such decree is set aside by the superior court i.e appellate court.<sup>9</sup> Consequently, the appellate court's order or decree holds the grounds whilst such appellate court simply sustains or upholds the subordinate court's decree.<sup>10</sup> There are three cases in which the original decree will be sustained and binding. Firstly, in the circumstance, when the appeal has been withdrawn by the appellant then the original decree will continue its binding nature.<sup>11</sup> Secondly, if the appeal has been "dismissed in limine," the original decree will be sustained. Thirdly, in the circumstances when no decree has been made by the worthy appellate court, the original decree will be intact and binding.<sup>12</sup>

It is an important point to discuss whether the decree of the subordinate court is as a whole appealable or only the portion of the original decree can be appealable. It is submitted that the aggrieved party can appeal against the whole of the original decree.<sup>13</sup> However, it is very important to note that when the subordinate court has given a single decree in two or more two consolidated cases, in such circumstances only one appeal will suffice rather than instituting separate appeals for each suit.<sup>14</sup>

Supreme Court of Pakistan in *Abdullah Khan v. Nasir Muhammad Khan*<sup>15</sup> has described a limitation while filing the appeal in the superior court that is the aggrieved party is unable to raise any new grounds, questions, or matters in appeal. Only the grounds or issues raised before

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<sup>8</sup> *Glaxo Laboratories Limited v. Inspecting Assistant Commissioner of Income-Tax and others*, PLD 1992 SC 549; *Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others*, 1992 SCMR 241; *Abdul Ghafoor v. Ahmad Kunhi*, PLD 1969 SC 424; *F. A. Khan v. The Government of Pakistan*, PLD 1964 SC 520; *Nabi Bux v. Land Acquisition Officer*, 2003 CLC 1914; *Saeed Ahmad v. Messrs. Indo Enamel Works Ltd., Lahore (In Lahore)*, PLD 1954 Lahore 490; *Nizam-ud-Din and others v. Ch. Muhammad Saeed and another*, 1993 CLC 2130; *Zahoor Din v. Anjuman Himayat-i-Islam*, 1989 MLD 480; *Jhangimal v. Abdul Aziz Khan*, PLD 1971 Karachi 147; *Walayat Shah v. Ghafar Shah and others*, PLD 1952 Peshawar 6.

<sup>9</sup> *Wajid Ali v. Sajid Ali*, 1985 SCMR 401; *Province of East Pakistan v. Muhammad Hussain Mia*, PLD 1965 SC 1; *F. A. Khan v. The Government of Pakistan*, PLD 1964 SC 520; *Waris Mean v. The State and the State Bank of Pakistan*, PLD 1957 SC 157; *Zahoor Din v. Anjuman Himayat-i-Islam*, 1989 MLD 480; *Haji Ismail Dossa v. Monopoly Control Authority*, PLD 1984 Karachi 315; *Roshan Din v. S. M. Badruddin*, PLD 1969 Karachi 546; *Nawabshah Co-Operative Housing Society v. Government Employees Co-Operative Housing Society, Nawabshah, and Government of West Pakistan*, PLD 1969 Karachi 1.

<sup>10</sup> *Sherin and others v. Fazal Muhammad and others*, 1995 SCMR 584; *Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others*, 1992 SCMR 241; *Siddique Khan v. Abdul Shakoorkhan*, PLD 1984 SC 289; *F. A. Khan v. The Government of Pakistan*, PLD 1964 SC 520; *Nabi Bux v. Land Acquisition Officer*, 2003 CLC 1914; *Haji Ismail Dossa v. Monopoly Control Authority*, PLD 1984 Karachi 315; *Sri Lakshmi Narayan and others v. Sri Surath Lal Chakraborti and others*, PLD 1964 Dacca 177.

<sup>11</sup> *Haji Muhammad Boota and Others v. Member (Revenue), Board of Revenue, Punjab and others*, PLD 2003 SC 979.

<sup>12</sup> *Toor v. Abdul Qadir*, 2001 CLC 108.

<sup>13</sup> *Budho and others v. Ghulam Shah*, PLD 1962 Karachi 344.

<sup>14</sup> *Haji Syed Ainullah v. Abdul Rashid*, 1985 SCMR 1991; *Shukar Din and others v. Nazir Ahmed and others*, 1993 CLC 1367; *Sh. Muhammad Riaz Diwana through his legal heirs v. Sh. Muhammad Sharif and others*, 1989 MLD 3663.

<sup>15</sup> *Haji Abdullah Khan and others v. Nisar Muhammad Khan and others*, PLD 1965 SC 690.

the learned trial court could possibly be raised in front of the appellate court. Furthermore, it is also a limitation that the appellant cannot be departed from the suit that has been tried by the subordinate court.<sup>16</sup>

Another limitation is that “*appeal is created by any statute.*”<sup>17</sup> However, the suit parties are not competent to create the remedy of the appeal by mutuality of their consent. Even the parties of the suit are not obliged to defect to the appellate court’s jurisdiction. Moreover, the parties cannot snatch the jurisdiction of the appellate court.<sup>18</sup> Hence, it is a fact that appeal is a remedy that is sustained by the law. The appeal is not only a remedy but also a substantive right of the aggrieved party.<sup>19</sup> In short, the law sustains the appeal and it is capable of also confining it as well.<sup>20</sup>

It is concluded that appeal is a continuation of the suit, a right of the aggrieved party which is sustained by law. When the aggrieved party is not satisfied by the decision of the subordinate court, it can institute an appeal against such order or decree to the higher court. The honourable superior court decides the matter on merit to satisfy equity and justice.

## 2.2 Revision against the Order of Subordinate Court

Statute creates not only the revision but also the revisional jurisdiction.<sup>21</sup> Remedy of revision is enshrined in Section 115 of the CPC. However, the revision is not a substantive right of an aggrieved party. It is a kind of a privilege that is given to the aggrieved party against the decision

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<sup>16</sup> *Haji Abdullah Khan and others v. Nisar Muhammad Khan and others*, PLD 1965 SC 690; *Ismail v. Abdullah and another*, PLD 1963 Karachi 161; *Begun v. Mst. Kazbanoo and others*, PLD 1957 Karachi 884.

<sup>17</sup> *Muzaffar Ali v. Muhammad Shafi*, PLD 1981 SC 94; *Ibrahim v. Muhammad Hussain*, PLD 1975 SC 457; *Pir Muhammad Farid Jan v. Colonisation Officer, Sukkur Barrage, Hyderabad and others*, PLD 1965 SC 399; *Muhammad Aslam v. The State*, PLD 1959 SC 119; *Miss. Parveen v. Kh. Muhammad Ashar*, PLD 1975 Lahore 334.

<sup>18</sup> *Malik Ghulam Jilani v. Government of West Pakistan*, PLD 1967 SC 373.

<sup>19</sup> *Mst. Zahida Sattar and others v. Federation of Pakistan and others*, PLD 2002 SC 408; *Anjum Zafar v. Abbas Ali Shah*, 2000 SCMR 59; *Governor, N.W.F.P. and another v. Gul Naras Khan*, 1987 SCMR 1709; *S.A. Rizvi v. Pakistan Atomic Energy Commission and another*, 1986 SCMR 965; *Pakistan International Airlines Corporation v. Messrs Pak Saaf Dry Cleaners*, PLD 1981 SC 553; *Muzaffar Ali v. Muhammad Shafi*, PLD 1981 SC 94; *Mian Manzar Bashir and others v. M. A. Asghar & Co.*, PLD 1978 SC 185; *Ibrahim v. Muhammad Hussain*, PLD 1975 SC 457; *Hussain Bakhsh v. Settlement Commissioner, Rawalpindi and others*, PLD 1970 SC 1; *Saeedur Rehman v. Cklef Election Commissioner*, PLD 1965 SC 157; *Muhammad Aslam v. The State*, PLD 1959 SC 119; *Afsar Khan and others v. The State*, *Ghulam Qadar v. Ahmad Gul and others*, PLD 1964 Peshawar 205; *Ghazi and others v. The State and another*, PLD 1962 Lahore 662; *Ghulam Fatima v. Fazal*, 1986 CLC 2057; *Bahadur v. Muhammad Shoaib and others*, PLD 1981 Karachi 788; *Abdul Ghani v. Settlement Commissioner, Lahore Division, Lahore and others*, PLD 1971 Lahore 59; *Bahadur v. Mirza Abdul Qayyum and another*, PLD 1969 Lahore 636; *The Essential Industries v. Central Board of Revenue*, PLD 1969 Lahore 24; *Hart Mean v. The State*, PLD 1958 Dacca 333.

<sup>20</sup> *Muzaffar Ali v. Muhammad Shafi*, PLD 1981 SC 94; *Ibrahim v. Muhammad Hussain*, PLD 1975 SC 457; *Pir Muhammad Farid Jan v. Colonisation Officer, Sukkur Barrage, Hyderabad and others*, PLD 1965 SC 399; *Muhammad Aslam v. The State*, PLD 1959 SC 119; *Miss. Parveen v. Kh. Muhammad Ashar*, PLD 1975 Lahore 334.

<sup>21</sup> *Muhammad Khan v. Government of West Pakistan and others*, PLD 1971 BJ 53.

of the lower court. The revisional court conducts the proceedings and such proceedings are in substance proceedings between the superior and the subordinate court.<sup>22</sup>

Following are the circumstances in which revision can be made under section 115 of the CPC:

“(1) The High Court may call for the record of an case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”<sup>23</sup>

The Supreme Court of Pakistan authenticated that revision is entertained in the cases in which the right of appeal is not available. Moreover, the Honourable court stated that section 115 of the CPC can be invoked in circumstances when the jurisdiction is illegal or irregularly exercised. *Muhammad Boota v. Allah Ditta* can be cited in this regard.<sup>24</sup> The revision will not be made if the jurisdiction is properly exercised by the lower court as well as the superior court is not allowed to utilise such jurisdiction if the conclusion as to law is not affecting the court’s jurisdiction,<sup>25</sup> even if such conclusion is incorrect or wrong unless such conclusion comprises

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<sup>22</sup> *Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others*, 1992 SCMR 241; *Mst. Shamero v. Sardaraz Khan and others*, PLD 2001 Peshawar 54; *Miss. Parveen v. Kh. Muhammad Ashar*, PLD 1975 Lahore 334.

<sup>23</sup> *Abdul Rahim and another v. Mrs. Jannatay Bibi and others*, 2000 SCMR 346; *Malik Hadayat Ullah and others v. Murad Ali Khan*, PLD 1972 SC 69; *Muhammad Swaleh and another v. United Grain & Fodder Agencies*, PLD 1964 SC 97; *Shau Ahmed v. Ashfaq Ahmed*, 1993 CLC 1669; *Karachi Development Authority v. Hadi Bux Memon*, 1992 CLC 1036; *Mst. Hassan Perveen and others v. Muhammad Zafarullah and others*, PLD 1986 Lahore 409; *Gulab and another v. Fazal Ilahi*, PLD 1955 Lahore 26.

<sup>24</sup> *Muhammad Boota v. Allah Ditta*, 1998 SCMR 2764; *S. Zafar Ahmad v. Abdul Khaliq*, PLD 1964 Karachi 149; *Abdul Ghaffar v. Jamaluddin*, 1986 CLC 747; *Muhammad Ashfaq v. Sohail Hameed*, 1986 CLC 2218.

<sup>25</sup> *Anwar Zaman v. Bahadur Sher, Abdul Hakeem v. Habibullah*, 2000 SCMR 431; *Abdul Hakeem v. Habibullah*, 1997 SCMR 1139; *Muhammad Zaman v. Zafar Ali Khan*, PLD 1986 SC 88; *Abdul Rehman Wahla v. Sher Dil Batra*, PLD 1986 SC 234; *Muhammad Bux v. Muhammad Ali*, 1984 SCMR 504; *Gul Roz v. Sargand*, 2003 CLC 116; *Khan Akbar v. Mohib Gul*, 2001 CLC 1899; *Riaz v. Malik Dad*, 2001 CLC 1814; *Hussain Naqvi v. Begum Zakira Chattha*, 2000 CLC 1771; *Tabassam Bibi v. Abdur Rashid Khan*, 1999 CLC 1216; *Riasat Ali v. Muhammad Mushtaq Ahmad Sindhu*, 1999 CLC 1195; *Muhammad Bashir v. Jamal Rashid*, PLD 1995 Karachi 261; *Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan*, PLD 1970 SC 139; *Sher Muhammad v. Ghulam Hussain*, 1992 CLC 204; *Ali Muhammad v. Zahida Parveen*, 1992 CLC 2328; *Abdul Ghaffar v. Jamaluddin*, 1986 CLC 747; *Muhammad Dawood Khan v. Muhammad Usman Ghani*, 1985 CLC 2309; *Rahim Bakhsh v. Civil Judge, Lodhran*, 1985 CLC 387; *Mst. Fazal Begum v. Bahadur Khan and another*, PLD 1983 Lahore 365; *Arshad Mahmoo v. Muhammad Rafique*, PLD 1982 Lahore 660; *Aif-ud-Din Malik v. The Government of West Pakistan through Irrigation and Power Department, Lahore*, PLD 1969 Lahore 506; *Khawaja Noor Muhammad v. Namdar*, PLD 1969 Lahore 105; *Maklemuddin v. Kasem Ali Howlader*, PLD 1960 Dacca 884; *Taj-ud-Din v. Nadar and others*, PLD 1959 Lahore 261; *Haji Abdul Ghafur Rishi v. Pakistan*, PLD 1959 Quetta 21; *Allah Bakhsh v. Syed Ghulam Rasool Shah*, PLD 1957 Lahore 968; *Pir Abdullah Shah v. Humayon*, PLD 1957 Lahore 1054.

issue regarding jurisdiction.<sup>26</sup> The verdict will be revisable if due to an incorrect conclusion, the court assumes or decline the jurisdiction.<sup>27</sup>

Unlike an appeal, revision is not called a “continuation of suit.”<sup>28</sup> However, it is fully based on the discretion of the court hence, it is concluded by Superior courts that “revisional jurisdiction is totally discretionary”.<sup>29</sup> It is very necessary that the revision should be utilised pursuant to law.<sup>30</sup> To satisfy equity and justice, the courts intervene and section 115 of CPC is invoked. Consequently, it is not necessary that each and every irregularity in the light of section 115 of the CPC should be corrected by the worthy revisional court. The revisional court is obliged in the light of section 115 of the CPC to intervene where justice has been denied.<sup>31</sup>

The revisional court is obliged to satisfy the principles of equity, the court will not intervene when the petitioner has come to court without a clean hand or he is at fault.<sup>32</sup> The revisional court has no power to interfere when the order passed by the lower court is satisfying justice and

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<sup>26</sup> *Kanwal Nain v. Fateh Khan*, PLD 1983 SC 53; *Muhammad Hussain Munir v. Sikandar*, PLD 1974 SC 139; *S. Zafar Ahmad v. Abdul Khaliq*, PLD 1964 Karachi 149; *Karachi Building Control Authority v. Muhammad Ismail*, 1989 MLD 2987.

<sup>27</sup> *Utility Stores Corpn. of Pakistan Ltd. v. Punjab Labour Appellate Tribunal*, PLD 1987 SC 447; *Muhammad Hussain Munir v. Sikandar*, PLD 1974 SC 139; *Khizar Hayat Khan Tiwana v. Zainab Begum*, PLD 1967 SC 402; *Abdul Aziz Urfi v. S. G. Jeelani*, 1985 CLC 2415; *Khan Nasrullah Khan v. The Member, Election Commission, Government of Pakistan, Lahore*, PLD 1966 Lahore 850; *Ghulam Moin-ud-Din v. Razia Begum*, PLD 1974 Lahore 173; *Malik Fateh Muhammad v. Malkani Brag Bhari*, PLD 1950 Lahore 253.

<sup>28</sup> *Alaf Din v. Mst. Parveen Akhtar*, PLD 1970 SC 75; *Mst. Majidan Khanum v. District Judge, Vehari*, 1984 CLC 3270.

<sup>29</sup> *Muhammad Bashir v. Province of Punjab*, 2003 SCMR 83; *Abid Hussain v. Aziz Fatima*, PLD 1995 SC 399; *Karamat Hussain and others v. Muhammad Zaman and others*, PLD 1987 SC 139; *Razia Begum v. Hijrayat Ali*, PLD 1976 SC 44; *Manager, Jammu & Kashmir, State Property in Pakistan v. Khuda Yar and another*, PLD 1975 SC 678; *Muhammad Afzal v. Riaz Mahmood*, PLD 2004 Lahore 115; *Ch. Gulzar Khan v. Saghir Ahmed*, 2004 MLD 402; *M. Alam Khan v. Jewan Khan*, PLD 1995 Lahore 181; *Abdul Ghafoor Khan v. Tassawar Hussain Shah*, 1990 MLD 213; *Syed Arif Shah v. Abdul Hakim*, PLD 1986 Karachi 189; *Minochar N. Kharas represented by legal heirs v. Ali Hassan Manghi and others*, 1986 CLC 1378.

<sup>30</sup> *Syed Muhammad Khurshid Abbas Gardezi and others v. Province of Punjab and others*, 1988 CLC 362.

<sup>31</sup> *Mst. Anwar Khatoon v. Umar Bakhsh*, PLD 1959 Dacca 143; *Muhammad Din v. Atta Muhammad*, PLD 1957 Lahore 971; *Ghulam Farid Muhammad Latif v. The Central Bank of India, Limited, Lahore*, PLD 1954 Lahore 575.

<sup>32</sup> *Attaullah Alias Billa and others v. Muhammad Ilyas and others*, 2004 SCMR 830; *Abid Hussain and others v. Aziz Fatima and others*, PLD 1995 SC 399; *Syed Tariq Farooq v. Nasruddin and another*, PLD 1989 Quetta 1; *Abdul Wahid v Ahmad Din*, 1986 SCMR 704; *Gul Baran and others v. Abdul Zahir and another*, 1988 CLC 65; *Mst. Jahanara Begum v. Abdus Samad and others*, PLD 1969 Dacca 322.

equity.<sup>33</sup> The revisional court cannot interfere when a case is filed in the subordinate court with mala fide intention or ulterior motives.<sup>34</sup>

It is submitted that a revision is a discretionary remedy. It is better to say that the entire section 115 of the CPC is discretionary and it is a privilege available when there is a commission of error in the jurisdiction or in cases where no appeal lies. In the case where any other relief is there, the revisional court can refuse the entertainment of the revision.

### 2.3 Difference between the Revision and Appeal

First of all, an appeal is a substantive right of an aggrieved party while revision is a privilege obtained from the petitioner as well as revision is a discretionary remedy.<sup>35</sup> Inter partes is defined as a matter that is between the parties hence, an appeal is a matter between the parties in which the parties have the power to differ. While revision under section 115 of the CPC is a matter regarding the exercising of jurisdiction between the higher and lower court.<sup>36</sup>

In the circumstances when the appeal has been dismissed by the appellate court, the order passed by the appellate court will be the substantive decision. In the case of the revision, when the revision has been dismissed the order passed by the subordinate court will be the substantive decision.<sup>37</sup>

### 3. First Appeal under the 1940 Act

The orders protected by section 39 of the 1940 Act are appealable. Hence, the right of appeal is invoked by the aggrieved party under section 39. There is a limitation that the remedy of the

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<sup>33</sup> *Muhammad Swaleh and another v. Messrs United Grain & Fodder Agencies*, PLD 1964 SC 97; *Haq Nawaz Chohan v. Tariq Azam*, 1994 CLC 1530; *Abdul Rahim v. Noor Muhammad*, 1993 CLC 1059; *Syed Tariq Farooq v. Nasruddin and another*, PLD 1989 Quetta 1; *Mst. Majidan v. Shabir Ahmed*, 1989 MLD 1959; *Mst. Fazal Begum v. Bahadur Khan and another*, PLD 1983 Lahore 365; *Nazeer Ahmad v. Additional District Judge, Muzaffargarh*, 1983 CLC 113; *Mst. Ghulam Sakina v. Karim Bakhsh*, PLD 1970 Lahore 412; *Bashir Ahmad v. Mst. Kaniz Begum*, PLD 1969 Lahore 560; *Syed Qasim Ahmad v. Manzoor Hussain Khan ad others*, PLD 1966 Peshawar 70.

<sup>34</sup> 1989 MLD 213.

<sup>35</sup> *Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others*, 1992 SCMR 241; *Miss. Parveen v. Kh. Muhammad Ashar*, PLD 1975 Lahore 334.

<sup>36</sup> *Maulvi Abdul Qayyum v. Syed Ali Asghar Shah and others*, 1992 SCMR 241; *Karamat Hussain and others v. Muhammad Zaman and others*, PLD 1987 SC 139; *Tahir Ali and others v. Chief Judge, Karachi Small Causes Court and another*, PLD 1963 SC 147; *Muhammad Aslam Mirza v. Mst. Khurshid Begum*, PLD 1972 Lahore 603; *Muhammad Anwar v. Hoechst Pharmaceutical Pakistan (Pvt.) Ltd. and others*, 1989 MLD 171; *Mst. Majidan Khanum v. District Judge, Vehari*, 1984 CLC 3270; *Miss. Parveen v. Kh. Muhammad Ashar*, PLD 1975 Lahore 334; *Din Muhammad v. Hidayat Hussain*, PLD 1968 Lahore 207; *Syed Ali Abid Zaidi and others v. Deputy Settlement and Rehabilitation Commissioner, Gujranwala and others*, PLD 1967 Lahore 836; *Qazi Ghulam Ahmad v. J. F. Elahi, Election Tribunal, Chakwal, and others*, PLD 1962 Lahore 786; *Akhtar Aksi v. Aftab Ahmad Khan and another*, PLD 1960 Lahore 57.

<sup>37</sup> *Mst. Majida Begum v. Sh. Zulfiqar Ali and another*, PLD 1987 Lahore 112; *Syed Ali Abid Zaidi and others v. Deputy Settlement and Rehabilitation Commissioner, Gujranwala and others*, PLD 1967 Lahore 836; *Akhtar Aksi v. Aftab Ahmad Khan and another*, PLD 1960 Lahore 57.

second appeal is not accessible on the first appellate court's order or decision. For orders not mentioned in section 39, the remedy of revision is available for them. This portion of the article describes the appeals and revisions under the 1940 Act.

Section 39 (1) of the 1940 Act reads as follows:

“An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from the original decree of the Court passing the order:—

An order—

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special cases;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award;

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.”

### **3.1 Second Appeal under Section 39(2) of the 1940 Act**

Section 39 (2) of the 1940 Act says: “no second appeal shall lie from any order passed in appeal under this section but nothing in this Section shall affect or take away any right to appeal to [the Supreme Court].” Section 39 expressly states that the verdict passed by the first appellate court cannot be challenged in the second appeal.<sup>38</sup>

## **4. Non-appealable Orders in Matters of Arbitration**

The orders mentioned in section 39 are appealable while the orders that are not mentioned in section 39 of the 1940 Act are non-appealable. Non-appealable orders include the declination of the court to grant the interim measures in the light of section 41 of the Act.<sup>39</sup> The court's order for the removal of an arbitrator is non-appealable.<sup>40</sup> Moreover, the order passed by the learned trial court under section 28 for the extension of the time is non-appealable.<sup>41</sup> In *Farid Majid and*

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<sup>38</sup> *Abdul Razzak v. Mst. Qaiser Sultan and others*, 1984 M L D 147; *Muhammad Nawaz v. Mian Khan and others*, 2019 CLC 413. Court stated that Since no right of revision has been given under 1940 Act against the appellate judgment pronounced by first appellate court under section 39, there is no forum available to contest first appellate judgment in revision. In this case, at the most, this judgement or orders given under first appeal can be challenged through a constitution petition if these are passed without any jurisdiction.

<sup>39</sup> *Petrosin Products (Pvt.) Limited v. Government of Pakistan and others*, 2000 MLD 785; *Arbab Abdul Qadir v. Mst. Bibi Fatima and another*, 1984 C L C 546; *Excel Techno Solutions FZE, UAE v. Oil and Gas Development Company Limited*, 2019 CLC 416; *Pakistan Water and Power Development Authority, Hyderabad v. China International Water and Electric Corporation, Karachi and another*, PLD 1999 Karachi 235.

<sup>40</sup> *Province of East Pakistan v. Abdur Rashid*, PLD 1970 Dacca 69.

<sup>41</sup> *Noble (Pvt.) Ltd., Karachi v. Federal Government Employees Housing Federation, Shaheed-e-Millate Secretariat, Islamabad*, 2002 CLC 1670.



*another v. Mohammad Nawab*, Karachi High Court held that “dismissal of appellant’s application to make award rule of court for want of evidence is non-appealable”<sup>42</sup>

## 5. Accessibility of Remedy of Revision

A revisional remedy is discretionary with a very limited scope and it is exercised to check the validity of an order passed by the court on the issues that are mentioned in section 39 of the Act.<sup>43</sup> In *Tribal Friends Co. v. Province of Balochistan*,<sup>44</sup> the very honourable Supreme Court of Pakistan stated that when there is no appeal available despite the fact that the court has exercised jurisdiction by exceeding it or acting without jurisdiction or committing material irregularity and the order thus passed by the court cannot be impeached under the Arbitration Act 1940, the jurisdiction is available to the High Court under section 115, C.P.C. Hence, in the cases where sections 30, 33, and 39 are not applied then the revisional petition is the only remedy.<sup>45</sup>

An order that is non-appealable, revision is the only remedy in such cases. *Province of Balochistan v Muhammad Hassan* describes that High Court in its revisional jurisdiction has the power to correct any order passed by the subordinate court in the light of section 8 of the Act. Such an order passed by the lower court must have an error regarding jurisdiction or procedure.<sup>46</sup>

## 6. Conclusion

The courts of Pakistan admitted that courts can commit any error while making any judgment as they are not reliable.<sup>47</sup> Hence, when such an error is committed the aggrieved party file appeal or revision against such order of the subordinate court. The concept of appeal and revision is applied and recognised not only by Pakistani laws but also by Pakistani Courts. Hence, applicability and availability of remedies like revision and appeal are also entertained in the matter of arbitration before the court. However, such remedies meaningfully are not availed in proceedings that are in front of an arbitrator. In the case where the appeal is not availed another reasonable remedy i.e revision is entertained.

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<sup>42</sup> *Farid Majid and another v. Mohammad Nawab*, PLD 1976 Karachi 891.

<sup>43</sup> *Ejaz Ali Siddique and another v. Rana Irshad Ahmed and another*, 1998 CLC 1684.

<sup>44</sup> *Tribal Friends Co. v. Province of Balochistan*, 2002 SCMR 1903.

<sup>45</sup> See also, *Abdul Razzak v. Mst. Qaiser Sultan and others*, 1984 M L D 147; *Rahim Jan v. Mrs. Z. Ikram Gardezi and others*, PLD 2004 SC 752.

<sup>46</sup> *Combined Enterprises v. Water and Power Development Authority, Lahore*, PLD 1988 SC 39.

<sup>47</sup> *Ch. Zahur Ilahi, M. N. A. v. The State*, PLD 1977 SC 273.