Section 75 and Order 26 CPC of Pakistan — Detailed Explanation

Section 75 CPC – Power of Court to Issue Commissions

Section 75 of the Code of Civil Procedure (CPC) of Pakistan empowers civil courts to issue commissions for specific purposes during the course of a suit. The purpose of these commissions is to assist the court in obtaining essential information, evidence, or clarification which cannot conveniently be secured in court.

Purpose of Commissions:

The court may issue commissions for examining a witness, making a local investigation, examining or adjusting accounts, performing any ministerial act, holding scientific, technical, or expert investigations, conducting sale of property where required, or any other matter the court deems fit.

Why Commissions Are Needed:

They save time and prevent delays, gather accurate information, assist the court in complex or technical matters, and secure evidence when witnesses cannot appear physically.

Order 26 CPC – Detailed Procedure of Commissions

Order 26 elaborates and operationalizes Section 75 by providing detailed rules related to different types of commissions. It acts as the procedural framework for issuing, executing, and reporting commissions.

Commission to Examine Witnesses (Rules 1–8)

When Court Issues Commission:

A commission to examine witnesses may be issued when the witness is unable to attend due to sickness, resides outside the court's jurisdiction, is a public servant whose attendance is inconvenient, or resides far away, causing unnecessary delay or expense.

Commissioner’s Powers:

He can record evidence, administer oath, examine documents, and submit the signed deposition to the court.

Importance:

This ensures that witness testimony is safeguarded and prevents delays in the judicial process.

Commission for Local Investigation (Rules 9–10)

Purpose:

A local investigation is conducted when the court needs first-hand information about boundaries of property, possession disputes, physical condition of land or building, or the value and measurement of property.

Commissioner's Duties:

He visits the site, inspects, measures, and prepares a report, attaching maps or diagrams if needed.

Use of Report:

Courts rely heavily on it, though objections may be filed by parties.

Commission to Examine Accounts (Rules 11–12)

When Issued:

This commission is issued in complicated financial disputes, partnership settlements, or business-related cases requiring expert accounting knowledge.

Commissioner:

Usually an accountant or suitable financial expert is appointed.

Outcome:

He provides a detailed accounting report like an auditor’s statement for the court.

Commission to Make Partition (Rules 13–14)

When Applied:

This is used in cases involving joint property, family settlements, or agricultural land division.

Commissioner's Work:

He inspects property, prepares a partition plan, and determines fair shares for each party.

Ministerial Acts (Rule 15)

These are non-judicial acts such as delivery of possession, formal inquiries, and verification of documents. The commissioner performs these acts to assist the court.

Scientific, Technical, or Expert Investigation (Rules 15-A onward)

Need for Expert Commissions:

Some disputes require forensic tests, handwriting verification, chemical analysis, engineering surveys, or medical examinations.

Commissioners:

Experts such as forensic analysts, doctors, engineers, or surveyors are appointed, and their reports form crucial evidence.

Commission for Sale of Property (Rule 16 onward)

Reasons:

A commission may be issued for sale of attached property, sale in partition suits, or auction proceedings.

Commissioner’s Role:

He advertises the sale, conducts bidding, and prepares sale reports for submission to the court.

Return and Submission of Commission Report

The commissioner must complete the assignment within the time fixed by the court and submit the report under seal, attaching evidence or sketches. The court may accept the report, order a fresh inquiry, or allow objections.

Comparison of Section 75 and Order 26

Section 75 gives the power to issue commissions, while Order 26 provides the procedure. Section 75 is broad and enabling, whereas Order 26 is specific and operational. Section 75 mentions the types of commissions, and Order 26 explains the rules for each type.

Practical Importance in Pakistani Courts

These provisions are used in family disputes, property cases, banking disputes, land measurements, and technical investigations. They reduce judicial workload by delegating tasks, ensure fairness, and improve evidence collection.

Conclusion

Section 75 and Order 26 CPC are essential mechanisms that allow courts to obtain accurate and expert information through commissioners. They promote efficient justice, minimize delays, and enhance the quality of judicial decisions.