

Civil Petition for Leave to Appeal

(CPLA)

Leave to Appeal – Meaning

- Leave to Appeal means ‘Right to Appeal’.
- Petition for Leave to Appeal means application for the right to file Appeal.

Leave vs. Appeal

- Grant of Leave to Appeal does not mean that the appeal is granted. It solely means that the Petitioner has secured the right to file Appeal

Law Providing CPLA

- Article 185(3) of Constitution of Pakistan.
- “An Appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal.

Purpose of CPLA

- Purpose of Leave to Appeal is to judge merits of the case before notice to the other party

Discretionary power of the Court

- Granting leave to appeal is the discretionary power of the court which is exercised judicially. Leave to appeal cannot be claimed as a matter of right.

Powers of SC under Art. 185(3)

- **PLD 2011 SC 44**

Powers of SC under Art. 185(3) are unfettered which are used for ensuring justice to the parties.

Maintainability of CPLA

- **2005 SCMR 1371**

Maintainability of CPLA is conditional upon non-availability of a right of appeal under Article 185(2) of Constitution

Appeal u/art. 185(3) Not a Right

- **PLD 1969 SC 98**

Grant of leave under Art. 185(3) is not a matter of right but can be granted where merits of the case require its grant.

Scope of Leave

- Leave may be granted on specific questions – not whole of the matter may be re-opened
- **2011 SCMR 11**
Supreme court does not normally go beyond the findings of the High Court unless it can be shown that such finding is on the face of it against evidence or perverse.

CPLA where ICA is provided

- **PLD 1971 SC 573**

There is no bar to exercise powers under Art. 185(3) where ICA has been provided under S. 3 of Law Reforms Ordinance, 1972, but SC has consistently refused to entertain a CPLA where ICA is provided. In exceptional cases CPLA has been entertained.

CPLA against Concurrent Findings

- As a general practice SC does not go against the concurrent findings of the courts below

New Plea in CPLA

- **PLD 2003 SC 430**

No new plea can be taken in CPLA

Interference into Interlocutory Orders

- **PLD 2003 SC 154**

As a matter of practice no interference is made into interlocutory orders of the High Court but where interlocutory order is made on the back of the petitioner and petitioner is likely to suffer irreparable loss due to it, interlocutory order can be interfered into.

Re-appraisal of Evidence

1971 SCMR 88

SC cannot make re-appraisal of evidence under Art. 185(3) of the Constitution unless a substantial departure from some principle of appreciation of evidence has been made.

PLD 1965 SC 179

The SC may grant re-examination of the evidence when grave injustice is apprehended to have been done

Additional Evidence

- **PLD 1969 SC 60**

SC acting as a court of ultimate jurisdiction has undoubtedly the power to do complete justice, if necessary, even by admitting additional evidence, which was not available earlier.

Relevancy of Subsequent Events

- **1982 SCMR 390**

Events taking place subsequent to passing of impugned order cannot be raised in CPLA

Interpretation of Law

- **SBLR 2004 SC 106**

Where cases involve complex questions of interpretation of law, leave can be granted.

Concurrent Findings

- **2011 SCMR 513**

As a general principle concurrent findings of the courts below are not interfered in CPLA but where findings of the courts below have been arrived at by disregarding any provision of law the concurrent findings loose their sanctity and can be modified.

Mixed Question of Law and Fact

- **PLD 2002 SC 618**

Mixed question of law and fact not raised at the forum below cannot be raised before SC.

Opening of Entire Case

- **PLD 1982 SC 413**

If circumstances of the case require the entire case may be re-opened to prevent failure of justice even though leave was granted to examine only certain specific points.

Construction of Documents

- **PLD 1983 SC 243**

Leave to appeal can be granted to ascertain if the documents have been given correct construction.

Jurisdictional Question

- **2000 SCMR 928**

Leave can be granted to adjudicate upon the question of Jurisdiction

CPLA in Criminal Cases

- **Two types**
 - (i) CPLA against Conviction
 - (ii) CPLA against Acquittal

CPLA against Capital Punishment

- In Appeal Against Conviction there is a tendency to interfere if there appears to be plausible reason for it
- In Appeals against Acquittal SC generally refrains from interfering into the findings of the court below

CPLA Against Acquittal

- **PLD 1981 SC 241**

The right to life is the basic right that human being possesses. Once a charge for capital offence, duly tried, results in acquittal the accused person acquires a very precious right and he should not, therefore, be put in jeopardy of his life by a petition of leave to appeal.

Leave Granting Order – Binding Nature

- Leave granting order is not binding under Article 189 of the Constitution as it does not decide a question of law or enunciates a principle of law.