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CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Monday, 03 August 2026

Upload Window: 31 July – 3 August 2026 (with 30 July FCC straggler)

FCC: 1 judgment | SC: 5 judgments | LHC: 1 judgment | SHC: 1 judgment | IHC: no new entries

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Exclusions and coverage notes: this issue sweeps the judgments uploaded on 31 July, 1 August and 3 August 2026; Sunday 2 August produced no uploads. Judgments uploaded between 28 and 30 July 2026 fall outside this window and were not swept, the single exception being the Federal Constitutional Court judgment in C.P.L.A. No. 2793-L of 2022 (uploaded 30 July 2026), which had not been covered in any earlier issue and is reported here. Two Supreme Court PDFs uploaded on 31 July 2026 are excluded because they are scanned images from which no machine-readable text could be extracted: Civil Appeal No. 240-P of 2018 (Saida Baz v. Niamat Ullah & others, decided 25.05.2026), and Civil Appeal No. 1443 of 2018 (Commissioner of Income Tax, Lahore v. M/s Sui Northern Gas Pipelines Ltd, decided 23.07.2026) — the latter, an income-tax appeal of likely substantive interest, will be reported once a text-bearing copy is released. Islamabad High Court — the order-search portal returned no results for 31 July to 3 August 2026. Note also that the Supreme Court PDF for Civil Appeal No. 208-P of 2015 is published on the Court's website under the filename 'c.a._280_p_2015.pdf' (a site-side transposition), and the link given below reflects the filename as actually hosted.

Federal Constitutional Court of Pakistan

1 judgment

INDUSTRIAL RELATIONS ACT 2012 S.58; NIRC (PROCEDURE AND FUNCTIONS) REGULATIONS 2016 REG.45; CPC S.12(2); CONSTITUTION ARTS 9, 14 & 199 — PENSIONARY BENEFITS ARE A VESTED AND ENFORCEABLE RIGHT, AND NO WRIT LIES AGAINST THE DISMISSAL OF A TIME-BARRED REVIEW SO AS TO REOPEN AN ORDER THAT HAS ATTAINED FINALITY

Muhammad Akram v. National Bank of Pakistan and others

PETITION CONVERTED INTO APPEAL AND ALLOWED; IMPUGNED JUDGMENT OF THE LAHORE HIGH COURT, BAHAWALPUR BENCH DATED 29.06.2022 SET ASIDE; LABOUR COURT JUDGMENT DATED 18.04.2008 HELD TO HAVE ATTAINED FINALITY; APPROVED FOR REPORTING

C.P.L.A. No. 2793-L of 2022 · Bench: Amin-ud-Din Khan, C.J.; Ali Baqir Najafi, J.; Syed Arshad Hussain Shah, J. (authoring) · Decided: 24.07.2026 (announced in open Court on 30.07.2026) · Uploaded: 30.07.2026

FACTS

The petitioner was appointed a driver with the National Bank of Pakistan on daily wages by letter dated 01.07.1992 and was disengaged with effect from 15.06.1995. Through nearly three decades of litigation his grievance petition was allowed by the NIRC in 1996, the Bank's appeal dismissed in 1997, the matter remanded by the High Court in 2004, and after Section 2A of the Service Tribunals Act, 1973 was omitted, a fresh grievance petition was allowed by the Punjab Labour Court No. 8, Bahawalpur on 18.04.2008 directing reinstatement and regularisation with all back benefits. Appeals reached the Full Bench of the NIRC after the Industrial Relations Act, 2012. In C.P.L.A. No. 648 of 2013 the Supreme Court, by order dated 05.07.2013, converted the petition into an appeal and directed reinstatement within seven days. A reinstatement order issued on 19.07.2013 and the petitioner retired on superannuation on 21.05.2017. He received gratuity and benevolent fund grant but was denied monthly pension, G.P. Fund, insurance and leave encashment on the footing that his qualifying service was only eight years and nine months. The Full Bench of the NIRC disposed of the pending appeals as infructuous on 30.11.2020. The Bank's application dated 04.10.2021 under Regulation 45 of the NIRC Regulations, 2016 read with Section 12(2) CPC was dismissed as time-barred, the order sought to be reviewed having been passed on 30.11.2020 in the presence of the Bank's counsel. The High Court, on the Bank's writ petition, set that aside and remanded the matter to the NIRC, and disposed of the petitioner's own writ petition seeking implementation as infructuous.

LEGAL ISSUE

Whether a writ petition lies against an order dismissing a time-barred review or Section 12(2) CPC application, so as to permit an original order that has attained finality by efflux of time to be reopened; and whether the petitioner's pre-1995 and pre-reinstatement service counted towards qualifying service for pension so as to entitle him to release of his pensionary benefits.

HOLDING

The Court held that no question of fraud or misrepresentation could arise where the order sought to be reviewed had been passed in the presence of the Bank's counsel and after hearing him, and that an order passed on a time-barred review petition is not amenable to the writ jurisdiction of the High Court, litigants not being permitted to adopt forums at will to bypass limitation. Once an original order attains finality by expiry of the limitation period, a suitor cannot bypass that finality by filing a time-barred review and then challenging its dismissal in a writ petition — the principle being that what cannot be done directly cannot be done indirectly, as held in Mumtaz Baig v. Jamal Din (2009 SCMR 1364) and Ahmad Jan v. Qazi Azizul Haq (2009 SCMR 1022). The High Court had accepted a novel, factually incorrect and legally untenable plea and had overlooked the cardinal principle that there must be an end to litigation. On the merits of the pension claim, the reinstatement letter dated 19.07.2013 by its express terms signified reinstatement with continuity of service and full back benefits; the Labour Court judgment directed that previous service be counted towards pensionary benefits; the petitioner's total service from 01.07.1992 to 21.05.2017 came to approximately 25 years, so that he qualified for pensionary benefits. The Court held that pensionary benefits constitute a vested, enforceable, legal and fundamental right of a retired employee that cannot be withheld except by an order of a court of competent jurisdiction in accordance with law, and that unexplained delay or withholding without lawful justification amounts to wilful disregard of the law declared by the superior judiciary and would amount to contempt of Court.

LEGAL SIGNIFICANCE

This is the Federal Constitutional Court's most forceful statement to date on pension as a vested and fundamental right, and it arms retired employees with a contempt remedy where pensionary dues are withheld without lawful justification or a court order. Read with the directions in Muhammad Ismail Memon's case (PLD 2007 SC 35) that pension papers be completed six months before retirement, it converts administrative lethargy in pension processing into a justiciable, and potentially contumacious, wrong. Equally important for civil practice is the jurisdictional holding that a writ will not lie against the dismissal of a time-barred review, which closes a familiar route by which litigants revive orders that have become final by efflux of time.

LEGAL PROPOSITIONS (VERBATIM)

— *there must be an end to litigation*

— *This is based on the principle that what cannot be done directly cannot be done indirectly.*

LEGAL PRINCIPLES EXPOUNDED

Pensionary benefits are a vested, enforceable, legal and fundamental right of a retired employee and may not be withheld save under an order of a court of competent jurisdiction made in accordance with law.

Source: *W e hold that pensionary benefits constitute a vested , enforceable , legal and fundament right of a retired employee and cannot be withheld except by the order of a Court of competent jurisdiction in accordance with law.*

Authority: *Articles 9 and 14 of the Constitution; Muhammad Ismail Memon v. Government of Sindh (PLD 2007 SC 35)*

Unnecessary, arbitrary or unexplained delay in releasing pensionary benefits, or their withholding without lawful justification or a court order, amounts to wilful disregard of the law declared by the superior judiciary, violates the pensioner's rights, undermines the authority of the Court and would amount to contempt of Court.

Source: *Consequently, any unnecessary, arbitrary, or unexplained delay in the release of pensionary benefits, or their withholding without any lawful justification or a specific order of a Court of competent jurisdiction, amounts to a wil l ful disregard of the law declared by the superior judiciary .*

Authority: *Muhammad Ismail Memon v. Government of Sindh (PLD 2007 SC 35); contempt jurisdiction of the superior courts*

An order passed on a time-barred review petition is not amenable to the writ jurisdiction of the High Court; litigants cannot be allowed to adopt forums at will in order to bypass limitation.

Source: *a n order passed on a time - barred review petition is not amenable to the writ jurisdiction of the High Court , as the litigants cannot be allowed to adopt forums at will to bypass limitation, as it makes a mockery of the process of law.*

Authority: *Article 199 of the Constitution; Regulation 45, NIRC (Procedure and Functions) Regulations, 2016 read with Section 12(2) CPC*

Once an original order has attained finality through expiry of the limitation period, that finality cannot be bypassed by filing a time-barred review and then challenging its dismissal in a writ petition; what cannot be done directly cannot be done indirectly.

Source: *The superior courts have consistently held that once an original order attains finality due to the expiration of the limitation period, a suitor cannot bypass this finality by filing a time - barred review and subsequently challenging its dismissal in a writ petition.*

Authority: *Mumtaz Baig v. Jamal Din (2009 SCMR 1364); Ahmad Jan v. Qazi Azizul Haq (2009 SCMR 1022); Limitation Act, 1908*

OPERATIVE ORDER

The petition was converted into an appeal and allowed. The impugned order dated 29.06.2022 of the Lahore High Court, Bahawalpur Bench, was set aside. Consequently, the judgment of the Punjab Labour Court No. 8, Bahawalpur dated 18.04.2008 was held to have attained finality, and the findings and directions contained therein, having remained undisturbed through the hierarchy of judicial forums, can neither be reopened nor circumvented. Islamabad, 24 July 2026; announced in open Court on 30 July 2026. Approved for reporting.

■ **View Full Judgment**

Supreme Court of Pakistan

5 judgments

KHYBER PAKHTUNKHWA SACKED EMPLOYEES (APPOINTMENT) ACT 2012 SS.2(G), 3, 5 & 9; CONSTITUTION ART.212(3) — SECTION 5'S BAR ON 'BACK BENEFITS' DOES NOT EXTINGUISH PRE-SACKING SERVICE FOR THE PURPOSE OF COMPUTING QUALIFYING SERVICE FOR PENSION

Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and others v. Nisar Ahmed and Sher Bahadur (heard with the cross-petitions of Nisar Ahmed and Sher Bahadur)

CIVIL PETITIONS CONVERTED INTO APPEALS AND ALLOWED; JUDGMENT OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL SET ASIDE; APPROVED FOR REPORTING

Civil Petitions No. 856-P, 857-P, 5393 & 5469 of 2024 · Bench: Muhammad Ali Mazhar, J. (authoring); Musarrat Hilali, J. · Decided: 23.06.2026 (heard 05.03.2026) · Uploaded: 01.08.2026

FACTS

The employees were appointed in 1995 as Theology Teachers in the Elementary and Secondary Education Department of Khyber Pakhtunkhwa and their services were terminated in 1996. After the promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, they were reinstated in service, but back benefits were denied to them. Their departmental appeals having failed, they approached the Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad, which by consolidated judgment dated 23.09.2024 in Appeals No. 618 & 619 of 2022 allowed their appeals only to the extent of counting service from the date of promulgation of the Act of 2012 for the payment of pensionary benefits. Both sides were aggrieved. The Government contended that under Section 5 of the Act of 2012 an appointment of a sacked employee is expressly a fresh appointment carrying no back benefits, so that not even the post-2012 period could be counted; the employees contended that Section 5 does not in terms bar the counting of the intervening or pre-sacking period towards qualifying service for pension. Reliance was placed by both sides on an earlier order of the Court dated 27.03.2020 in Civil Petitions No. 468-P etc. of 2016, which had observed that petitioners 'will be allowed counting of their service for the protected period for payment of pensionary benefits', and on the coordinate-bench order dated 29.09.2025 in Civil Petitions No. 301-P to 304-P of 2021 following it. The Court noted that the expression 'protected period' had never been defined either in the Act of 2012 or by the coordinate bench.

LEGAL ISSUE

Whether Section 5 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 — which denies a sacked employee, on re-appointment, any claim of seniority, promotion or 'other back benefits' and deems the appointment to be a fresh appointment — also operates to exclude the period of service rendered before sacking from the computation of qualifying service for pension; and what the undefined expression 'protected period' in the Court's earlier orders means.

HOLDING

The Court held that the statutory bar in Section 5 is directed at 'back benefits' properly so called and does not, word for word, repudiate a claim to pensionary benefits referable to service actually rendered before sacking. 'Back benefits' denote retroactive wages and arrears payable when a wrongful termination is overturned and are compensation for losses sustained during the period out of employment; they are subject to the overarching exception of gainful employment and to the doctrine of 'no work, no pay'. Pension, by contrast, is a separate vested retirement right which matures only on superannuation, is not dependent on the gainful-employment threshold, and cannot be denied or forfeited without cover of law. The Court surveyed comparative authority (Indian Supreme Court decisions separating back wages from pension, and Sections 114(1) and 114(2)(a) of the United Kingdom Employment Rights Act 1996) and found the same separation. The expression 'protected period' was held to have no standalone universal meaning; in employment law it denotes the span over which protection from dismissal or detrimental treatment is accorded. Applying the golden rule of harmonious construction, the doctrine of purposive interpretation, the doctrine of reading down and the canons of beneficial construction, and holding the Act of 2012 to be remedial and beneficial legislation enacted to undo the injustice of the sacking, the Court held that there is no lawful justification to scrap service rendered before sacking for the purpose of pension eligibility, although that service cannot be treated as continuous with the re-appointment. The doctrine of 'no work, no pay' applies to deny back benefits for the intervening period, but not to the counting of the pre-sacking service.

LEGAL SIGNIFICANCE

The judgment resolves a recurring dispute affecting every province with sacked-employees legislation, and is directly applicable to the Sindh and federal analogues: a statutory denial of 'back benefits' on re-appointment is not a denial of pension, and the two must not be conflated. It supplies, for the first time, a working construction of the previously undefined expression 'protected period' used in the Court's earlier orders, and it settles that pre-sacking service counts towards the length of service for pension eligibility while remaining non-continuous for other purposes. It also contains an extended restatement of beneficial-construction doctrine, drawing on Province of Sindh v. Azhar Ali (2026 SCLR 6 = 2025 SCP 464), and a useful comparative treatment of the pension/back-wages divide in Indian and United Kingdom law.

LEGAL PROPOSITIONS (VERBATIM)

— The Court has to do substantial and not insubstantial justice.

— The back benefits are subject to the overarching exception of gainful employment .

— The dominant object of promulgating Act of 2012 was to extinguish the unfairness and injustice to the sacked employees

LEGAL PRINCIPLES EXPOUNDED

The expression 'protected period' has no fixed or universal content; it takes its meaning from the statute and context in which it appears, and in employment law denotes the span of time over which protection from discrimination, dismissal or detrimental treatment in the terms of service is accorded.

Source: *Without a doubt, its crystal - clear denotation differs by context and background and the e xpression "protected period" does not have a standalone universal meaning but depends on the statute or legal context.*

Authority: *Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 (construed); earlier orders of the Supreme Court dated 27.03.2020 in Civil Petitions No. 468-P, 469-P, 471-P and 472-P of 2016 and dated 29.09.2025 in Civil Petitions No. 301-P to 304-P of 2021*

'Back benefits' and 'pension' are juridically distinct: back benefits are retroactive wages and arrears compensating an employee for the period of wrongful termination, and are subject to the gainful-employment exception and to 'no work, no pay'; pension is a separate vested retirement right accruing on superannuation which cannot be denied or forfeited without cover of law.

Source: *The literal connotation of the stock phrase "back benefits" in fact applies to discharge the liability of retroactive/ex - post facto wages/ arrears when a wrongful dismissal/termination order from service is overturned but the right of pension or its claim is treated under the law as a separate vested retirement benefit which only accrues on the eve of superannuation that cannot be unwaveringly mixed up with the payment or claim of back benefits which is in fact a compensation for the financial losses and miseries sustained by an employee during the period of termination or dismissal.*

Authority: *Section 5, Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012; Muhammad Sharif v. Inspector General of Police (2021 SCMR 962); Muhammad Ismail Memon v. Government of Sindh (PLD 2007 SC 35); Muhammad Yousaf v. Province of Sindh (2024 SCMR 1689 = 2024 SCP 291); Qazi Khalid Ali v. Federation of Pakistan (2025 SCP 305)*

A statute must be read as a harmonious whole in line with legislative intention, so that no provision is obliterated or annihilated by the construction placed upon another; the object of the exercise is to preserve the effect of the statute within the limits of the law and the Constitution.

Source: *The golden rule of statutory interpretation provides that the provisions should be interpreted harmoniously and congenially in line with the intention of the legislature and all the provisions should be read in unison, for the reason that the foremost stratagem of this doctrine is to preserve the effect of the statute within the precincts of law and the Constitution .*

Authority: *Golden rule of statutory interpretation; doctrines of purposive interpretation and reading down, applied to Sections 3, 5 and 9 of the Act of 2012*

Where a provision of beneficial legislation admits of two constructions, the court must choose the one that preserves and advances the benefit rather than the one that deprives the beneficiary of it.

Source: *Even if a word or provision of any beneficial le gislation may be interpreted in two ways that one protects and conserves the benefit but one does not or it allows diverse interpretations, then the dominant option is to pick and choose the interpretation which prospers and withstands the benefit rather than deprive it.*

Authority: *Province of Sindh through Chief Secretary v. Azhar Ali (2026 SCLR 6 = 2025 SCP 464); canons of beneficial construction*

OPERATIVE ORDER

The civil petitions were converted into appeals and allowed. The consolidated judgment dated 23.09.2024 of the Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad, was set aside with the declaration that the period of service rendered by the employees before the termination of their service shall be counted and included for deciding eligibility for pensionary benefits only, after re-appointment under the provisions of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Announced at Islamabad. Approved for reporting.

■ **View Full Judgment**

SUCCESSION ACT 1925; MUSLIM PERSONAL LAW; PESCO/WAPDA SERVICE AND PENSION RULES — FAMILY PENSION IS A STATUTORY ENTITLEMENT OF THE WIDOW AND DESIGNATED DEPENDENTS AND IS NOT TIRKA DEVOLVING BY INHERITANCE, AND A SUCCESSION CERTIFICATE CANNOT ENLARGE IT

Haji Painda Khan & others v. Mst. Gul Indana Bibi & others

APPEAL AND PETITION DISMISSED; LEAVE DECLINED; IMPUGNED JUDGMENT OF THE PESHAWAR HIGH COURT, BANNU BENCH UPHELD; NO ORDER AS TO COSTS; APPROVED FOR REPORTING

Civil Appeal No. 208-P of 2015 and C.P.L.A. No. 637-P of 2015 · Bench: Yahya Afridi, C.J.; Shakeel Ahmad, J. (authoring) · Decided: 12.05.2026 · Uploaded: 31.07.2026

FACTS

Ghulam Muhammad, a Superintendent Revenue in PESCO, died on 28.03.2007 leaving behind service benefits including pension and gratuity payable by WAPDA. He left a widow, Mst. Gul Indana Bibi, but no children. His siblings applied to the Senior Civil Judge/Guardian Judge, Lakki Marwat, for a succession certificate in respect of the estate. The widow contested. The trial Court dismissed the succession application on 03.03.2010. The Additional District Judge, Lakki Marwat, allowed the siblings' appeal on 23.02.2011. Both sides then filed civil revisions before the Peshawar High Court, Bannu Bench, which by common judgment dated 13.08.2015 accepted the widow's revision and dismissed that of the siblings. The siblings came to the Supreme Court by appeal and petition. No one appeared for either side despite service, and the Court proceeded on the record.

LEGAL ISSUE

Whether family pension, gratuity, benevolent grant and allied post-retirement dues payable on the death of a public-sector employee form part of his tirka (estate) devolving upon his legal heirs under Muslim Personal Law, so as to entitle the deceased's brothers and sisters to a succession certificate in respect of them, or whether they are statutory entitlements regulated exclusively by the governing service and pension rules.

HOLDING

The Court held that retirement dues of employees of corporations and public-sector entities such as PESCO are governed primarily by the relevant service and pension rules and are not treated as part of the deceased employee's tirka devolving through inheritance under Muslim Personal Law. A crucial distinction was drawn between amounts that had accrued to and vested in the deceased during his lifetime — which do form part of his estate and devolve upon his heirs — and family pension, the right to which arises only upon death and is payable exclusively under the governing pension rules. Family pension is a personal statutory right created in favour of the widow and other eligible dependents; it does not pass through the law of succession and cannot be claimed by collateral relatives unless they are expressly recognised as beneficiaries within the definition of 'family' or 'dependents' under the applicable framework. A succession certificate may facilitate realisation of assets forming part of the estate but cannot override or enlarge rights created by a statutory pension scheme.

Where the employee dies leaving a widow but no children, the widow, as the recognised dependent and valid nominee, is entitled to the family pension, pension arrears, gratuity, benevolent dues and other admissible benefits, and the brothers and sisters acquire no independent or vested right in them merely by virtue of their status as heirs.

LEGAL SIGNIFICANCE

This is a clean and citable statement of the boundary between inheritance law and statutory pension schemes, of daily importance in succession-certificate practice. It confirms that the grant of a succession certificate is not a passport to family pension, and that collaterals cannot convert a welfare entitlement designed for dependents into an inheritable asset. Practitioners should note the operative distinction the Court draws between dues that vested in the deceased during his lifetime (which are tirka) and the post-mortem family pension (which is not), because that distinction determines what may properly be included in a succession application in the first place.

LEGAL PROPOSITIONS (VERBATIM)

— It is a settled principle that a family pension does not constitute an inheritable asset of the deceased employee.

— Family pension, however, stands on an entirely different footing.

— Brothers and sisters of the deceased do not acquire any independent or vested right in such benefits merely by virtue of their status as legal heirs.

LEGAL PRINCIPLES EXPOUNDED

Family pension is not an inheritable asset of the deceased employee but a statutory benefit or concession created by the applicable rules for the benefit of the widow and other eligible dependents.

Source: *It is a settled principle that a family pension does not constitute an inheritable asset of the deceased employee.*

Authority: *Service and pension rules applicable to employees of PESCO/WAPDA; Muslim Personal Law (distinguished)*

Dues that accrued to and vested in the deceased during his lifetime may form part of his tirka and devolve under the law of inheritance; family pension does not, because the right to it arises only on death and is payable exclusively under the governing pension rules.

Source: *Family pension, however, stands on an entirely different footing. It does not form part of the deceased's estate because the right thereto arises only upon his death and is payable exclusively in terms of the governing pension rules.*

Authority: *Distinction between tirka (estate) and post-mortem statutory entitlements; governing pension rules*

A succession certificate does not by itself confer entitlement to family pension where such entitlement would be inconsistent with the governing pension rules; the certificate is a facility for realising estate assets and cannot override or enlarge rights created by a statutory pension scheme.

Source: *A succession certificate may facilitate the realization of assets forming part of the deceased's estate, but it cannot override or enlarge rights created and regulated by a statutory pension scheme.*

Authority: *Succession Act, 1925 (succession certificate jurisdiction) read with the applicable service and pension rules*

Entitlement to family pension does not pass through the law of succession and cannot be claimed by collateral relatives, including the brothers and sisters of the deceased, unless they are expressly recognised as beneficiaries within the statutory definition of 'family' or 'dependents'.

Source: *Such entitlement does not pass through the law of succession and cannot be claimed by collateral relatives, including brothers and sisters of the deceased, unless they are expressly recognized as beneficiaries within the definition of "family" or "dependents" under the applicable statutory framework.*

Authority: *Definition of 'family'/'dependents' in the applicable pension rules; Muslim Personal Law (inapplicable to family pension)*

OPERATIVE ORDER

The Court found no legal or factual infirmity in the impugned judgment dated 13.08.2015 of the Peshawar High Court, Bannu Bench, holding that the High Court had correctly appreciated the governing statutory framework. The impugned judgment was upheld; the appeal and petition, being devoid of merit, were dismissed and leave was declined, with no order as to costs. Islamabad, 12.05.2026. Approved for reporting.

View Full Judgment

PPC SS.409, 420, 468 & 471; PREVENTION OF CORRUPTION ACT 1947 S.5(2); CR.P.C. S.342; CONSTITUTION ART.188; SUPREME COURT RULES 1980 ORDER XXVI RULE 1 — ENTRUSTMENT IS THE SINE QUA NON OF AN OFFENCE UNDER S.409 PPC, AND ITS OMISSION TOGETHER WITH A DEFECTIVE S.342 EXAMINATION IS AN ERROR APPARENT ON THE FACE OF THE RECORD JUSTIFYING REVIEW

Dr. Waqar Hameed v. The State etc.

CRIMINAL REVIEW PETITION ALLOWED; CONVICTIONS AND SENTENCES SET ASIDE; PETITIONER ACQUITTED BY EXTENDING THE BENEFIT OF DOUBT; APPROVED FOR REPORTING

Criminal Review Petition No. 122 of 2019 in Criminal Petition No. 490 of 2019 · Bench: Malik Shahzad Ahmad Khan, J.; Aqeel Ahmed Abbasi, J.; Shakeel Ahmad, J. (authoring) · Decided: 08.06.2026 · Uploaded: 31.07.2026

FACTS

The petitioner and his co-accused, Farrukh Abbas, were implicated in Crime No. 17 dated 02.08.2010 registered at Police Station ACE, Sargodha under Sections 409, 420, 468 and 471 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947. The prosecution alleged that they had fraudulently withdrawn the complainant's salary for March to November 2008 from the government treasury with intent to misappropriate it; a sum of Rs. 80,645 was subsequently redeposited. By judgment dated 18.09.2017 the trial Court acquitted both accused of the charges under Sections 420, 468 and 471 PPC but convicted them under Section 409 PPC and Section 5(2) of the 1947 Act, sentencing each to three years' rigorous imprisonment on each count with fines. On appeal, the Lahore High Court by judgment dated 25.03.2019 dismissed the petitioner's appeal but allowed that of the co-accused, acquitting him on the benefit of doubt on the very same evidence. Criminal Petition No. 490 of 2019 was dismissed by the Supreme Court by a majority of two to one. The petitioner, who had been released on 30.01.2021 after serving out his sentence, pressed the review on merit rather than allowing it to be treated as infructuous.

LEGAL ISSUE

Whether the majority opinion refusing leave suffered from errors of law apparent on the face of the record — in particular the absence of proof of entrustment under Section 409 PPC, the defective examination of the accused under Section 342 Cr.P.C., the finality of the acquittal under Sections 420, 468 and 471 PPC, the unexamined ingredients of Section 5(2) of the Prevention of Corruption Act, 1947, and the acquittal of the co-accused on identical evidence — so as to bring the case within the limited ambit of review jurisdiction under Article 188 of the Constitution.

HOLDING

The Court held that entrustment of property, or dominion over it, followed by dishonest misappropriation, is the foundation of an offence under Section 409 PPC, and that in this case the prosecution had never alleged, much less proved, that the salary amount had been entrusted to the petitioner or had come into his lawful custody. The conviction was therefore legally vulnerable. The challan (Exh. P-4) relied upon as bearing the petitioner's signatures and stamp had never been sent for forensic comparison, the investigating officer having candidly admitted that he merely presumed the deposit had been made by the petitioner; a conviction cannot rest on conjecture or presumption. Several links in the chain — the issuance of the treasury token, presentation of documents, actual withdrawal and receipt of the money — were unproved. Material incriminating circumstances were never put to the petitioner in his examination under Section 342 Cr.P.C., so that any conviction founded on them was unsustainable and the requirements of a fair trial were offended. Section 5(2) of the 1947 Act creates a distinct offence whose ingredients neither Court below had examined; the mere status of being a public servant does not attract liability. The acquittal of the co-accused on the same evidence, and the unchallenged and now final acquittal of both accused under Sections 420, 468 and

471 PPC on the single factual foundation of forged documents, raised the principles of consistency and parity. These being questions of law and errors apparent on the record rather than a fresh appraisal of evidence, they fell within the limited ambit of review; the majority opinion had overlooked material legal and evidentiary defects, resulting in a manifest miscarriage of justice.

LEGAL SIGNIFICANCE

A rare instance of the Supreme Court allowing a criminal review under Article 188 and converting a concluded conviction into an acquittal, and therefore an important authority on the boundary of review jurisdiction: it maps precisely which categories of defect (patent error of law, overlooked material evidence, an unconsidered legal proposition, manifest injustice) will support review, while reaffirming that review is not an appeal in disguise. It is also a compact restatement of the ingredients of criminal breach of trust by a public servant — entrustment being the sine qua non — and of the consequences of a defective Section 342 Cr.P.C. examination. Defence practitioners should note the treatment of parity where a co-accused is acquitted on the same inseparable body of evidence, and the requirement that disputed signatures forming the foundation of the case be sent for forensic comparison.

LEGAL PROPOSITIONS (VERBATIM)

— Entrustment constitutes the very foundation of the offence under Section 409 PPC, and in its absence, the charge cannot be sustained.

— It is well settled that a criminal conviction cannot rest upon conjecture, presumption or assumptions.

— Consequently, any conviction founded upon material not put to the accused becomes legally unsustainable.

LEGAL PRINCIPLES EXPOUNDED

Entrustment of property, or dominion over it, is the foundation of the offence of criminal breach of trust by a public servant; where entrustment is neither alleged nor proved, a conviction under Section 409 PPC cannot stand.

Source: *Entrustment constitutes the very foundation of the offence under Section 409 PPC, and in its absence, the charge cannot be sustained.*

Authority: *Section 409, Pakistan Penal Code, 1860*

A criminal conviction may not be founded on conjecture, presumption or assumption; where the authorship of disputed signatures is the very foundation of the prosecution case, the failure to refer them for forensic examination creates an incurable evidentiary lacuna.

Source: *It is well settled that a criminal conviction cannot rest upon conjecture, presumption or assumptions.*

Authority: *Standard of proof beyond reasonable doubt; Qanun-e-Shahadat Order, 1984 (expert comparison of disputed signatures)*

Every material piece of incriminating evidence intended to be used against an accused must be specifically put to him under Section 342 Cr.P.C.; material not so put cannot sustain a conviction, and its omission offends the requirements of a fair trial.

Source: *Consequently, any conviction founded upon material not put to the accused becomes legally unsustainable.*

Authority: *Section 342, Code of Criminal Procedure, 1898; Article 10A of the Constitution (fair trial)*

Section 5(2) of the Prevention of Corruption Act, 1947 creates a distinct and independent offence; the status of being a public servant does not by itself attract liability, and the prosecution must prove specific acts of criminal misconduct falling within the statutory provision.

Source: *The mere fact that an accused is a public servant does not, by itself, attract criminal liability under Section 5(2) of the Act.*

Authority: *Section 5(2), Prevention of Corruption Act, 1947*

Review is not an appeal in disguise and does not permit a rehearing on the merits, but review jurisdiction may be invoked where the judgment discloses a patent error of law on the face of the record, overlooked material evidence, an unconsidered important legal proposition, or manifest injustice.

Source: *Nevertheless, review jurisdiction may be invoked where the impugned judgment suffers from a patent error of law apparent on the face of the record, material evidence has been overlooked, an important legal proposition has escaped consideration, or the judgment results in manifest injustice.*

__Authority:__ Article 188 of the Constitution read with Order XXVI Rule 1 of the Supreme Court Rules, 1980

OPERATIVE ORDER

The Court found itself in agreement with the reasoning of the minority opinion, holding the defects identified therein to be neither trivial nor procedural but to strike at the very foundation of the prosecution's case. Satisfied that the majority opinion had overlooked material legal and evidentiary defects apparent on the face of the record, thereby resulting in a manifest miscarriage of justice, the Court allowed the criminal review petition, set aside the judgments of the Courts below convicting and sentencing the petitioner, and acquitted him of the charges by extending to him the benefit of doubt. Islamabad, 08 June 2026. Approved for reporting.

■ **View Full Judgment**

CPC S.12(2) & ORDER III RULE 4; LEGAL PRACTITIONERS AND BAR COUNCILS ACT 1973 S.22(3) — A CONSENT ORDER RECORDED ON THE STATEMENT OF A DULY ENGAGED ADVOCATE CANNOT BE UNDONE UNDER S.12(2) CPC ON A BALD PLEA OF FRAUD BY A LITIGANT WHO HAS TAKEN THE BENEFIT OF IT

Muhammad Ashraf v. Akber Ali & others

LEAVE DECLINED; PETITION DISMISSED; PETITIONER DIRECTED TO HAND OVER VACANT POSSESSION WITHIN ONE MONTH; COST WAIVED IN VIEW OF ADVANCED AGE; APPROVED FOR REPORTING

C.P.L.A. No. 49-K of 2026 · Bench: Irfan Saadat Khan, J. (authoring); Aqeel Ahmed Abbasi, J. · Decided: 30.07.2026 · Uploaded: 01.08.2026

FACTS

Long-standing rent and possession litigation between the petitioner and respondent No. 1 over demised premises culminated in an order of the Sindh High Court dated 09.11.2021 disposing of Constitution Petition No. S-1485 of 2019, by which, on the assurance of the petitioner's counsel that the premises would be vacated if reasonable time were granted, the High Court gave a grace period of nearly eight months up to 30.06.2022 for peaceful vacation, with directions as to deposit of monthly rent and utility bills. The petitioner's C.P.L.A. No. 102-K of 2022 against that order was dismissed on 21.03.2022 as barred by sixteen days and as not pressed, with liberty to pursue remedies before the High Court. The petitioner then filed CMA No. 2587/2022 under Section 12(2) CPC before the High Court, alleging that his previous counsel had consented to vacation without his knowledge or authority, thereby committing fraud upon him. The High Court, holding that the counsel engaged was fully competent and authorised and that the petitioner was bound by concessions made on his behalf, dismissed the application by the impugned order dated 16.01.2026. Notably, the Section 12(2) application alleging fraud was filed through the very same advocate said to have acted without authority.

LEGAL ISSUE

Whether a consent order recorded by a High Court on the statement of a duly engaged advocate can be set aside under Section 12(2) CPC on the allegation that counsel gave the concession without the client's authority, and what a party must plead and prove to sustain such a plea of fraud or misrepresentation.

HOLDING

The Court held that under Order III Rule 4 CPC read with Section 22(3) of the Legal Practitioners and Bar Councils Act, 1973, an advocate appointed by Wakalatnama has authority to represent and act for the appointing party; while a Wakalatnama does not automatically confer unbridled authority to compromise or withdraw a matter without specific instructions, where a solemn statement or concession is made by a duly engaged advocate in open court a litigant cannot subsequently disown it as a matter of routine convenience without concrete evidence of lack of authority or fraud. The law under Section 12(2) CPC is no longer res integra: a general or bald assertion of fraud is legally insufficient, and the party seeking to set aside a judicial order must specifically plead and substantiate the exact particulars of the alleged fraud or misrepresentation with cogent material; bare allegations do not warrant a full-fledged inquiry. Equitable estoppel applies, so that a litigant who reaps the full benefit of a consent order by enjoying the grace period allowed by the Court is barred from repudiating that very consent; permitting a party to approbate and reprobate would violate equity and undermine the finality of judicial proceedings. On the facts, the petitioner gave no plausible answer when asked whether he had appointed the advocate concerned, filed the Section 12(2) application through the very same advocate against whom fraud was alleged, produced no affidavit from counsel and initiated no disciplinary or corrective action; the plea of fraud was an afterthought designed to prolong possession.

LEGAL SIGNIFICANCE

A practical authority for rent and execution practice on the durability of consent orders. It confirms the pleading burden under Section 12(2) CPC — particulars, not assertions — and adds two evidential markers that will be quoted in future: the absence of an affidavit from the advocate said to have exceeded authority, and the tell-tale fact of the fraud application being filed through that same advocate. The application of equitable estoppel to a party who has enjoyed the grace period conferred by the consent order is a useful answer to delayed challenges. The Court's reliance on Riaz Hussain v. Chairman, Federal Land Commission (PLD 2026 FCC 22) alongside Messrs Dadabhoy Cement Industries Ltd v. NDFC (PLD 2002 SC 500) and Bashir Ahmad v. Muhammad Hussain (PLD 2019 SC 504) is also noteworthy as an early citation of Federal Constitutional Court authority in the Supreme Court.

LEGAL PROPOSITIONS (VERBATIM)

— Bare allegations unsupported by evidence do not warrant a full-fledged inquiry.

— Permitting a party to approbate and reprobate at will would violate basic principles of equity and undermine the finality ol judicial proceedings.

LEGAL PRINCIPLES EXPOUNDED

A party invoking Section 12(2) CPC must specifically plead and substantiate the exact particulars of the alleged fraud or misrepresentation with cogent material; a general or bald assertion of fraud is legally insufficient and does not warrant a full-fledged inquiry.

Source: *Bare allegations unsupported by evidence do not warrant a full-fledged inquiry.*

Authority: *Section 12(2), Code of Civil Procedure, 1908; Messrs Dadabhoy Cement Industries Ltd v. NDFC (PLD 2002 SC 500); Bashir Ahmad v. Muhammad Hussain (PLD 2019 SC 504)*

A litigant who has taken the full benefit of a consent order — here, by enjoying the grace period for vacation allowed by the Court — is estopped from turning around and repudiating that consent; a party cannot be permitted to approbate and reprobate at will.

Source: *Permitting a party to approbate and reprobate at will would violate basic principles of equity and undermine the finality ol judicial proceedings.*

Authority: *Doctrine of equitable estoppel; principle of finality of judicial proceedings*

An advocate appointed by Wakalatnama has authority to represent and act for his client, and although that authority does not extend without specific instructions to compromising or withdrawing a matter, a solemn statement or concession made by a duly engaged advocate in open court cannot be disowned by the client as a matter of routine convenience absent concrete evidence of want of authority or fraud.

Source: *Under Order III, Rule 4 of the CPC read with Section 22(3) of the Legal Practitioners and Bar Councils Act, 1973, an advocate appointed through a Wakalatnama is granted the authority to represent and act for the appointing party in court.*

Authority: *Order III Rule 4, Code of Civil Procedure, 1908 read with Section 22(3), Legal Practitioners and Bar Councils Act, 1973; Riaz Hussain v. Chairman, Federal Land Commission (PLD 2026 FCC 22)*

OPERATIVE ORDER

Finding no legal infirmity, irregularity or jurisdictional defect in the impugned order dated 16.01.2026 of the Sindh High Court, the Court declined leave and dismissed the petition. Although the petitioner's conduct warranted dismissal with heavy cost, the Court took a lenient view in light of his advanced age and refrained from imposing cost. The petitioner was directed to hand over vacant and peaceful possession of the demised premises to respondent No. 1 within one month, failing which respondent No. 1 was to be at liberty to pursue all legal remedies for securing vacant possession; the remaining directions in the order dated 09.11.2021 regarding deposit of monthly rent and utility bills were to remain intact. Karachi, 30 July 2026. Approved for reporting.

■ **View Full Judgment**

CONSTITUTION ART.185(3); FAMILY COURTS ACT 1964; MUSLIM PERSONAL LAW — QUANTUM OF MAINTENANCE CONCURRENTLY FIXED ON A REALISTIC ASSESSMENT OF THE FATHER'S EARNING CAPACITY IS A FINDING OF FACT NOT OPEN TO INTERFERENCE ABSENT PERVERSITY OR ARBITRARINESS

Mst. Shaheen Nawaz v. Raheel Khan and another

LEAVE REFUSED; PETITION DISMISSED AS DEVOID OF MERIT; JUDGMENT OF THE SINDH HIGH COURT MAINTAINED; APPROVED FOR REPORTING

C.P.L.A. No. 316-K of 2026 · Bench: Irfan Saadat Khan, J. (authoring); Aqeel Ahmed Abbasi, J. · Decided: 30.07.2026 · Uploaded: 01.08.2026

FACTS

The petitioner mother instituted Family Suit No. 3753 of 2021 before the XXIII Family Judge, Karachi East, claiming maintenance for the minor Muhammad Rayyan Khan at Rs. 40,000 per month. By order dated 02.12.2024 the trial Court partly decreed the suit, fixing maintenance at Rs. 15,000 per month with a 10% annual increment. On the petitioner's Family Appeal No. 446 of 2024, the District Judge, Karachi East, by order dated 03.04.2025 modified the decree and enhanced maintenance to Rs. 30,000 per month with a 15% annual increase. Still dissatisfied with the quantum, the petitioner invoked the constitutional jurisdiction of the Sindh High Court in C.P. No. S-378 of 2025; the High Court, after evaluating the evidence, upheld the appellate court and dismissed the petition. The petitioner, appearing in person before the Supreme Court, contended that respondent No. 1 was employed as a manager in a textile company in Bangladesh drawing a substantial salary and that Rs. 40,000 per month with an annual increase should have been allowed. The courts below had taken into account the respondent's financial obligations towards two other children from his first wife, the petitioner being his second wife who had already been granted khula by preliminary decree dated 20.01.2022.

LEGAL ISSUE

Whether the concurrent determination by the first appellate court and the High Court of the quantum of maintenance payable to a minor suffers from any legal infirmity or misreading of evidence such as to justify interference by the Supreme Court under Article 185(3) of the Constitution.

HOLDING

The Court held that the core controversy lay within a narrow compass and that the law on the scope of appellate interference with the quantum of maintenance fixed by the courts below is now well settled: superior courts do not ordinarily reassess or substitute the quantum where it has been determined on a realistic evaluation of the father's earning capacity, socio-economic parameters and the genuine needs of the minor, and interference is warranted only where the amount fixed is shown to be manifestly arbitrary, excessive or grossly inadequate. Both the first appellate court and the High Court had fixed maintenance at Rs. 30,000 per month with a 15% annual increment after an extensive assessment of the respondent's financial status, earning capacity and overall resources, as well as his obligations towards two other children. Those determinations were purely findings of fact reached upon a proper evaluation of the material. Following Muhammad Imran Baqir v. Mst. Zarnain Arzoo (PLD 2026 Supreme Court 170), the Court reiterated that a father bears a solemn obligation to maintain his offspring and that where the courts below have fixed maintenance on an evaluation of his earning potential and financial liabilities, such concurrent findings are not to be lightly disturbed. No perversity, arbitrary exercise of discretion or jurisdictional defect having been pointed out, no case for interference was made out.

LEGAL SIGNIFICANCE

A short but useful restatement, following PLD 2026 SC 170, of the standard of review in maintenance matters, of frequent practical application in family practice. It confirms that the quantum of maintenance is a question of fact, that the threshold for interference under Article 185(3) is manifest arbitrariness, excess or gross inadequacy, and that a father's obligations to children of another marriage are a legitimate part of the assessment of his earning capacity. It also confirms that an annual escalation clause is properly treated as part of the same factual determination.

LEGAL PROPOSITIONS (VERBATIM)

— The law on the scope of appellate interference with the quantum of maintenance fixed by lower courts is now well-settled.

— The findings of the courts below are neither perverse nor based on no evidence.

LEGAL PRINCIPLES EXPOUNDED

The quantum of maintenance fixed by the courts below on a realistic evaluation of the father's earning capacity, socio-economic parameters and the genuine needs of the minor is a finding of fact; the scope for appellate interference is narrow and now well settled.

Source: *The law on the scope of appellate interference with the quantum of maintenance fixed by lower courts is now well-settled.*

Authority: *Article 185(3) of the Constitution; Muhammad Imran Baqir v. Mst. Zarnain Arzoo (PLD 2026 Supreme Court 170)*

A father bears a solemn obligation to maintain his offspring, and where the courts below have fixed maintenance upon an evaluation of his earning potential and financial liabilities, the resulting concurrent findings of fact are not to be lightly disturbed.

Source: *where the courts below have fixed maintenance upon evaluating the father's earning potential and financial liabilities, such concurrent findings of fact are not to be lightly disiupted.*

Authority: *Muhammad Imran Baqir v. Mst. Zarnain Arzoo (PLD 2026 Supreme Court 170); Muslim Personal Law*

Interference under Article 185(3) requires perversity, an arbitrary exercise of discretion or a jurisdictional defect; where the findings are neither perverse nor based on no evidence, leave will be refused.

Source: *The findings of the courts below are neither perverse nor based on no evidence.*

Authority: *Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973*

OPERATIVE ORDER

Finding no illegality, irregularity, constitutional or jurisdictional defect in the impugned orders warranting interference, the Court held the petition to be devoid of merit, refused leave and dismissed the petition, maintaining the judgment of the High Court. Karachi, July 2026. Approved for reporting.

■ **View Full Judgment**

Lahore High Court

1 judgment

QANUN-E-SHAHADAT ORDER 1984 ART.115; CPC S.144 & ORDER I RULE 10; CONSTITUTION ART.199 — A THIRD-PARTY OBJECTION PETITION IN EXECUTION CANNOT BE USED AS A DEVICE TO SHELTER A TENANT'S POSSESSION UNDER AN EJECTMENT ORDER THAT HAS ATTAINED FINALITY

Mst. Balqees Begum v. Additional District Judge, Multan etc.

WRIT PETITION DISMISSED AS DEVOID OF MERIT; IMPUGNED ORDERS DATED 08.11.2025 AND 26.01.2026 SUSTAINED; APPROVED FOR REPORTING

Writ Petition (Rent) No. 1877 of 2026; 2026 LHC 4874 (Lahore High Court, Multan Bench) · Bench: Muzamil Akhtar Shabir, J. · Decided: 09.06.2026 · Uploaded: 31.07.2026

FACTS

Respondents No. 3 and 4, the landlords, obtained an ejectment order dated 20.11.2012 from the Rent Controller, Multan against respondent No. 5, Nehal Din, in respect of shops No. 270/W3 and 270-A/W3 (first and second floors) at Chowk Barar Hussain Agahi, Multan. During the tenant's appeal, the present petitioner, claiming ownership of shop No. 270-A/W3, applied under Order I Rule 10 CPC to be impleaded and was made a co-appellant on 20.03.2013. By judgment dated 08.11.2013 the appellate court dismissed the tenant's appeal but allowed the petitioner's, excluding shop No. 270-A/W3 from the ejectment order. The tenant's Writ Petition No. 14763 of 2013 against that judgment was dismissed on 23.09.2025. The landlords then filed for execution, attaching the original map (which depicted the adjacent properties), and obtained a warrant of possession. The petitioner filed an objection petition, which was dismissed by the executing court on 08.11.2025 and, on appeal, by the appellate court on 26.01.2026, both forums recording that her property stood excluded and that no warrant of possession had issued against it. She then invoked Article 199.

LEGAL ISSUE

Whether a third party claiming title to a portion of the demised premises, which has already been excluded from an ejectment order by a final appellate judgment, may maintain an objection petition in execution on the apprehension that the map annexed to the execution application might result in her property being dispossessed; and whether such an objection petition may be used to protect the possession of the tenant against whom the ejectment order has attained finality.

HOLDING

The Court held that the petitioner's property had already been excluded by the appellate judgment dated 08.11.2013, that both forums below were alive to that fact and had held her property to be outside the subject matter of the execution, and that the execution petition sought eviction only from property No. 270/W3. The annexure of the original map was unobjectionable, since it showed adjacent properties and served to identify with precision the property under tenancy; no new map had been filed after the ejectment order was modified, and the execution remained subject to the condition that the order would not be executed against the petitioner's property. The objection was therefore based on apprehension only. More fundamentally, since the ejectment order was not being executed against the petitioner or her property, the true object of her objection petition appeared to be to shelter the tenant's possession despite the eviction order against him having attained finality. Under Article 115 of the Qanun-e-Shahadat Order, 1984 a tenant is estopped from challenging his landlord's title without first surrendering possession — the statutory expression of the maxim 'once a tenant, always a tenant' — and occupation as a tenant, however long, creates no ownership adverse to the owner. What the tenant could not claim in his own defence cannot be claimed on his behalf by a third party, on the principle that what cannot be done directly cannot be done indirectly. The landlords having waited since 30.07.2012 for possession, the objection petition was an impermissible attempt to prolong the tenant's possession by delaying the execution.

LEGAL SIGNIFICANCE

A valuable addition to rent-execution practice in Punjab. It extends the tenant's estoppel under Article 115 of the Qanun-e-Shahadat Order, 1984 to third parties acting on the tenant's behalf, holding that a stranger's objection petition cannot be used as a proxy for a defence the tenant himself is barred from raising. It also confirms that the retention of the original map with an execution application is not, of itself, a ground of objection where the decree has been modified, and — importantly for genuine third parties — it identifies the correct remedy: an application for restitution of possession under Section 144 CPC, which the Court holds applicable to execution proceedings under the rent laws, with demarcation available where required.

LEGAL PROPOSITIONS (VERBATIM)

— *the objection being raised by the petitioner is without any substance and is based on apprehension only*

— *what cannot be done directly cannot be done indirectly*

LEGAL PRINCIPLES EXPOUNDED

A tenant is estopped by Article 115 of the Qanun-e-Shahadat Order, 1984 from challenging his landlord's title without first surrendering possession; occupation as a tenant, however long, creates no ownership adverse to the owner, and the status of tenant does not change until possession is surrendered.

Source: *The said principle of statutory law has its origin in the legal maxim "once a tenant, always a tenant" which means a person who enters a property as a tenant cannot later deny the landlord's title or claim ownership simply by staying in the property for a long time for the reason that stay or occupation of the property as a tenant for whatever length of time does not create ownership in the property adverse to its owner and status as tenant does not change without first surrendering the possession of the property to the landlord.*

Authority: *Article 115, Qanun-e-Shahadat Order, 1984; Kalimullah v. Amin Hazin (1976 SCMR 77); Naveed Akhtar v. Special Judge (Rent), Sialkot (2021 CLC 952 Lahore); Mrs. Azra Riaz v. Additional District Judge (2021 CLC 623 Lahore)*

A person proved to be a tenant cannot plead title in a third party in order to take shelter under it and protect his possession over the tenanted property on the basis of technicalities.

Source: *the person who is proved to be a tenant of the property cannot unnecessarily endeavour to plead title in a third party to take shelter under it on the basis of technicalities for protection of his possession over property under tenancy.*

Authority: *Muhammad Rafiq v. Sabir Ali (1995 MLD 178 Lahore)*

What the tenant could not be allowed to claim in his own defence cannot be allowed to be claimed on his behalf by a third party through an objection petition in execution; what cannot be done directly cannot be done indirectly.

Source: *what the tenant could not be allowed to claim in his defence, cannot be allowed to be claimed by the third party on his behalf based on the principle of law that what cannot be done directly cannot be done indirectly.*

Authority: *Mir Abdul Baqi Baluch v. Government of Pakistan (PLD 1968 SC 313); Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189); Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473)*

Where a genuine third party is in fact dispossessed in execution, the remedy is an application for restitution of possession under Section 144 CPC, which applies to execution proceedings under the rent laws, and demarcation may be ordered by the executing court where required.

Source: *she may, if advised, file an application for retrieving possession of the same by filing an application for restitution of possession under section 144 Code of Civil Procedure, 1908, which is applicable to the execution proceedings under Rent Laws in terms of principles laid down in Muhammad Bashir Versus Muhammad Ramzan and 2 others (1979 SCMR 260)*

Authority: *Section 144, Code of Civil Procedure, 1908; Muhammad Bashir v. Muhammad Ramzan (1979 SCMR 260)*

OPERATIVE ORDER

No illegality or jurisdictional defect having been pointed out in the impugned orders concurrently dismissing the objection petition, and those orders being based on a proper appreciation of the facts and the law, the Court held that they could not be declared to have been passed without lawful authority or to be of no legal effect. The impugned orders were sustained and the writ petition was dismissed as devoid of merits, with liberty to the petitioner, if in fact dispossessed, to seek restitution under Section 144 CPC. Approved for reporting.

■ View Full Judgment

Sindh High Court

1 judgment

CPC SS.11, 115 & ORDER VII RULE 11 — EXECUTION PROCEEDINGS ARISING FROM A DECREE THAT HAS ATTAINED FINALITY CANNOT BE STAYED THROUGH COLLATERAL PROCEEDINGS OR AN INDIRECT CHALLENGE MOUNTED IN A LATER SUIT

Peer Bux v. Dhani Bux (Deceased, through Legal Heirs) & Others

REVISION APPLICATION DISMISSED WITH COSTS OF RS. 20,000 PAYABLE TO THE HIGH COURT CLINIC WITHIN FIFTEEN DAYS; APPROVED FOR REPORTING

Civil Revision (R.A.) No. 31 of 2026 (S.B.); 2026 SHC KHI 1505 · Bench: Sana Akram Minhas, J. · Decided: 03.08.2026 (heard 29.04.2026 and 13.05.2026; reserved 19.05.2026) · Uploaded: 03.08.2026

FACTS

The dispute concerns a single 300 square yard residential property, Plot No. 36/B/1 (actual 36/B), Sheet No. 3, Upper Gizri, Karachi. The deceased respondent No. 1 instituted Civil Suit No. 1197 of 2004 for cancellation, declaration, injunction, recovery of possession and mesne profits, seeking cancellation of the KMC (Katchi Abadis) lease in favour of the applicant. After a first decree, an unsuccessful appeal by the applicant, a remand by the High Court in Second Appeal No. 28/2011, and a post-remand dismissal on limitation, the first appellate court by judgment dated 15.01.2021 in Civil Appeal No. 245/2018 decreed the suit as prayed. Execution No. 8/2021 followed, in which the applicant fully participated. His Second Appeal No. 9/2023 against the 2021 judgment was dismissed as time-barred on 20.03.2025, and his review (CMA No. 2986/2025) was dismissed on 12.12.2025; both orders attained finality. In November 2024 the applicant instituted Civil Suit No. 1547/2024 seeking cancellation of the registered lease dated 01.04.2014 in favour of the deceased respondent; the plaint was rejected on 22.08.2025 under Order VII Rule 11 CPC as barred by

Section 11 CPC. In his appeal against that rejection (Civil Appeal No. 254/2025), the applicant applied for status quo to restrain the execution proceedings; that application was dismissed by the XII Additional District Judge, Karachi South on 09.02.2026, and it was that interlocutory order which was assailed in revision.

LEGAL ISSUE

Whether a revision under Section 115 CPC lies against the refusal of an interlocutory application for status quo, made in an appeal against the rejection of a plaint in a later suit, when the effect sought is to restrain execution of a decree passed in an earlier and separate suit which has attained finality.

HOLDING

The Court held that the sole basis of the challenge — that the parties claimed different properties bearing different addresses — found no mention in the impugned interlocutory order, showing that it had never been urged before the first appellate court; advanced for the first time in revision, it was plainly an afterthought. The plea was in any event demonstrably false, since the applicant's own plaint in the rejected suit described the property by the same address as the prayer clause in the decreed suit. The execution proceedings originate from the decreed suit, the judgment in which had attained finality upon the dismissal of the second appeal as time-barred and the subsequent dismissal of the review, no further remedy having been pursued. The executing court is bound to execute the decree and cannot be restrained in collateral proceedings merely because the applicant seeks to reopen issues concluded by the decree, or which ought to have been raised in the proceedings culminating in it, or pursued through the statutory remedies against it. The Court further recorded that the applicant already enjoyed interim protection, the appellate court's order dated 17.12.2025 suspending the rejection of the plaint remaining operative — a fact not disclosed by his counsel but discovered on scrutiny of the record. In substance the applicant sought to achieve indirectly what he had failed to achieve directly, which would amount to a collateral attack on concluded proceedings and could not be countenanced.

LEGAL SIGNIFICANCE

A crisp and quotable authority for execution practice on the impermissibility of collateral attacks. It confirms that a decree-holder's execution cannot be stalled by interlocutory manoeuvres in a parallel or later suit, that an executing court is bound to execute and cannot be restrained collaterally, and that points not urged before the forum below cannot be raised for the first time in revision. The Court's express notice of counsel's failure to disclose the subsisting interim order in the applicant's favour, and its imposition of costs payable to the High Court Clinic, mark a firm judicial posture towards dilatory execution objections. The order also usefully preserves the pending appeal, confining itself to the legality of the interlocutory order.

LEGAL PROPOSITIONS (VERBATIM)

— Having been advanced for the first time before this Court, it is clearly an afterthought and cannot furnish a basis for interference with the Impugned Interlocutory Order.

— Such a course would amount to a collateral attack on proceedings that have already attained finality and cannot be countenanced .

LEGAL PRINCIPLES EXPOUNDED

An executing court is bound to execute the decree in accordance with law and cannot be restrained in collateral proceedings merely because a party seeks to reopen matters concluded by the decree, or which ought to have been raised in the proceedings culminating in it, or pursued through the statutory remedies available against it.

Source: *The Executing Court is bound to execute the decree in accordance with law and cannot be restrained in collateral proceedings merely because the Applicant seeks to re - open issues that either stood concluded by the decree, ought to have been raised in the proceedings culminating in the decree, or could and ought to have been pursued through the statutory remedies available against the decree.*

Authority: *Sections 11 and 115, Code of Civil Procedure, 1908; principle of finality of decrees*

A litigant who has exhausted his remedies against a decree cannot mount an indirect challenge to it through interlocutory proceedings in a separate suit; such a course is a collateral attack on concluded proceedings and cannot be countenanced.

Source: *In effect, the App licant now seeks to achieve indirectly what he has been unable to achieve directly through the remedies available against th e said Judgment . Such a course would amount to a collateral attack on proceedings that have already attained finality and cannot be countenanced .*

Authority: *Doctrine that what cannot be done directly cannot be done indirectly; Order VII Rule 11 read with Section 11 CPC (res judicata)*

A contention that finds no mention in the order under challenge, and was therefore never urged before the forum below, cannot be advanced for the first time in revision; it is an afterthought and furnishes no basis for interference.

Source: *Having been advanced for the first time before this Court, it is clearly an afterthought and cannot furnish a basis for interference with the Impugned Interlocutory Order.*

Authority: *Section 115, Code of Civil Procedure, 1908 (scope of revisional jurisdiction)*

OPERATIVE ORDER

Subject to the clarification that Civil Appeal No. 254/2025 remains pending before the first appellate court and shall be decided independently on its own merits in accordance with law, the Court held that the first appellate court had correctly appreciated the nature of the controversy and had rightly declined to stay Execution No. 8/2021, so that the impugned interlocutory order warranted no interference. The revision application was dismissed as devoid of merit with costs of Rs. 20,000 (Rupees Twenty Thousand), to be deposited by the applicant in the account of the High Court Clinic within fifteen days of the order.

■ **View Full Judgment**